

# **CHAPTER 21**

## **State and Private Education Institutions**

### **ARTICLE 1**

#### **General Provisions Relating to State Educational Institutions**

##### **21-1-1. State institutions; admission requirements to be established by boards of regents.**

A. The respective boards of regents of New Mexico state university, 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.

B. In determining the standard of requirements for admission to their respective institutions, boards of regents shall not require a student who has completed the requirements of a home-based or nonpublic school educational program and who has submitted test scores that otherwise qualify the student for admission to that institution to obtain or submit proof of having obtained a high school equivalency credential. In determining requirements for admission, boards of regents shall evaluate and treat applicants from home-based educational programs or nonpublic schools fairly and in a nondiscriminatory manner.

**History:** Laws 1912, ch. 83, § 2; Code 1915, § 5162; C.S. 1929, § 130-1312; 1941 Comp., § 55-2801; 1953 Comp., § 73-30-1; 1997, ch. 127, § 1; 2015, ch. 122, § 1.

#### **ANNOTATIONS**

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

For 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 21-11-27 NMSA 1978.

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

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision

relating to admission requirements in state educational institutions; and in Subsection B, after "otherwise qualify", deleted "him" and added "the student", and after "proof of having obtained a", deleted "general education development certificate" and added "high school equivalency credential".

**The 1997 amendment**, effective June 20, 1997, rewrote this section heading, designated the existing language as Subsection A, substituted "New Mexico state university, New Mexico institute of mining and technology" for "the New Mexico College of Agriculture and Mechanical Arts, the New Mexico School of Mines" in Subsection A, and added Subsection B.

**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.

### **21-1-1.1. Home school students; admission requirements; public post-secondary educational institutions.**

In determining the standard of requirements for admission to any public post-secondary educational institution, the board of regents, governing board or community college board shall not require a student who has completed the requirements of a home-based or nonpublic school educational program and who has submitted test scores that otherwise qualify the student for admission to that institution to obtain or submit proof of having obtained a high school equivalency credential. In determining requirements for admission, the board of regents, governing board or community college board shall evaluate and treat applicants from home-based or nonpublic educational programs fairly and in a nondiscriminatory manner.

**History:** Laws 1999, ch. 182, § 1; 2015, ch. 122, § 2.

### **ANNOTATIONS**

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to admission requirements for home school students to public post-secondary educational institutions; after "otherwise qualify", deleted "him" and added "the student", after "having obtained a", deleted "general" and added "high school", and after "equivalency" deleted "diploma certificate" and added "credential".

## **21-1-1.2. Dual credit for high school and post-secondary classes.**

### **A. As used in this section:**

(1) "bureau of Indian education school" means a school located in New Mexico that is under the control of the bureau of Indian education of the United States department of the interior;

(2) "dual credit course" means a post-secondary course that may be academic or career-technical but not remedial or developmental and specified in a rule promulgated pursuant to Paragraph (1) of Subsection G of this section for which a student simultaneously earns credit toward high school graduation and a post-secondary degree or certificate;

(3) "dual credit program" means a program offered by a public post-secondary educational institution or tribal college that allows high school students to enroll in dual credit courses;

(4) "high school" means a school offering one or more of grades nine through twelve or their equivalent and that is a school district, charter school, state-supported school, bureau of Indian education school, private school or home school; and

(5) "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the north central association of colleges and schools.

**B.** To be eligible to participate in a dual credit program, the student shall be a school-age person as that term is defined in the Public School Code [Chapter 22 NMSA 1978, except Article 5A] and:

(1) except as provided in Subsection C of this section, be enrolled in a school district, charter school or state-supported school in one-half or more of the minimum course requirements approved by the public education department for public school students or, if a student in a bureau of Indian education school, private school or home school, be receiving at least one-half of the student's instruction at the student's high school; and

(2) obtain permission from the student's school counselor, school principal or head administrator of the high school that the student primarily attends prior to enrolling in a dual credit course.

**C.** A student who has met the eligibility criteria provided for in Subsection B of this section in a fall or winter semester and who has not graduated or earned a high school equivalency credential may take courses for dual credit during the immediately succeeding summer semester.

D. The high school that the student primarily attends shall pay the cost of the required textbooks and other course supplies for the post-secondary course the student is enrolled in through purchase arrangements with the bookstore at the public post-secondary educational institution or tribal college or through other cost-efficient methods. The student shall return the textbooks and unused course supplies to the high school when the student completes the course or withdraws from the course.

E. A public post-secondary educational institution or tribal college that participates in a dual credit program shall waive all general fees for dual credit courses.

F. The higher education department shall revise procedures in the higher education funding formula to address enrollments in dual credit courses and to encourage institutions to waive tuition for high school students taking those courses.

G. The higher education department and the public education department shall adopt and promulgate rules to implement a dual credit program that specify:

- (1) post-secondary courses that are eligible for dual credit;
- (2) conditions that apply, including:
  - (a) the required academic standing and conduct of students enrolled in dual credit courses;
  - (b) the semesters in which dual credit courses may be taken;
  - (c) the nature of high school credit earned;
  - (d) any caps on the number of courses, location of courses and provision of transcripts; and
  - (e) an appeals process for a student who is denied permission to enroll in a dual credit course;
- (3) accommodations or other arrangements applicable to special education students;
- (4) the contents of the uniform master agreement that govern the roles, responsibilities and liabilities of the high school, the public post-secondary educational institution or tribal college and the student and the student's family;
- (5) provisions for expanding dual credit opportunities through distance learning and other methods;
- (6) the means by which school districts, charter schools and state-supported schools are required to inform students and parents about opportunities to participate in

dual credit programs during student advisement, academic support and formulation of annual next step plans, as well as other methods; and

(7) provisions for collecting and disseminating annual data, including:

(a) the number of students taking dual credit courses;

(b) the participating high schools, public post-secondary educational institutions and tribal colleges;

(c) the courses taken and grades earned;

(d) the high school graduation rates for participating school districts, charter schools and state-supported schools;

(e) the public post-secondary educational institutions and tribal colleges that participating students ultimately attend; and

(f) the cost of providing dual credit courses.

H. The higher education department and the public education department shall evaluate the dual credit program in terms of its accessibility to students statewide and its effect on:

(1) student achievement in secondary education;

(2) student enrollment and completion of higher education; and

(3) high schools, public post-secondary educational institutions and tribal colleges.

I. The departments shall make an annual report, including recommendations, to the governor and the legislative education study committee.

J. The provisions of this section do not apply to the New Mexico military institute.

**History:** Laws 2007, ch. 227, § 1; 2008, ch. 14, § 1; 2010, ch. 36, § 1; 2014, ch. 12, § 1; 2015, ch. 122, § 3.

## ANNOTATIONS

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to dual credit for high school and post-secondary classes; and in Subsection C, after "graduated or earned a", deleted "general educational development certificate" and added "high school equivalency credential".

**The 2014 amendment**, effective July 1, 2014, effective July 1, 2014, provided for dual credit program parity for all high school students; clarified language; in Subsection A, Paragraph (1), within the quotes, after "Indian education", deleted "high"; in Subsection A, added Paragraph (2); in Subsection A, Paragraph (3), after "means a program", added "offered by a public post-secondary educational institution or tribal college", after "to enroll in", deleted "college-level" and added "dual credit", and after "courses", deleted former language which required that college level courses offered for dual credit be offered by a public post-secondary educational institution or tribal college and that the courses be academic or career-technical, and not remedial or developmental; in Subsection A, added Paragraph (4); in Subsection B, in the introductory sentence, after "the student shall", added the remainder of the sentence, in Subsection B, Paragraph (1), after "enrolled in a", deleted "regular public", after "enrolled in a school", added "district", after "charter school", added "or", after "state-supported school", deleted "or bureau of Indian education high school", and after "public school students", added the remainder of the sentence; in Subsection B, Paragraph (2), after "obtain permission from", deleted "a" and added "the student's", after "head administrator of", deleted "a charter school, state-supported school or bureau of Indian education" and added "the", and after "the high school", added "that the student primarily attends"; in Subsection D, in the first sentence, at the beginning of the sentence, deleted "school district, charter school, state-supported school or bureau of Indian education", and after "that the student", added "primarily", and in the second sentence, after "course supplies to the", deleted "school district, charter school, state-supported school or bureau of Indian education", in Subsection G, Paragraph (4), after "uniform master agreement", deleted former language which required that the uniform master agreement be developed in collaboration with school districts, charter schools, state-supported schools, bureau of Indian education schools, public post-secondary educational institutions and tribal colleges, and after "liabilities of the", deleted "school district, charter school, state-supported school or bureau of Indian education"; in Subsection G, Paragraph (6), after "means by which", deleted "public high" and added "school districts, charter schools and state-supported"; in Subsection G, Paragraph (7), Subparagraph (b), after "participating", deleted "school districts, charter schools, state-supported schools, bureau of Indian education"; in Subsection G, Paragraph (7), Subparagraph (d), after "charter schools", added "and" and after "state-supported schools", deleted "and bureau of Indian education high schools"; in Subsection H, Paragraph (3), deleted "school districts, charter schools, state-supported schools, bureau of Indian education"; and in Subsection I, after "governor and the", deleted "legislature" and added "legislative education study committee".

**The 2010 amendment**, effective July 1, 2010, added Paragraph (1) of Subsection A; in Subsection A(2), after "educational institution", added "or tribal college"; added Paragraph (3) of Subsection A; in Subsection B(1), after "state-supported school", added "or bureau of Indian education high school"; in Subsection B(2), after "state-supported school", added "or bureau of Indian education high school"; in Subsection D, in the first sentence, after "state-supported school", added "or bureau of Indian education high school" and after "bookstore at the public", changed "post-secondary educational institution or other cost-efficient methods" to "post-secondary educational

institution or tribal college or through other cost-efficient methods"; and in the second sentence, after "school district", added "charter school, state-supported school or bureau of Indian education high school"; in Subsection E, after "educational institution" added "or tribal college"; in Subsection G(4), after "state-supported schools", deleted "and the" and added "bureau of Indian education high schools", after "educational institutions", added "and tribal colleges"; after "liabilities of the school district, charter school," changed "or state-supported school; the institution; and the student" to "state-supported school or bureau of Indian education high school; the public post-secondary educational institution or tribal college; and the student"; in Subsection G(7)(b), after "state-supported schools", deleted "and" and added "bureau of Indian education high schools" and after "educational institutions", added "and tribal colleges"; in Subsection G(7)(d), after "charter schools", deleted "and" and after "state-supported schools", added "and bureau of Indian education high schools"; in Subsection G(7)(e), after "educational institutions", added "and tribal colleges"; and in Subsection H(3), after "state-supported schools", deleted "and", and added "bureau of Indian education high schools" and after "educational institutions", added "and tribal colleges".

**The 2008 amendment**, effective May 14 2008, included state-supported schools in the dual credit program and added Subsections C and J.

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

A. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978 [repealed], 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 and New Mexico institute of mining and technology 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 and in Section 21-1-4.3 NMSA 1978 [repealed], the board of regents of northern New Mexico college 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 in an amount not to exceed the matriculation fee or tuition and fees, or both. These scholarships are in addition to the lottery tuition scholarships authorized in Section 21-1-4.3 NMSA 1978 [repealed] and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection 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 the institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds 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 or governing board 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 for tuition and fees. In no event shall the board of regents of any institution be allowed to award scholarships for 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 scholarships 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) the board of regents of 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 governing board of New Mexico junior college may grant up to fifty-two athletic scholarships.

E. In the event that the number of athletic scholarships exceeds 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, the appropriate board of regents shall reduce the number of authorized tuition scholarships to comply with association rules and regulations.



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; 1996, ch. 71, § 1; 1997, ch. 102, § 1; 2000, ch. 52, § 2; 2009, ch. 47, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Section 21-1-4.3 NMSA 1978 was repealed by Laws 2014, ch. 80, § 10, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

**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.

**Cross references.** — For 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.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, deleted "and New Mexico junior college" after "technology"; in Subsection C, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "Beginning with the fall semester of 2010, a minimum of one-half"; and at the end of the last sentence, added the language following "financial need"; in Subsection D, added "or governing board" after "regents"; and in Paragraph (4) of Subsection D, deleted "board of regents" and added "governing board".

**The 2000 amendment**, effective July 1, 2000, in Subsection C, substituted the second sentence for "Except as provided in Section 21-1-4.3 NMSA 1978" and inserted "pursuant to this subsection" in the present third sentence.

**The 1997 amendment**, effective June 20, 1997, in Subsection E, deleted the former first sentence relating to computing tuition credits using the value of athletic scholarships, substituted "In the event that the number of athletic scholarships exceeds" for "In no event shall the board of regents of any such institution be allowed to establish

scholarships for tuition and fees from more than" and added the language beginning "the appropriate board" at the end of the subsection.

**The 1996 amendment**, effective May 15, 1996, inserted "and in Section 21-1-4.3 NMSA 1978" in Subsections A and B; in Subsection C, substituted "in an amount not to exceed" for "by waiving" in the first sentence and added "Except as provided in Section 21-1-4.3 NMSA 1978" in the second sentence; in Subsection D, substituted "for tuition" for "by waiving tuition" in the first sentence, and "award scholarships for" for "waive the" and "scholarships granted" for "waivers granted" in the second sentence, added "the board of regents of" at the beginning of Paragraphs (2) and (4), and deleted "board" following "college" in Paragraph (4); and, in Subsection E, substituted "scholarships for" for "waivers of" in the first sentence and "establish scholarships for" for "waive the" in the second sentence. Laws 1996, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Constitutionality.** — Based on its authority to provide and charge tuition for educational services, a board of regents may, consistently with the antidonation clause, use public money for scholarships in the form of tuition waivers or reductions if the criteria used to award them are education-related and applied in a reasonable and even-handed manner. 1997 Op. Att'y Gen. No 97-02.

**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. 1954 Op. Att'y Gen. No. 54-6039 (overruled on other grounds 1997 Op. Att'y Gen. No. 97-02).

**All students enrolled for credit may be considered.** — All students enrolled for credit at the college may be considered for computation of scholarships. 1959 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 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 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.

### **21-1-2.1. Scholarship program established.**

A. The department of military affairs shall establish a scholarship program for students who are in the New Mexico national guard. The adjutant general of the department of military affairs shall provide for the administration of the scholarship program and shall establish criteria for scholarship eligibility and award in accordance with rules adopted and promulgated by the department of military affairs. Scholarships awarded may be used at any New Mexico public post-secondary educational institution. Scholarships shall be awarded in an amount and for a duration to be determined by the department.

B. The board of regents of each public post-secondary educational institution shall designate a representative of the institution to coordinate the scholarship program.

**History:** Laws 1996, ch. 64, § 1; 2001, ch. 269, § 1; 2001, ch. 274, § 1.

#### **ANNOTATIONS**

**The 2001 amendment,** , effective June 15, 2001, added Subsection B and the Subsection A designation; in Subsection A, substituted "in the New Mexico national guard" for "New Mexico guard or the New Mexico air national guard" and inserted "in accordance with rules adopted and promulgated by the department of military affairs".

Laws 2001, ch. 269, § 1, effective July 1, 2001, and Laws 2001, ch. 274, § 1, effective June 15, 2001, enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 274, § 1. See 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute, regulation, or policy governing home schooling or affecting rights of home-schooled students, 70 A.L.R.5th 169.

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

A. For the purpose of tuition payment at the resident student rates at state educational institutions enumerated 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 or armed forces of a foreign country 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.

D. For the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution enumerated in Article 12, Section 11 of the constitution of New Mexico may determine that "resident student" includes any Texas resident who resides within a one hundred thirty-five mile radius of that institution.

E. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes any student receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the constitution of New Mexico.

F. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes a member of an Indian nation, tribe or pueblo located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution enumerated in Article 12, Section 11 of the constitution of New Mexico for either undergraduate or post-graduate enrollment.

**History:** 1953 Comp., § 73-30-2.1, enacted by Laws 1970, ch. 47, § 1; 1976 (S.S.), ch. 42, § 1; 1994, ch. 136, § 1; 1996, ch. 66, § 1; 1997, ch. 102, § 2; 2001, ch. 118, § 1; 2005, ch. 155, § 1.

## **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, added Subsection F to define a "resident student" for tuition payment and budget and revenue calculations to include a member of an Indian nation, tribe or pueblo located in whole or in part in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution.

**The 2001 amendment**, effective June 15, 2001, inserted "or armed forces of a foreign country" in Paragraph A(1).

**The 1997 amendment**, effective June 20, 1997, added Subsection E.

**The 1996 amendment**, effective May 15, 1996, added Subsection D.

**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 and general fee charges; definitions.**

A. The state educational institutions set forth in Article 12, Section 11 of the constitution of New Mexico and their branches, community colleges as provided in Chapter 21, Article 13 NMSA 1978 and technical and vocational institutes as provided in Chapter 21, Article 16 NMSA 1978 shall charge tuition, which is in addition to general or other earmarked fees, as provided by law.

B. "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit. "Tuition" does not include required general or other fees.

C. "General fee" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

D. 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.

E. 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.

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

G. The higher education department 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; 1996, ch. 71, § 2; 2006, ch. 85, § 1.

## ANNOTATIONS

**The 2006 amendment,** effective May 17, 2006, in Subsection A, deleted the exception provided in Section 21-1-4.3 NMSA 1978; and added the branches of state educational institutions, community colleges and technical and vocational institutes; added the definition of "tuition" in Subsection B; added the definition of "general fee" in Subsection C; and provided in Subsection F (formerly Subsection D) that part-time students shall be charged per semester credit hour.

**The 1996 amendment,** effective May 15, 1996, in Subsection A, added "Except as provided in Section 21-1-4.3 NMSA 1978" and substituted "constitution of New Mexico" for "state constitution"; and, in Subsection E, substituted "commission on higher education" for "board of educational finance".

**Who may define "resident".** — Within the scope of the language of the statutes, constitutional provisions and case law, the state board of educational finance (now the commission on higher education) 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.

### **21-1-4.2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1994, ch. 136, § 3 repealed 21-1-4.2 NMSA 1978, as enacted by Laws 1994, ch. 136, § 2, relating to the resident status of Native Americans at New Mexico highlands university, effective July 1, 1999. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

### **21-1-4.3. Repealed.**

**History:** 1978 Comp., § 21-1-4.3, enacted by Laws 1996, ch. 71, § 3; 1999, ch. 224, § 1; 2007, ch. 72, § 7; 2007, ch. 73, § 1; 2010, ch. 109, § 1; repealed by Laws 2014, ch. 80, § 10.

#### **ANNOTATIONS**

**Repeals.** — Laws 2014, ch. 80, § 10 repealed 21-1-4.3 NMSA 1978, as enacted by Laws 1996, ch. 71, § 3, relating to authorization of legislative lottery scholarships for

certain educational institutions, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

#### **21-1-4.4. Repealed.**

**History:** 1978 Comp., § 21-1-4.4, enacted by Laws 1996, ch. 71, § 4; repealed by Laws 2014, ch. 80, § 10.

#### **ANNOTATIONS**

**Repeals.** — Laws 2014, ch. 80, § 10 repealed 21-1-4.4 NMSA 1978, as enacted by Laws 1996, ch. 71, § 4, relating to determination of tuition scholarships and use of lottery tuition fund, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

#### **21-1-4.5. Resident tuition for veterans of the armed forces of the United States and families of members of the armed forces.**

A. A veteran of the armed forces of the United States shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning, provided that the veteran is eligible for veterans' education benefits under federal law. In order for a veteran who is not a resident of New Mexico to receive in-state tuition rates, the veteran shall use the veteran's federal educational benefits at a state public post-secondary institution.

B. A spouse or child of an active member of the armed forces who is assigned to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning.

C. A spouse or child of an active member of the armed forces who is assigned to duty elsewhere immediately following assignment to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning as long as the spouse or child resides continuously in New Mexico.

D. A spouse or child of an active member of the armed forces who dies or is killed shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning if the spouse or child becomes a resident of New Mexico within sixty days of the date of death.

E. A veteran of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the veteran is enrolled in a degree or certificate program.



F. If an active member of the armed forces is stationed outside New Mexico and the member's spouse or child establishes residence in New Mexico and files with a state institution of higher learning at which the spouse or child plans to register a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be deemed an in-state resident for purposes of determining tuition and fees at that state institution of higher learning without regard to length of time that the spouse or child has resided in the state.

G. A spouse or child of an active member of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the person is continuously enrolled in the same degree or certificate program. For purposes of this subsection, a person is not required to enroll in a summer term to remain continuously enrolled in a degree or certificate program. A person's eligibility to pay tuition and fees at the rate provided for New Mexico residents under this subsection does not terminate because the person is no longer a child or spouse of a member of the armed forces.

H. A spouse or child of a veteran of the armed forces is entitled to pay tuition and fees at the rate provided for New Mexico residents; provided that the spouse or child is eligible for benefits pursuant to the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal law authorizing educational benefits for a veteran and the dependents of a veteran.

I. As used in this section, "armed forces" means the United States army, navy, air force, marine corps or coast guard.

J. As used in this section, "veteran" means a person who:

(1) was regularly enlisted, drafted, inducted or commissioned in the:

(a) armed forces of the United States and was accepted for and assigned to active duty in the armed forces of the United States;

(b) army reserve, navy reserve, marine corps reserve, air force reserve, coast guard reserve, army national guard or air national guard and was accepted for and assigned to duty for a minimum of six continuous years; or

(c) United States public health service commissioned corps or the national oceanic and atmospheric administration commissioned officer corps and served in the capacity of a commissioned officer while on active duty in defense of the United States; and

(2) was not separated from such service under circumstances amounting to dishonorable discharge.

**History:** Laws 2005, ch. 168, § 1; 2009, ch. 123, § 1; 2015, ch. 151, § 1; 2016, ch. 4, § 2.

## **ANNOTATIONS**

**Cross references.** — For the federal Post-9/11 Veterans Educational Assistance Act of 2008, see 38 U.S.C., Part III, §§ 3301 - 3325.

**The 2016 amendment**, effective May 18, 2016, amended the definition of "veteran" for purposes of determining tuition and fees at all state institutions of higher learning; in Subsection J, after "'veteran' means a", deleted "person who has been discharged under conditions other than dishonorable from service in the army, navy, marine corps, air force or coast guard of the United States" and added "person who", and added new Paragraphs (1) and (2).

**The 2015 amendment**, effective June 19, 2015, provided that a spouse or child of a veteran of the armed forces is entitled to pay resident tuition and fees if the spouse or child is eligible for federal educational benefits; added new Subsection H and redesignated the succeeding subsections accordingly; and in Subsection J, after "section", deleted "a".

**The 2009 amendment**, effective June 19, 2009, added Subsections A, E and I.

### **21-1-4.6. Nondiscrimination policy for admission to any public post-secondary educational institution; nondiscrimination in eligibility for education benefits.**

A. A public post-secondary educational institution shall not deny admission to a student on account of the student's immigration status.

B. Any tuition rate or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a high school equivalency credential in New Mexico.

**History:** Laws 2005, ch. 348, § 1; 2015, ch. 122, § 4.

## **ANNOTATIONS**

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to nondiscrimination policies for admission to public post-secondary educational institutions; and in Subsection B, after "high school or received a", deleted "general educational development certificate" and added "high school equivalency credential".

#### **21-1-4.7. Foster child tuition and fee waiver eligibility; notification.**

A. The state educational institutions set forth in Article 12, Section 11 of the constitution of New Mexico and their branches, community colleges as provided in Chapter 21, Article 13 NMSA 1978 and technical and vocational institutes as provided in Chapter 21, Article 16 NMSA 1978 shall not charge tuition or fees pursuant to Section 21-1-4 NMSA 1978 to a student for whom the children, youth and families department provides certification that the student was in the legal custody of the children, youth and families department pursuant to the Children's Code [Chapter 32A NMSA 1978] or for whom a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services provides certification that the student was in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services on or after the day of the student's fourteenth birthday, who enrolls in one of the state educational institutions set forth in Article 12, Section 11 of the constitution of New Mexico and their branches, community colleges as provided in Chapter 21, Article 13 NMSA 1978 and technical and vocational institutes as provided in Chapter 21, Article 16 NMSA 1978 no later than the day of the student's twenty-fifth birthday.

B. The higher education department shall collaborate with the children, youth and families department, the New Mexico Indian nations, tribes or pueblos and the United States department of the interior bureau of Indian affairs division of human services to ensure that middle school and high school students who are or have been in the legal custody of the children, youth and families department, a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services learn about the provisions of this section.

**History:** Laws 2014, ch. 62, § 1; 2019, ch. 163, § 1.

#### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, provided foster children greater access to tuition and fee waivers at state educational institutions; in Subsection A, deleted paragraph designation "(1)", deleted former Subparagraph A(1)(a) and subparagraph designation "(b)", after "fourteenth birthday", deleted "and the student's parents' rights were relinquished or terminated at that time", and deleted former Subparagraph A(1)(c) and paragraph designation "(2)".

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

#### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 24, § 11 repealed 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.

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

The commission on higher education [higher education department] 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 [department] 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 [department] 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 [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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.

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**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*, 1954-NMSC-123, 59 N.M. 3, 277 P.2d 550.

**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*, 1954-NMSC-123, 59 N.M. 3, 277 P.2d 550.

**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*, 1954-NMSC-123, 59 N.M. 3, 277 P.2d 550 (decided prior to enactment of the Tort Claims Act, §§ 41-4-1 et. seq. NMSA 1978).

**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.

### **21-1-7.1. Post-tenure review process required.**

A. The boards of regents at all state baccalaureate degree-granting educational institutions are authorized to direct the president of the university to institute a periodic post-tenure review process for all tenured faculty.

B. The boards of regents are authorized to direct the president of the university to establish programs designed to assist faculty members in enhancing their teaching skills.

C. The tenured faculty member shall be subject to review every three to five years based on a review of a number of factors, including the following:

- (1) an evaluation of the faculty member's teaching;
- (2) an evaluation of the faculty member's research and scholarly output; and
- (3) an evaluation of the contributions made by the faculty member in the area of public service to the institution and the community.

D. The boards of regents shall ensure that a peer review is afforded the faculty member and that student evaluations are considered in the evaluation of the tenured faculty member's teaching.

E. In the event a faculty member receives an unfavorable evaluation in the area of the faculty member's teaching, the post-tenure review process shall include:

- (1) a two-year probation and reevaluation period; and
- (2) loss of tenure if, during the subsequent probation and reevaluation period, the faculty member fails to demonstrate improvement in the area of teaching.

**History:** Laws 1995, ch. 150, § 1.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1995, ch. 150, § 4 contained an emergency clause and was approved April 5, 1995.

**Temporary provisions.** — Laws 1995, ch. 150, § 3, effective April 5, 1995, provided that the board of regents of all state baccalaureate degree-granting educational institutions shall study the options, advantages and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.

### **21-1-7.2. Reporting; commission on higher education [higher education department].**

Each board of regents shall file annually a report on the post-tenure review process instituted at the institution.

**History:** Laws 1995, ch. 150, § 2.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Emergency clauses.** — Laws 1995, ch. 150, § 4 contained an emergency clause and was approved April 5, 1995.

### **21-1-7.3. Temporary provisions; tenure study.**

The boards of regents of all state baccalaureate degree-granting educational institutions shall study the options, advantages and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.

**History:** Laws 1995, ch. 150, § 3.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1995, ch. 150, § 4 contained an emergency clause and was approved April 5, 1995.

### **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

**Compiler's notes.** — "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.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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. 1946 Op. Att'y Gen. No. 46-4883.

**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 [New Mexico state university], the New Mexico college of agriculture and mechanic arts [the New



Mexico institute of mining and technology], and the New Mexico insane asylum [the New Mexico behavioral institute of Las Vegas] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

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.

Laws 2005, ch. 313, § 5, changed the name of the Las Vegas medical center to the New Mexico behavioral institute of Las Vegas, effective June 17, 2005. See 23-1-13 NMSA 1978.

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

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

**Cross references.** — For Per Diem and Mileage Act, see 10-8-1 to 10-8-8 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. Delegation of authority.**

The boards of regents of state educational institutions may delegate authority or functions to officers or subordinate bodies within the state educational institutions as the boards deem proper for the efficient functioning of their respective educational institutions.

**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; 1995, ch. 167, § 1.

### **ANNOTATIONS**

**The 1995 amendment**, effective June 16, 1995, rewrote this section to the extent that a detailed comparison is impracticable.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 62.

### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For management of state educational institutions, 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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

## **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.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**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.

## **21-1-16.1. State institutions of higher education; presidential searches.**

A. Public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education are exempt from inspection under the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper

of countywide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in this section prohibits a governing body from identifying or otherwise disclosing the information described in this section.

F. This section may be enforced pursuant to the provisions of the Inspection of Public Records Act.

**History:** Laws 2011, ch. 134, § 23.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 134, § 25 made Laws 2011, ch. 134, § 23 effective July 1, 2011.

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

No employee or member of a board of regents of a state educational institution shall have 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 and Economic Development Act [Chapter 21, Article 28 NMSA 1978] or the New Mexico Research Applications Act [53-7B-1 to 53-7B-10 NMSA 1978], or unless it complies with provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978] and the Procurement Code [13-1-28 to 13-1-199 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; 1999, ch. 148, § 1; 2009, ch. 66, § 13.

#### **ANNOTATIONS**

**The 2009 amendment**, effective April 2, 2009, added "and Economic Development Act" after "University Research Park" and added "or the New Mexico Research Applications Act".

**The 1999 amendment**, effective June 18, 1999, added "or unless it complies with provisions of the Governmental Conduct Act and the Procurement Code" at the end of the paragraph.

**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. 1932 Op. Att'y Gen. No. 32-373 (issued prior to 1999 amendment of section).

**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 Op. Att'y Gen. No. 21-3195 (issued prior to 1999 amendment of section).

**Bidding on supplies.** — A firm of which a trustee is a member may not bid on supplies for a state institution. 1917 Op. Att'y Gen. No. 17-1978 (issued prior to 1999 amendment of section).

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Federal preemption.** — As a matter of federal preemption, this section does not confer immunity to board members from suit under a 42 U.S.C § 1983 claim. *Leach v. N.M. Junior Coll.*, 2002-NMCA-039, 132 N.M. 106, 45 P.3d 46, cert. denied, 132 N.M. 83, 44 P.3d 529 (2002).

**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.

Validity, construction and application of "hazing" statutes, 30 A.L.R.5th 683.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**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**

**Compiler's notes.** — 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."

**Cross references.** — For 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.

**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 behavioral institute of Las Vegas) has the power to sell real property. 1935 Op. Att'y Gen. No. 35-1171.

**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**

**Compiler's notes.** — 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 § 35.

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

### **21-1-21.1. State educational institutions; adequate parking.**

The staff architect of a university, or the commission on higher education [higher education department] in the case of state educational facilities that do not employ a staff architect, shall review all plans for the construction or major enlargement of a state educational facility prior to the execution of a contract for such work and shall certify to the state board of finance that adequate parking is provided for the use of staff employed in the facility, students who attend classes or events in the facility and



members of the public reasonably expected to enter the facility. If adequate parking is not provided for, no contract may be entered into.

**History:** Laws 2001, ch. 319, § 22.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 319, § 24, made Laws 2001, ch. 319, § 22 effective July 1, 2001.

#### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effect on school for the deaf.** — Neither the constitution nor statutes prohibit religious training given by someone not connected with a state educational institution after school hours. Use of the grounds and property of the institution are subject to control of the governing board. Such religious instruction must be wholly voluntary on the part of the students and entirely dissociated from the curriculum or course of instruction of the institution and its faculty. If use of tax supported institutional grounds or buildings is permitted to one denomination, the same privilege should be granted to all denominations seeking the privilege, without discrimination. 1947 Op. Att'y Gen. No. 47-5075.

**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.

Validity and construction of public school regulation of student distribution of religious documents at school, 136 A.L.R. Fed. 551.

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 § 221 et seq.

### **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, repealed 21-1-25 NMSA 1978, relating to out-of-state travel by personnel of state educational institutions.

#### **21-1-26. Higher education department; general powers.**

A. The higher education department shall be concerned with the problems of finance of those educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and other public post-secondary educational institutions in the state. The department shall:

- (1) be concerned with the adequate financing of these institutions and with the equitable distribution of available funds among them;
- (2) 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;
- (3) 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 the governing bodies of other public post-secondary educational institutions in the state;
- (4) analyze the financial impact of each new degree program of each public post-secondary educational institution as part of the department's review of the institution's operating budget; and
- (5) exercise such other powers as may be granted it by law.

B. Effective July 1, 2005, all new state-funded baccalaureate, graduate and professional degree programs shall be offered by public four-year educational institutions and all new associate degree programs shall be offered by public post-secondary educational institutions after a timely and thorough consultation with and review by the department.

C. Notwithstanding any other provisions of law, the higher education department may be designated by the governor to administer funds furnished under acts of congress for post-secondary educational institutions, except for funds specifically appropriated or otherwise designated for those educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico.

D. The higher education department 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; 2005, ch. 289, § 15.

## ANNOTATIONS

**Cross references.** — For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

For the Higher Education Department Act, see 9-25-1 NMSA 1978 et seq.

For designation of the commission of higher education [higher education department] as the state commission on post-secondary education, see 21-2-3 NMSA 1978.

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

**The 2005 amendment**, effective April 7, 2005, deleted the former language in subsection A which created the commission on higher education; provided in Subsection A that the department shall be concerned with other public post-secondary educational institutions in the state; deleted the former provision of Subsection A(2) which provided that the commission was authorized to receive funding for the in-plant development training program and to administer the funds; provided in Subsection A(3) that the department shall provide for the orientation and in-service education of members of the governing bodies of other public post-secondary educational institutions in this state; added Subsection A(4) to provide that the department shall analyze the financial impact of new degree programs in public post-secondary educational institutions as part of the review of their operating budget; added Subsection B to provide that all new state-funded baccalaureate, graduate and professional degree programs shall be offered by public four-year educational institutions and all new associate degree programs shall be offered by public post-secondary educational

institutions after review by the department; changed the reference to the commission on higher education to the department in Subsection C; provides in subsection that the department may administer federal funds for post-secondary educational institutions except funds specifically appropriated or otherwise designated for those educational institutions; and changed "commission on higher education" to "higher education department" in Subsection D.

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

**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 Op. Att'y Gen. No. 51-5468.

**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 higher education department in Chapter 21 NMSA 1978, the department shall perform the same planning and budgeting functions for the university of New Mexico hospital as it performs for other post-secondary educational institutions.

**History:** Laws 1980, ch. 145, § 2; 2005, ch. 289, § 16; 2015, ch. 23, § 7.

### **ANNOTATIONS**

**The 2015 amendment**, effective June 19, 2015, made a technical correction; changed "by the Post-Secondary Educational Planning Act" to "in Chapter 21 NMSA 1978".

**The 2005 amendment**, effective April 7, 2005, changed "board of educational finance" to "higher education department" and changed "Bernalillo county medical center" to "university of New Mexico hospital".

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

Upon approval by the corrections department in consultation with the higher education department, 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 higher education department or the

public education department as appropriate in the same manner that funding recommendations for similar programs at other institutions are calculated.

**History:** Laws 1981, ch. 69, § 1; 2005, ch. 289, § 17.

#### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "board of educational finance" to "higher education department" and changed "public school finance division of the department of finance and administration" to "public education department".

**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. Verification function.**

The higher education department shall annually conduct special verifications of the institutions of higher education. The verifications shall include enrollments, fund balances, compliance with legislation, comparison of expenditures to budgets and other areas to be determined by the department. Reports on the verifications shall be made annually to the department of finance and administration and the legislative finance committee. The department shall consider the verification 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; 1999, ch. 173, § 1; 2005, ch. 289, § 18.

#### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "commission on education" to "higher education department".

**The 1999 amendment**, effective June 18, 1999, substituted "verification" for "audit" in the section heading and throughout the section and made minor stylistic changes.

#### **21-1-26.4, 21-1-26.5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-1-26.4 and 21-1-26.5 NMSA 1978, as enacted by Laws 1989, ch. 381, §§ 1 and 2, relating to legislative findings and development of a statewide articulation plan, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-1-26.6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 173, § 3 repealed 21-1-26.6 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 4, § 1, relating to indicators of performance of educational institutions in the state, effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 21-1-26.7 NMSA 1978.

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

A. The higher education department shall submit an annual accountability report to the governor and to the legislature by December 31. Prior to publication, the department shall distribute a draft of the accountability report to all public post-secondary educational institutions and shall allow comment upon the draft report.

B. The department in consultation with each public post-secondary educational institution shall develop and adopt the content and a format for the report, including the following information:

(1) student progress and success disaggregated by gender and by ethnicity and race as follows:

(a) Caucasian, non-Hispanic;

(b) Hispanic;

(c) African American;

(d) American Indian or Alaska Native;

(e) Native Hawaiian or other Pacific Islander;

(f) Asian;

(g) two or more races; and

(h) other; provided that if the sample of students in any category enumerated in Subparagraphs (a) through (g) of this paragraph is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act, the report may combine that sample into the "other" category;

(2) student access and diversity;

(3) affordability and cost of educational services;

- (4) public and community service by the institution; and
- (5) faculty, compensation and benefits practices, including:
  - (a) number and percentage of part-time and full-time faculty;
  - (b) per-credit-hour pay rate for full-time instructors or lecturers and per-credit-hour pay rate for part-time faculty;
  - (c) percent salary increase for full-time faculty and percent salary increase for part-time faculty; and
  - (d) description of the institution's policy for offering benefits to full-time faculty and to part-time faculty.

C. The department shall make no funding recommendation, capital outlay recommendation, distribution or certification on behalf of any public post-secondary educational 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; 1999, ch. 173, § 2; 2005, ch. 289, § 19; 2007, ch. 150, § 1; 2013, ch. 196, § 1.

## **ANNOTATIONS**

**Compiler's notes.** — 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.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C. § 1232g.

**The 2013 amendment,** effective June 14, 2013, provided for post-secondary educational institution accountability reports, including student achievement disaggregated by certain factors; in Paragraph (1) of Subsection B, in the introductory sentence, after "success", added the remainder of the sentence; and added Subparagraphs (a) through (h) of Paragraph (1) of Subsection B.

**The 2007 amendment,** effective June 15, 2007, added Subparagraphs (a) through (d) of Paragraph (5) of Subsection B.

**The 2005 amendment,** effective April 7, 2005, changed "commission on higher education" to "higher education department".

**The 1999 amendment,** effective June 18, 1999, substituted "accountability report" for "report card" in the section heading and throughout the section; in Subsection A, added "by December 31" at the end of the first sentence and deleted the former second



sentence providing that the annual report card be published by November 15; in Subsection B, in the first sentence, inserted "in consultation with the public post-secondary educational institution" and inserted "the content and", deleted part of the former second sentence, relating to information to be submitted by each four-year post-secondary institution, and substituted Paragraphs (1) through (4) for former Paragraphs (1) through (9), relating to specific information to be submitted by each four-year post-secondary institution; deleted former Subsection C, relating to information to be submitted by two-year post-secondary institutions, and redesignated the subsequent subsection accordingly.

**Temporary provisions.** — Laws 2007, ch. 150, § 2 provided that the higher education department shall work with the public post-secondary educational institutions to establish a pay schedule for part-time faculty to be subject to legislative appropriation.

## **21-1-26.8. Repealed.**

**History:** Laws 1995, ch. 144, § 1; repealed by Laws 2005, ch. 321, § 14.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 321, § 14 repealed 21-1-26.8 NMSA 1978, as enacted by Laws 1995, ch. 144, § 1, relating to creation of health profession advisory committee, effective June 17, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## **21-1-26.9. Limitation; higher education department; review of proposed campuses.**

Effective January 1, 1998, no new public post-secondary educational institution, branch campus or off-campus instructional center shall be created except as specifically created by the legislature. The higher education department shall review any proposal for the establishment of a new public post-secondary educational institution or campus and submit its recommendations to the legislature. In reviewing proposals, the department may consider:

- A. provisions for a local mill levy of at least two mills;
- B. population base to provide at least five hundred full-time students;
- C. whether at least fifty percent of the costs of initial construction comes from private or local sources;
- D. governance structure;
- E. means for acquisition of property, including purchase, lease, donations or any other means;

F. eligibility and level of funding request of the state; and

G. brokering of extended learning provisions.

**History:** Laws 1998, ch. 61, § 2; 2005, ch. 289, § 20.

#### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "commission on higher education" to "higher education department".

### **21-1-26.10. Higher education department; plan for funding significant post-secondary educational infrastructure needs.**

The higher education department, in conjunction with the governing bodies of the post-secondary educational institutions and other state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, shall develop and approve a five-year plan for funding the infrastructure renovation and expansion projects designated by the department as the highest priority of significant needs. The department shall determine the projects and amounts to be funded, with a timetable for the projects and amounts to be funded each year over the five-year period, subject to review and comment by the educational institutions and subject to appropriations.

**History:** Laws 1999 (1st S.S.), ch. 6, § 18; 2005, ch. 289, § 21.

#### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "commission on higher education" to "higher education department"; deleted the former provisions in Subsection A that the five-year plan will be funded with supplemental severance tax bonds and that projects were subject to the amount of supplemental severance tax bonds issued each year; provided in Subsection A that projects are subject to appropriations; and deleted former Subsection B which provided that the commission on higher education shall administer the proceeds for supplemental severance tax bonds and distribute the proceeds to educational institutions with projects funded with the proceeds.

### **21-1-26.11. Higher education department; additional duties.**

In addition to the duties imposed upon the higher education department by the Post-Secondary Educational Planning Act [Chapter 21, Article 2 NMSA 1978], the department shall plan and budget for the statewide adult basic education program and shall adopt and promulgate rules for all such adult educational programs. The department shall establish a uniform protocol for identifying, communicating with and providing direct and equitable access to funding for eligible agencies, which include:

- A. local educational agencies;
- B. community-based organizations;
- C. volunteer literacy organizations;
- D. post-secondary institutions;
- E. public or private nonprofit agencies;
- F. public libraries;
- G. public housing authorities; and

H. a consortium of agencies, organizations, institutions, libraries or authorities as described in Section 203 of Public Law 105.

**History:** Laws 2003, ch. 394, § 1; 2005, ch. 289, § 22.

#### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "commission on higher education" to "higher education department".

### **21-1-26.12. Educational needs and guidelines; accountability reports.**

A. The higher education department shall, through consultation with all public post-secondary educational institutions, develop and publish a statement of statewide educational needs and guidelines to assist the institutions in the development or modification of institutional strategic plans. The department may conduct studies of statewide educational needs and make recommendations to the governor, the legislature and public post-secondary educational institutions.

B. All public post-secondary educational institutions, including off-campus instruction programs and learning centers, shall:

(1) approve and submit accountability reports prepared in accordance with the statewide public agenda; and

(2) submit budgets for review no later than August 1 each year for the following fiscal year.

**History:** Laws 2005, ch. 289, § 14.

#### **ANNOTATIONS**

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

## **21-1-27. Higher education department; distribution of available funds.**

In its distribution of available funds and its adjustment and approval of budgets, the higher education department 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; 2005, ch. 289, § 23.

### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "commission on higher education" to "higher education department".

**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.

### **21-1-27.1. Higher education endowment fund created.**

A. The "higher education endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

B. The higher education endowment fund shall be administered by the higher education department. Money shall be disbursed only on warrant of the secretary of finance and administration upon voucher signed by the secretary of higher education or the secretary's authorized representative.

C. Money in the higher education endowment fund is appropriated to the department for distribution to the public post-secondary educational institutions listed in Subsection D of this section that submit proposals and receive award determinations from the department to establish endowments at the institutions for endowment purposes. Endowment purposes shall include:

(1) establishing endowed chairs, lectureships, professorships, research positions, graduate assistantships and faculty development programs that will enhance the quality of public post-secondary education in New Mexico; and

(2) addressing one or more of the governor's initiatives, including research and development initiatives; technology transfer initiatives; science, technology, engineering and mathematics initiatives; health, education, water and agriculture initiatives; and work force development initiatives.

D. Appropriations to the higher education endowment fund shall be distributed to public post-secondary educational institutions as awards made by the department or the higher education endowment committee pursuant to competitive proposals submitted by institutions, as follows:

(1) sixty-two percent of the total amount to be distributed may be awarded to the university of New Mexico, the university of New Mexico health sciences center, New Mexico state university and the New Mexico institute of mining and technology;

(2) twenty percent of the total amount to be distributed may be awarded to the New Mexico military institute and any independent community college, branch community college and technical and vocational institute; and

(3) eighteen percent of the total amount to be distributed may be awarded to New Mexico highlands university, eastern New Mexico university, western New Mexico university and northern New Mexico college.

E. Following an award determination, a public post-secondary educational institution shall not receive a distribution until that institution provides documentation to the department that it has received or will receive matching funds, pursuant to a written gift agreement, for the endowment from nongovernmental sources in an amount equal to at least fifty percent of the award amount. Distributions from the higher education endowment fund are made over a two-year cycle with unmatched balances reverting to the general fund at the end of the second fiscal year. Allocations not matched during the first year of a cycle are made available during the second year of a cycle for supplemental or second round matching by any institution listed in Subsection D of this section.

F. The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the Uniform Prudent Management of Institutional Funds Act [46-9A-1 to 46-9A-10 NMSA 1978] and the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be expended only for endowment purposes.

G. The "higher education endowment committee" is created. The committee is composed of the secretaries of higher education, economic development and finance and administration or their designees. The committee shall meet no less than twice per year to review proposals and award determinations to:

(1) determine whether the proposals and award determinations meet endowment purposes;

(2) determine whether the endowment funds are being distributed pursuant to the provisions of this section; and

(3) recommend ways to support or change the endowment purposes award and distribution processes.

H. The department shall establish rules setting forth the procedures for making award determinations and distributing money from the higher education endowment fund pursuant to the provisions of this section.

I. The department shall report annually to the legislative finance committee on award determinations made pursuant to this section. The report shall include the amounts awarded to each institution, the amount of matching funds and their sources and the purposes of the endowments and awards.

**History:** Laws 2002, ch. 31, § 1; 2003, ch. 379, § 1; 2003, ch. 392, § 1; 2007, ch. 364, § 1; 2008, ch. 49, § 1; 2009, ch. 91, § 1; 2011, ch. 44, § 1; 2015, ch. 7, § 1.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 364, § 3 repealed Laws 2003, ch. 379, § 1, effective June 15, 2007.

**The 2015 amendment**, effective July 1, 2015, changed the distribution process and the endowment purposes of the Higher Education Endowment Fund, and limited funds to establish endowments at public post-secondary institutions; deleted Subsection C relating to limits on the use of education endowment funds and the requirement that institutions receiving endowment funds receive matching funds from other than government sources; redesignated former Subsection D as Subsection C; in the present Subsection C, after "department", deleted "to be disbursed" and added "for distribution to the public post-secondary educational institutions listed in Subsection D of this section that submit proposals and receive award determinations from the department to establish endowments at the institutions", after "endowment purposes", inserted a period, added "Endowment purposes shall include:" and designated the next sentence as Paragraph 1 of Subsection C; in the present Paragraph 1 of Subsection C, after "(1)", added "establishing", after "professorships", deleted "scholarships for students" and added "research positions", after "New Mexico", deleted "The department, by rule, shall establish procedures for disbursing money from the fund. Not less than five percent of each institution's total endowment effort resulting from amounts specified in this section shall address" and added "; and", designated a new Paragraph 2 of Subsection C; in the present Paragraph 2 of Subsection C, after "(2)", added "addressing", and after "governor's initiatives", added the remainder of the paragraph; deleted Subsection E, relating to distribution proportions and matching requirements on disbursements of the Higher Education Endowment Fund; added a new Subsection D; added new Subsection E; removed the designation from former Subsection F and added the language from former Subsection F to the present Subsection E; in the present Subsection E, after

"Distributions from the higher education endowment fund are made over a", deleted "three year" and added "two-year", after "general fund at the end of the", deleted "third" and added "second", after "fiscal year.", deleted "The department shall notify each eligible institution of the specific amount it may match during the first two fiscal years of each three-year cycle.", after "Allocations not matched during the first", deleted "two years" and added "year", after "of", deleted "each" and added "a", after "cycle are made available", added "during the second year of a cycle", after "second round matching by", deleted the remainder of the sentence relating to applications for supplemental distributions from the Higher Education Endowment Fund, and added "any institution listed in Subsection D of this section"; redesignated former Subsection G as Subsection F; in the present Subsection F, after "investments shall be expended", deleted the remainder of the subsection, relating to the manner in which investments shall be expended, and added "only for endowment purposes"; added new Subsections G and H; redesignated former Subsection H as Subsection I; in the present Subsection I, after "legislative finance committee on", deleted "disbursements" and added "award determinations", after "report shall include the amounts", deleted "disbursed" and added "awarded", after "funds and their", changed "source" to "sources", after "and the", changed "purpose" to "purposes", and after "endowments", added "and awards".

**The 2011 amendment**, effective June 17, 2011, required that investments be made in accordance with the Uniform Prudent Management of Institutional Funds Act and that expenditures be made in accordance with the Uniform Prudent Management of Institutional Funds Act and Section 21-1-38 NMSA 1978.

**The 2009 amendment**, effective July 1, 2009, deleted former Subsection E, which provided for the disbursement of funds until June 30, 2010; deleted former Subsection F, which provided for the matching of remaining funds; added new Subsections E and F; and in Subsection H, deleted "No later than July 1 of 2008, 2009 and 2010" at the beginning of the sentence.

**The 2008 amendment**, effective May 14, 2008, changed the name of the fund from the faculty endowment fund to the higher education endowment fund.

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that money in the endowment shall not revert at the end of any fiscal year; eliminated the provision that money shall be disbursed for chairs, professorships and faculty development programs at four-year institutions; eliminated provisions that specify the dollar amounts of disbursements for chairs, professorships and development programs; expanded the purposes for which disbursements can be made; required at least five percent of each institution's total endowment be used to address the governor's initiatives; changed the list of institutions that are eligible for disbursements until June 30, 2010 in Paragraphs (1) through (3) of Subsection E; added Subsection F; permitted income from investment of endowed funds to be used for lectureships, scholarships, and graduate assistantships; eliminated the list of allotments of disbursements; eliminated the procedure for allocation of insufficient disbursements; and eliminated the additional

disbursements for chairs at the University of New Mexico, New Mexico state university and New Mexico institute of mining and technology; and added Subsections F and H.

**The 2003 amendment**, effective June 20, 2003, deleted "Money" at the beginning of the second sentence of Subsection B and inserted "Except as provided in Subsection J of this section, money"; deleted "Disbursements" at the beginning of the first sentence of Subsection H and inserted "Except as provided in Subsection J of this section, disbursements"; and added a new Subsection J.

## **21-1-27.2. Technology enhancement fund created; allocations; application review panels.**

A. The "technology enhancement fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the commission on higher education [higher education department]. Money in the fund shall be used to provide matching funds to state research universities to support innovative applied research that advances knowledge and creates new products and production processes in the fields of agriculture, biotechnology, biomedicine energy, materials science, microelectronics, water resources, aerospace, telecommunications, manufacturing science and similar research areas. Money from the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the executive director of the commission on higher education [higher education department] or the executive director's authorized representative.

B. Grants from the fund are available to state research universities that are conducting collaborative research with corporate and nonprofit organizations. A state research university may apply for a grant from the fund in accordance with rules promulgated by the commission on higher education [higher education department]. Allocations from the fund shall be based on a competitive process with applications reviewed by a panel of scientific and business experts established by the commission [department]. The review panel shall judge proposals based on excellence in research design and possible innovation in cross-disciplinary, multi-campus and higher education-industry research collaboration. The review panel may determine new research areas.

C. To apply for a grant, a state research university must have equal or greater matching funds for the proposal from sources other than the state.

**History:** Laws 2003, ch. 367, § 1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 367 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

### **21-1-27.3. Higher education performance fund; created; administration; distributions.**

A. The "higher education performance fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund. The fund shall be administered by the commission on higher education [higher education department] and money in the fund is appropriated to the commission [department] for distributions to public post-secondary educational institutions.

B. The commission [department] shall distribute money in the fund annually to each public post-secondary educational institution that met its performance standards in the preceding year.

C. The commission [department] shall develop rules for the assessment of performance measures and standards for public post-secondary educational institutions and shall annually assess the performance of each institution according to those measures and standards.

**History:** Laws 2003, ch. 388, § 1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 388 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-1-27.4. Higher education program development enhancement fund; purpose.**

A. The "higher education program development enhancement fund" is created in the state treasury. All income earned on investment of the fund shall be credited to the

fund and money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the commission on higher education [higher education department] and money in the fund is appropriated to the commission [department] to carry out the purposes of this section. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission on higher education [higher education department] or his authorized representative.

B. The higher education program development enhancement fund shall be used to enhance the contribution of post-secondary educational institutions to the resolution of critical state issues and the advancement of the welfare of state citizens.

C. At the beginning of each fiscal year in which the commission [department] determines that the balance of the fund is sufficient to make awards, the commission [department] shall define or reaffirm no more than four critical issues to be addressed through awards from the fund. Issues to be addressed may include:

- (1) expanding instructional programs to meet critical statewide work force and professional training needs;
- (2) enhancing instructional programs that provide employment opportunity for New Mexico students in a global economy; and
- (3) developing mission-specific instructional programs that build on existing institutional academic strengths.

D. The commission [department] shall establish criteria and procedures for making awards from the fund based on evaluation of competitive proposals submitted by post-secondary educational institutions. Each winning proposal shall address at least one of the critical issues defined for use of the fund that year. Criteria may include:

- (1) collaboration among educational agencies and other public or private entities that demonstrate a competency regarding the issues addressed by the proposal;
- (2) the commitment of matching money; and
- (3) evaluation components.

E. The commission [department] shall report annually to the legislature and the governor on the status of the fund and projects supported by the fund.

**History:** Laws 2003, ch. 389, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 389, § 2 made the act effective July 1, 2003.

## **21-1-27.5. Adult basic education fund created.**

The "adult basic education fund" is created in the state treasury. Money in the fund is appropriated to the commission on higher education [higher education department] for the purpose of funding adult basic education programs for educationally disadvantaged adults. Money in the fund shall be distributed by the commission [department] pursuant to an equitable formula established by the commission [department] in consultation with representatives from the adult basic education administrative sites. Any unexpended or unencumbered balance remaining in the fund at the end of each fiscal year shall revert to the general fund.

**History:** Laws 1995, ch. 56, § 1; 2003, ch. 394, § 3; § 22-8-30.1, recompiled as § 21-1-27.5 by Laws 2004, ch. 27, § 28.

### **ANNOTATIONS**

**Recompilations.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.1 NMSA 1978 as 21-1-27.5 NMSA 1978, effective May 19, 2004.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2003 amendment**, effective April 8, 2003, substituted "commission on higher education" for "department of education" following "appropriated to the", substituted "commission" for "department of education" following "distributed by the", substituted "commission" for "state board" following "established by the", deleted "and with the approval of the commission on higher education as provided by law" following "education administrative sites".

## **21-1-27.6. Adult basic education; distribution of money; objective formula; higher education department; adoption of formula.**

The higher education department in consultation with representatives of adult basic education administrative sites shall create an equitable formula for the distribution of money in the adult basic education fund, including funding for instructional materials for

adult basic education students. In establishing an equitable formula, the department shall consider the types of programs conducted, the cost of service delivery, the types and cost of instructional materials and the socioeconomic profiles of the adult receiving services. The department shall review the formula and any proposed changes with the adult basic education administrative sites prior to adoption or amendment.

**History:** Laws 1995, ch. 56, § 2; 2003, ch. 394, § 4; § 22-8-30.2, recompiled as § 21-1-27.6 by Laws 2004, ch. 27, § 28; 2009, ch. 221, § 1.

## **ANNOTATIONS**

**Recompilations.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.2 NMSA 1978 as 21-1-27.6 NMSA 1978, effective May 19, 2004.

**The 2009 amendment**, effective July 1, 2010, after “adult basic education fund”, added “including funding for instructional materials for basic adult education students” and after “the cost of service delivery”, added “the types and cost of instructional materials”.

**The 2003 amendment**, effective April 8, 2003, in the catchline, substituted "commission on higher education" for "state board", deleted "commission on higher education approval"; in the section text, substituted "commission on higher education" for "state board" near the beginning, substituted "create" for "by regulation, establish" following "administrative sites shall", substituted "commission" for "state board" following "equitable formula", substituted "commission shall review the formula and any proposed changes with the adult basic education administrative sites" for "state board shall submit the proposed formula to the commission on higher education for approval" following "receiving services. The", and inserted "or amendment" at the end.

### **21-1-27.7. Fund created.**

A. There is created in the state treasury the "nurse educators fund". The state treasurer shall deposit in the fund all amounts appropriated or credited to the fund. The fund shall be administered by the higher education department, which shall charge not more than a five percent administrative fee. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature.

B. The purpose of the fund is to enable the attainment of bachelor of science, master of science, doctor of nursing practice and doctor of philosophy degrees in nursing programs by nursing educators employed by a public post-secondary educational institution and registered nurses seeking employment as nursing educators in a public post-secondary educational institution.

C. The higher education department shall develop rules for continuing employment or pay-back provisions for current and future nursing educators who use the fund.

**History:** Laws 2005, ch. 136, § 1; 2015, ch. 41, § 1; 2015, ch. 47, § 1.

#### **ANNOTATIONS**

**The 2015 amendment**, effective June 19, 2015, expanded the purpose of the nurse educators fund to allow registered nurses who are seeking employment as nurse educators to use the fund to obtain a higher degree; in Subsection A, in the first sentence, after "created in the", deleted "commission on higher education" and added "state treasury", in the second sentence, after "appropriated", added "or credited", in the third sentence, after "administered by the", deleted "commission on" and after "higher education", added "department", and in the last sentence, after "legislature", deleted "as provided in this section"; in Subsection B, after "fund is to", deleted "enhance the ability of college and university employed nursing educators to obtain" and added "enable the attainment of", after "master of science", added "doctor of nursing practice", and after "philosophy degrees", added the remainder of the sentence; and in Subsection C, after "The", deleted "commission on", after "higher education", added "department", and after "provisions for", added "current and future".

Laws 2015, ch. 41, § 1 and Laws 2015, ch. 47, § 1, both effective June 19, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 47, § 1. See 12-1-8 NMSA 1978.

#### **21-1-27.8. Adult basic education; instructional materials.**

The higher education department shall promulgate rules on the purchase and provision of instructional materials for the free use of adult basic education students. The rules shall include:

A. the responsibilities of adult basic education administrative units as agents for the benefit of students entitled to the free use of instructional materials; and

B. inventory and accounting procedures to be followed by the adult basic education administrative units.

**History:** Laws 2009, ch. 221, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 221, § 11 made Laws 2009, ch. 221, § 2 effective July 1, 2010.

#### **21-1-27.9. Alternative energy and energy efficiency programs; fund created; awards; criteria.**

A. The "higher education new energy development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests

made to the fund and federal grants or distributions made to the fund or to the higher education department for deposit into the fund. All income earned on investment of the fund shall be credited to the fund, and money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the higher education department, and money in the fund is appropriated to the department to carry out the purposes of this section. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

B. The higher education new energy development fund shall be used to provide financial incentives to:

(1) four-year public post-secondary educational institutions to develop research programs, courses of instruction and degree programs in the fields of alternative energy and energy efficiency; and

(2) two-year public post-secondary educational institutions to provide alternative energy and energy efficiency programs and courses of instruction for students seeking licensure or certification as electricians, plumbers, mechanics, welders and heating, ventilation and air conditioning personnel or similar professions.

C. The higher education department shall, by rule, establish criteria and procedures for making awards from the fund based on evaluation of competitive proposals submitted by public post-secondary educational institutions. The criteria shall include:

(1) a requirement that the application demonstrate how the award will be used to establish permanent educational programs in the fields of alternative energy and energy efficiency;

(2) a requirement that the application demonstrate how local resources will be utilized, including how the institution will cooperate with local employers with a potential need for interns or graduates;

(3) the commitment of matching money; and

(4) such other evaluation components as the department deems useful.

D. No more than an amount equal to five percent of the total awards made during a fiscal year shall be expended from the fund in that fiscal year for administrative costs, including project management, auditing and other oversight functions.

E. The higher education department shall report annually to the legislature and the governor on the status of the fund and programs supported by the fund.

**History:** Laws 2009, ch. 281, § 1.

## ANNOTATIONS

**Emergency clauses.** — Laws 2009, ch. 281, § 2 contained an emergency clause and was approved on April 9, 2009.

### **21-1-27.10. Fund created; tribal college dual credit program fund; administration.**

A. The "tribal college dual credit program fund" is created in the state treasury. The fund shall be administered by the higher education department. Money in the fund is appropriated to the higher education department to be used only to compensate tribal colleges for the tuition and fees waived to allow high school students to attend classes on the college campus or electronically pursuant to the dual credit program set forth in Section 21-1-1.2 NMSA 1978.

B. The fund shall consist of:

(1) money appropriated by the legislature for the purposes of the tribal college dual credit program fund as it applies to tribal colleges;

(2) grants, gifts, donations and bequests for the dual credit program as it applies to tribal colleges; and

(3) earnings on the money in the fund.

C. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designee.

D. Unexpended and unencumbered balances in the fund shall revert to the general fund at the end of each fiscal year.

**History:** Laws 2012, ch. 44, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2012, ch. 44, § 2 made Laws 2012, ch. 44, § 1 effective July 1, 2012.

### **21-1-27.11. Centers of excellence.**

A. A "center of excellence" is established at the following higher education institutions:

(1) the New Mexico institute of mining and technology to work toward developing and promoting innovation in and expanding cybersecurity industries;

(2) New Mexico state university to work toward developing and promoting innovation in and expanding sustainable agricultural industries;

(3) San Juan college to work toward developing and promoting innovation in and expanding sustainable and renewable energy industries; and

(4) the university of New Mexico health sciences center-affiliated entity, the New Mexico bioscience authority, to continue its work toward developing, promoting innovation in and expanding the bioscience industry in New Mexico.

B. Each center of excellence provided for in Subsection A of this section shall foster excellence in the noted field through:

(1) collaboration among leaders of the state's agencies, higher education institutions, business sector, national laboratories and community organizations;

(2) the development by those leaders of strategies to accomplish that aim; and

(3) the execution of those strategies.

C. Each center of excellence provided for in Subsection A of this section shall:

(1) actively seek, and may accept, public and private funding for its work;

(2) establish short- and long-term goals for job creation, business creation and private equity investment outcomes of its work; and

(3) beginning in 2020, report annually to the higher education department and the legislative finance committee on its goals and achievements.

**History:** Laws 2019, ch. 60, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 60, § 2 made Laws 2019, ch. 60, § 1 effective July 1, 2019.

## **21-1-28. Repealed.**

**History:** 1953 Comp., § 73-29-15.2, enacted by Laws 1977, ch. 246, § 49; 1980, ch. 151, § 44; repealed by Laws 2005, ch. 289, § 30.

## **ANNOTATIONS**



**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-28 NMSA 1978, as enacted by Laws 1977, ch. 246, § 49, relating to administrative services of commission on higher education, effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## **21-1-29. Repealed.**

**History:** 1978 Comp., § 21-1-29, enacted by Laws 1971, ch. 224, § 1; 1990, ch. 77, § 1; 1991, ch. 241, §§ 1, 2; repealed by Laws 2005, ch. 289, § 30.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-29 NMSA 1978, as enacted by Laws 1971, ch. 224, § 1, relating to membership of commission on higher education, effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## **21-1-30. Repealed.**

**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; repealed by Laws 2005, ch. 289, § 30.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-30 NMSA 1978, as enacted by Laws 1977, ch. 365, § 2, relating to executive director of commission on higher education, effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## **21-1-31. Repealed.**

**History:** 1941 Comp., § 55-2717, enacted by Laws 1951, ch. 190, § 4; 1953 Comp., § 73-29-18; Laws 1973, ch. 82, § 1; repealed by ws 2005, ch. 289, § 3.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-31 NMSA 1978, as enacted by Laws 1973, ch. 82, § 1, relating to per diem and mileage allowance for commission members, effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## **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 higher education department, in consultation with the state auditor, shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting and reporting that includes the reporting of all funds available. The manual shall apply to all institutions enumerated in Article 12, Section 11 of the constitution of New Mexico and all their branches, except the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf. The manual shall also apply to the two-year public post-secondary educational institutions.

B. The uniform system for budgeting and reporting shall require the submission of at least quarterly financial reports.

C. Following review by the legislative finance committee, the manual shall be reproduced by the department and filed as required by the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Upon the filing, the requirements set forth in the manual shall constitute rules of the department and have the force of law. The department shall review the manual annually. Sections of the manual may be revised or amended from time to time by the department, and revisions or amendments shall become effective upon review by the legislative finance committee and reproduction and filing as provided in this section.

D. All institutions to which this section and Section 21-1-32 NMSA 1978 apply shall comply with all of the requirements in the manual, submit reports to the department as requested and furnish such additional information as the department deems necessary.

**History:** 1953 Comp., § 73-29-20, enacted by Laws 1974, ch. 30, § 2; 2003, ch. 273, § 21; 2005, ch. 289, § 24.

### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, changed "commission on higher education" to "higher education department" and provided in Subsection A that the manual shall apply to two-year public post-secondary educational institutions.

**The 2003 amendment**, effective July 1, 2003, rewrote the section.

**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 higher education department shall develop criteria and promulgate rules 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 secretary of 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 department. 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; 2005, ch. 289, § 25.

### **ANNOTATIONS**

**Compiler's notes.** — The General Appropriation Act of 1982, referred to in the last sentence, is Laws 1982, ch. 4, §§ 1 to 8.

**The 2005 amendment**, effective April 7, 2005, changed "board of educational finance" to "higher education department".

**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 [University Research Park and Economic Development Act][Chapter 21, Article 28 NMSA 1978] or that comply with provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978] and the Procurement Code [13-1-28 to 13-1-199 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; 1999, ch. 148, § 2.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2007, ch. 247, § 1 changed the "University Research Park Act" to the "University Research Park and Economic Development Act".

**The 1999 amendment,** effective June 18, 1999, added "or that comply with provisions of the Governmental Conduct Act and the Procurement Code" at the end of the first sentence.

**The 1989 amendment,** effective April 5, 1989, added the proviso at the end of the first sentence, and made minor stylistic changes throughout the section.

**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*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**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*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**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 Op. Att'y Gen. No. 57-53 (issued prior to 1999 amendment of section).

**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 (issued prior to 1999 amendment of section).

**When 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 Op. Att'y Gen. No. 53-5727 (issued prior to 1999 amendment of section).

**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 (issued prior to 1999 amendment of section).

**When 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 (issued prior to 1999 amendment of section).

**Truck route not permissible.** — It is not permissible for a member of the municipal school board to have a truck route for his school. 1936 Op. Att'y Gen. No. 36-1389.

**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 § 23.

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 § 405.

## **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 [higher education department]. 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 [department] 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 [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 current and future income that may either be added to the principal or expended, and the maintenance of the principal may be either: 1) held 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 has determined and has 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 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 and distribution of endowment funds by the institution's board of finance, which regulations shall provide at least for:

(a) the application of the standard of loyalty described in Section 45-7-606 NMSA 1978 and the Uniform Prudent Management of Institutional Funds Act [46-9A-1 to 46-9A-10 NMSA 1978];

(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 the manager the power to make purchases, sales, exchanges, investments and reinvestments of endowment funds.

**History:** Laws 1991, ch. 69, § 1; 1997, ch. 199, § 13; 2011, ch. 44, § 2.

#### **ANNOTATIONS**

**The 2011 amendment**, effective June 17, 2011, in Subsection A, eliminated the requirement that the conditions of a gift stipulate that principal will be held inviolate; and in Subsection B, required the board of finance to adopt regulations regarding the distribution of funds that apply the standard of loyalty described in Section 45-7-606 NMSA 1978.

**The 1997 amendment**, effective July 1, 1997, substituted "standard of conduct described in Section 6-8-10 NMSA 1978 and the Uniform Management of Institutional Funds Act" for "standard described in Section 6-8-10 NMSA 1978" in Subparagraph B(1)(a) and made minor stylistic changes in Subsection A.

### **21-1-39. Legislative findings.**

The legislature finds that the state currently has six universities established by the constitution of New Mexico. The legislature has authorized these institutions to create branches of their institutions in conjunction with local school districts. The legislature also finds that proliferation of post-secondary educational institutions is not in the best interest of the state.

**History:** Laws 1997, ch. 167, § 1; 1998, ch. 61, § 1.

#### **ANNOTATIONS**

**Cross references.** — For provisions relating to the establishment of branch community colleges, see 21-14-2 NMSA 1978.

**The 1998 amendment**, effective March 9, 1998, deleted "prohibition" from the end of the section heading; deleted the designation "A" at the beginning of the first sentence, deleted "four-year" at the beginning of the second sentence and deleted the language beginning "and shall not be funded by the legislature" at the end of that sentence; and deleted Subsection B.

### **21-1-40. Prepaid higher education tuition program; feasibility study; guidelines.**

A. The commission on higher education [higher education department] shall conduct a thorough study to determine the feasibility of creating a prepaid higher education tuition program, which shall include requirements that:



(1) prepaid tuition contracts, once paid, will cover all tuition and required fees of the institution of higher education;

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

(3) the prepaid tuition contracts shall:

(a) allow purchasers to choose from payment plans that pay the tuition and required fees for either a community college, four-year or in-state, private post-secondary educational institution;

(b) allow for rollover of prepaid higher education tuition benefits from one plan to another, and that provide that benefits may be used at any community college, four-year or in-state, private post-secondary educational institution;

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

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

(4) beneficiaries meet certain minimum eligibility requirements;

(5) when setting contract prices, the commission [department] consider:

(a) the amount and estimated rate of increase of tuition and fees at institutions of higher education;

(b) expected investment returns;

(c) estimated administrative costs; and

(d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(6) allow for gifts or bequests either on behalf of a beneficiary or to the fund generally;

(7) institutions of higher education are either required to participate or that the commission [department] may specify how and when institutions of higher education become eligible to participate in the program;

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

(9) a program established pursuant to the requirements set forth in this section shall not obligate or encumber any money deposited in the state permanent fund, the severance tax bond fund or any money that is a part of a state-funded financial aid program.

B. The commission [department] shall report its findings to the appropriate interim legislative committee no later than October 15, 1997. The report shall include a recommendation from the commission [department] regarding the feasibility of implementing a prepaid higher education tuition program based on the requirements set forth in Subsection A of this section.

**History:** Laws 1997, ch. 206, § 1.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-1-41. Military access to a post-secondary educational institution.**

A public post-secondary educational institution shall provide on a mutually acceptable schedule on-campus recruitment opportunities and facilities to a branch or service of the United States military to the same degree that it provides such opportunities and facilities to members of the public.

**History:** Laws 2007, ch. 113, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 113, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **21-1-42. Public post-secondary educational institutions; student identification number.**

A. The higher education department shall, in collaboration with public post-secondary educational institutions, use the same student identification number issued to a New Mexico public school student pursuant to Section 22-2C-11 NMSA 1978 for a student enrolled in a public post-secondary educational institution, including an off-campus instructional program or learning center.

B. In collaboration with the public education department, the higher education department shall:

(1) develop a system for assigning a unique student identifier to a student who did not attend a New Mexico public school;

(2) add an additional identifier to the student identification number for those students who enter a teacher preparation program; and

(3) adopt the format to report individual student data into the public education department's student teacher accountability reporting system.

C. The higher education department shall promulgate rules to carry out the provisions of this section.

**History:** Laws 2007, ch. 264, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 264 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **21-1-43. First year of college outcomes of New Mexico public high school graduates; annual reports.**

A. Upon request from a public high school or school district superintendent in New Mexico, a public post-secondary educational institution shall provide a report of students who enroll in the institution within three years of graduating from that high school or leaving that high school without enrolling in another high school or earning a high school equivalency credential. Information in the reports may be used by the high schools and public post-secondary educational institutions to improve instruction, student preparation and advisement.

B. The higher education department, in consultation with the public education department and representatives of public high schools and public post-secondary educational institutions, shall prescribe the form of the reports. Reports shall not include any personally identifiable student information. The reports shall be designed to show advanced placement by subject, total credits earned, grade point averages, retention from fall to spring semester of the first year of college and frequency and patterns of remedial or development courses being taken.

C. The higher education department shall be provided with copies of the reports.

**History:** Laws 2009, ch. 7, § 1; 2015, ch. 122, § 5.

## ANNOTATIONS

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to annual reports by public post-secondary educational institutions regarding enrollment of high school graduates; and in Subsection A, after "high school or earning a", deleted "general educational development certificate" and added "high school equivalency credential".

### **21-1-44. School leadership institute; created; purpose.**

A. The "school leadership institute" is created and is administratively attached to the higher education department. The department shall provide administrative services for the institute. The institute shall provide a comprehensive and cohesive framework for preparing, mentoring and providing professional development for principals and other public school leaders.

B. The institute shall offer at least the following programs:

- (1) licensure preparation for aspiring principals;
- (2) mentoring for new principals and other public school leaders;
- (3) intensive support for principals at schools in need of improvement;
- (4) professional development for aspiring superintendents; and
- (5) mentoring for new superintendents.

C. The institute shall partner with state agencies, institutions of higher education and professional associations to identify and recruit candidates for the institute.

**History:** Laws 2010, ch. 65, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2010, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### **21-1-45. Sale of student information; marketing credit cards to students; prohibited practices.**

A. No public or private post-secondary educational institution, including its agents, its employees, its student or alumni organizations or its affiliates, shall:

(1) sell, give or otherwise transfer to any card issuer, for the purpose of distributing or marketing credit cards, the name, address, social security number, date of birth, telephone number or other contact or personal identifying information of an undergraduate student at the post-secondary educational institution;

(2) enter into any agreement or cooperate with a card issuer to market credit cards to undergraduate students at the post-secondary educational institution; or

(3) allow the marketing of credit cards from the property or campus of the post-secondary educational institution.

B. A person whose contact information was sold, given or transferred in violation of this section, or the attorney general, may bring a civil action and seek a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation plus costs of the action and reasonable attorney fees.

C. For purposes of this section, "credit card" and "card issuer" have the meanings given them in the federal Truth in Lending Act.

**History:** Laws 2010, ch. 71, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

**Cross references.** — For the federal Truth in Lending Act, see 15 U.S.C. § 1601 et seq.

## **21-1-46. Request for access to social networking account prohibited.**

A. It is unlawful for a public or private institution of post-secondary education to request or require a student, applicant or potential applicant for admission to provide a password to gain access to the student's, applicant's or potential applicant's account or profile on a social networking web site or to demand access in any manner to a student's, applicant's or potential applicant's account or profile on a social networking web site.

B. It is unlawful for public or private institutions of post-secondary education to deny admission to an applicant or potential applicant for admission on the basis of the applicant's or potential applicant's refusal to provide an agent of a public or private institution of post-secondary education access to the applicant's or potential applicant's account or profile on a social media networking site.

C. It is unlawful for a private or public institution of post-secondary education to take any disciplinary action against a student for the student's refusal to grant access to an agent of the private or public institution of post-secondary education to the student's account or profile on a social media networking site.

D. Nothing in this section prohibits a public or private institution of post-secondary education from obtaining information about a student, applicant or potential applicant for admission that is in the public domain.

E. As used in this section, "social networking web site" means an internet-based service that allows individuals to:

(1) construct a public or semi-public profile within a bounded system created by the service;

(2) create a list of other users with whom they share a connection within the system; and

(3) view and navigate their list of connections and those made by others within the system.

**History:** Laws 2013, ch. 223, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### **21-1-47. Statewide advanced placement policy.**

A. Beginning with the 2019-2020 academic year, public post-secondary educational institutions shall accept a score of three or higher on the advanced placement examination for post-secondary level course credit. Institutions that offer a corresponding course for a particular advanced placement examination as a part of their general education degree requirements shall accept a score of three or higher on the advanced placement examination for course credit as part of their general education degree requirements. If an institution does not offer a corresponding course for a particular advanced placement examination, the institution shall award, at a minimum, elective post-secondary level course credit for those students who receive a score of three or higher on that advanced placement examination.

B. An institution shall not require an examination score of more than three unless the chief academic officer provides evidence-based research to the higher education department that the higher score is necessary for a student to be successful in a related or more advanced course for which the lower-division course is a prerequisite. Each

institution shall publish its updated course-granting policy for advanced placement in accordance with the requirements of this subsection on its website before the beginning of the 2019-2020 academic year.

C. The higher education department, in cooperation with all public post-secondary educational institutions, shall collect and report the course-granting policy for advanced placement of each institution and the research used by each institution to determine the level of credit and the number of credits provided for the advanced placement examination scores and file a report that includes findings and recommendations to the legislature and the governor. Each institution shall provide the department with all necessary data, in accordance with the federal Family Educational Rights and Privacy Act of 1974, to allow the department to conduct its analysis.

**History:** Laws 2019, ch. 139, § 1.

### ANNOTATIONS

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C. § 1232g.

**Effective dates.** — Laws 2019, ch. 139 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## ARTICLE 1A

### University Endowments (Repealed.)

#### 21-1A-1. Repealed.

**History:** Laws 1989, ch. 390, § 1; repealed by Laws 1989, ch. 390, § 6.

### ANNOTATIONS

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-1 NMSA 1978, as enacted by Laws 1989, ch. 390, § 1, relating to the short title of the University Endowment Act, effective July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

#### 21-1A-2. Repealed.

**History:** Laws 1989, ch. 390, § 2; repealed by Laws 1989, ch. 390, § 6.

### ANNOTATIONS

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-2 NMSA 1978, as enacted by Laws 1989, ch. 390, § 2, relating to purpose, effective July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

### **21-1A-3. Repealed.**

**History:** Laws 1989, ch. 390, § 3; repealed by Laws 1989, ch. 390, § 6.

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-3 NMSA 1978, as enacted by Laws 1989, ch. 390, § 3, relating to definitions, effective July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

### **21-1A-4. Repealed.**

**History:** Laws 1989, ch. 390, § 4; 1991, ch. 241, § 3; repealed by Laws 1989, ch. 390, § 6.

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-4 NMSA 1978, as enacted by Laws 1989, ch. 390, § 4, relating to the university fund for endowments, effective July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

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

**History:** Laws 1989, ch. 390, § 5; repealed by Laws 1989, ch. 390, § 6.

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, § 5, relating to allocation of fund, effective July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 1B**

### **Post-Secondary Education Articulation**

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

Chapter 21, Article 1B NMSA 1978 may be cited as the "Post-Secondary Education Articulation Act".



**History:** Laws 1995, ch. 224, § 1; 2005, ch. 272, § 1.

### **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, changed the statutory reference to the act.

### **21-1B-2. Definitions.**

As used in the Post-Secondary Education Articulation Act:

A. "articulation" means the transfer of courses that fulfill a graduation requirement for a student's chosen degree program;

B. "department" means the higher education department;

C. "general education core curriculum" means the group of lower-division courses approved by the department as fulfilling general education requirements that are accepted by all institutions for transfer purposes;

D. "institution" means an accredited, public post-secondary educational institution operating in the state;

E. "meta-major" means fifteen credits of lower-division courses that are developed in consultation with the faculty and approved by the department and that include general education courses and prerequisite courses and that can articulate to multiple degree programs and can include courses across the institution that address diversity;

F. "transfer" means the transfer of course credits from one institution to another; and

G. "transfer module" means a list of lower-division courses established by the department that fulfill graduation requirements for a specific degree program.

**History:** Laws 1995, ch. 224, § 2; 2005, ch. 272, § 2; 2015, ch. 29, § 1; 2017, ch. 18, § 1.

### **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, amended definitions in the Post-Secondary Education Articulation Act to clarify conditions under which students may transfer earned credits between and among New Mexico institutions of higher education; in Subsection A, after "the transfer of", deleted "course credit from one institution to another" and added "courses that fulfill a graduation requirement for a student's chosen degree program"; deleted former Subsections C and D, which defined "discipline module" and "general education core"; added a new Subsection C;

redesignated former Subsection E as Subsection D; deleted former Subsection F, which defined "module" or "transfer module"; and added new Subsections E, F and G.

**The 2015 amendment**, effective June 19, 2015, updated references to the higher education department; in Subsection B, after "B.", deleted "commission" and added "department", after "means the", deleted "commission on", and after "higher education", added "department"; in Subsection D, after "by the", deleted "commission" and added "department"; in Subsection F, after "by the", deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, added Subsection C to define "discipline module"; added Subsection D to define "general education core"; and deleted "skills" from the definition of "module" or "transfer module".

### **21-1B-3. Initial articulation planning and development of meta-major and transfer module.**

A. The department shall establish and maintain a comprehensive statewide plan to provide for the articulation of educational programs and facilitate the transfer of course credits between institutions.

B. In establishing a statewide articulation plan, the department shall:

(1) by August 1, 2017, establish a common course naming and numbering system for courses identified as substantially equivalent lower-division courses; provided that the department shall establish an interim mechanism of a statewide equivalency table that uses a universal taxonomy to identify substantially equivalent courses until the common system is in place;

(2) establish a process to identify courses as substantially equivalent. The process shall:

(a) include a procedure for each course whereby faculty members from each segment teaching the academic discipline will reach mutual agreement on the material to be taught and the competencies to be gained;

(b) ensure that the content of each course is comparable across institutions offering that course;

(c) ensure that substantially all the content agreed to among the institutions as the content to be covered by a course is in fact covered in that course and that students successfully completing the course will achieve like competencies with respect to the content covered; and

(d) ensure that the content requirements for each course will be sufficient to prepare students for upper-division coursework in that field;

(3) maintain a list of lower-division courses offered at higher education institutions in New Mexico. All courses assigned the same number shall transfer between institutions as that course name and number; and

(4) develop a process for reviewing, updating and maintaining the common course numbering system.

C. The department shall, in consultation with the faculty, facilitate the development and approval of statewide meta-majors and transfer modules by August 2019.

D. The department, in consultation with faculty, shall develop a statewide general education core curriculum of not less than fifteen hours for an associate in applied science degree, thirty hours for an associate degree other than in applied science and thirty hours for a bachelor degree. The statewide general education core curriculum shall include a comprehensive array of lower-division college-level courses designed to provide a foundation for a liberal education and courses that include the interdisciplinary study of differences that recognize and respect New Mexico's diverse cultures, histories and identities. The department shall develop a process for maintaining and updating the statewide general education core curriculum. The department shall review and approve proposed statewide general education core curriculum requirements. For every institution, each approved course in the general education core curriculum shall be transferable, and its credit hours shall count toward fulfilling general education core curriculum requirements at any institution to which they are transferred.

**History:** Laws 1995, ch. 224, § 3; 2005, ch. 272, § 3; 2015, ch. 29, § 2; 2017, ch. 18, § 2.

## ANNOTATIONS

**The 2017 amendment**, effective July 1, 2017, provided additional requirements for the higher education department in establishing a comprehensive statewide plan under which students may transfer earned credits between and among New Mexico institutions of higher education; in the catchline, added "Initial", changed "plan" to "planning and", after "development", deleted "implementation establishment", and added "meta-major and"; in Subsection A, after "the transfer of", deleted "students" and added "course credits"; in Subsection B, Paragraph B(3), deleted "define, publish and", after "maintain", deleted "modules" and added "a list", after "lower division courses", deleted "accepted for transfer at all institutions and meeting requirements for lower division requirements established for associate and baccalaureate degree granting programs" and added the remainder of the paragraph, and added Paragraph B(4); in Subsection C, after "The department shall", deleted "ensure that institutions develop transfer modules that include approximately sixty-four hours of lower division college level credit" and added the remainder of the subsection; and deleted former Subsections D, E and F and added a new Subsection D.

**The 2015 amendment**, effective June 19, 2015, provided a deadline for the department to establish a statewide articulation plan; in Subsection A, after "The", deleted "commission" and added "department"; in the introductory sentence of Subsection B, after "the", deleted "commission" and added "department"; in Subsection B, Paragraph (1), after "(1)", added "by August 1, 2017", and after "provided that the", deleted "commission" and added "department"; and in Subsection C, after "The", deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, added Subsection B(1) to provide that the commission shall establish a common course naming and numbering system for courses substantially equivalent to lower division courses and an interim mechanism of a statewide equivalency table; added Subsection B(2)(a) through (d) to provide for a process to identify courses as substantially equivalent; provided in Subsection C that transfer modules shall include approximately sixty-four hours of credit; provided in Subsection D that the general education core shall transfer as a block and count as required lower-division course work and that any course in the core is transferable as credit toward the general education core requirements; added Subsection E to provide that courses in the general education core may be offered for dual credit to secondary school students and be transferable as credit for a required lower-division course; and added Subsection F to provide that a discipline module shall consists of approximately sixty-four hours applicable to the discipline and that any course within the discipline module is transferable as credit toward degree requirements.

## **21-1B-4. Transfer of credits.**

A. Courses that have a New Mexico common course number shall be accepted as the equivalent courses offered at the receiving institution.

B. Courses taken as part of an approved meta-major or transfer module shall be accepted to meet lower-division graduation requirements of a degree-granting program to which the meta-major or transfer module articulates.

C. An institution shall not increase requirements for degree-granting programs as a result of the use of a meta-major or transfer module or acceptance of a course that is part of a meta-major or transfer module. An institution may specify additional lower-division or upper-division requirements not included in a meta-major or transfer module for one or more programs of study; provided that those requirements apply equally to transfer students and students originating their study at the institution.

**History:** Laws 1995, ch. 224, § 4; 2005, ch. 272, § 4; 2017, ch. 18, § 3.

## **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, provided for the transfer of credits between and among New Mexico institutions of higher education; in the catchline, deleted "use of transfer module" and added "transfer of credits"; in Subsection A,

deleted "Each" and added "Courses that have a New Mexico common course number shall be accepted as the equivalent courses offered at the receiving", and after "institution", deleted the remainder of the subsection; added a new Subsection B and redesignated former Subsection B as Subsection C; deleted former Subsection C, which related to the transfer of completed transfer modules; and in Subsection D, added "meta-major or" in two places, and after "requirements not included in a", deleted "discipline" and added "meta-major or transfer".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that Subsection A applies to any course that is part of a transfer module; provided in Subsection B that an institution shall not increase the degree requirements as a result of acceptance of a course that is part of a transfer module and that an institution may specify additional requirements not included in a discipline module for programs of study; deleted the former provisions of Subsection C which provided that the commission establish procedures to identify additional lower-division courses in specific disciplines of study that will be transferable and applicable to baccalaureate degrees in specific programs of study; and added Subsection C to provide that institution shall accept completed transfer modules as a block as fulfilling lower-division coursework and upon transfer of a discipline module, admit students into the upper-division program.

## **21-1B-5. Oversight of articulation programs; complaint procedures.**

A. The department shall establish and maintain a process to monitor and improve articulation through frequent and systematic consultation with institutions.

B. The department shall establish a complaint procedure for transfer students who fail to receive credit for courses that have a common course number or are contained in an approved meta-major or transfer module taken at another institution. The department may set standards for determining bona fide complaints, including a requirement that students follow institutions' internal procedures for resolving complaints prior to submitting them to the department. The department shall investigate all articulation complaints and render decisions as to the appropriateness of the actions of the participants.

C. Prior to December 31 of each year, the department shall summarize all articulation complaints filed with the department and the decisions of the department with regard to those complaints.

D. If a student's articulation complaint regarding commonly numbered courses or courses contained in a meta-major or transfer module is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

**History:** Laws 1995, ch. 224, § 5; 2005, ch. 272, § 5; 2017, ch. 18, § 4.

## **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, required the higher education department to establish a complaint procedure for transfer students who fail to receive credit for commonly numbered courses or courses contained in a meta-major or transfer module; in Subsection A, after "The", deleted "commission" and added "department", and after the first sentence, deleted the remainder of the subsection, which related to monitoring the progress of transfer students; in Subsection B, substituted "department" for "commission" throughout the subsection, after "receive credit for courses", added "that have a common course number or are", and after "contained in", deleted "a" and added "an approved meta-major or"; in Subsection C, substituted "department" for "commission" throughout the subsection, and deleted the last sentence of the subsection, which related to the process for meritorious complaints; and in Subsection D, deleted "When a module becomes effective as provided in Subsection F of Section 21-1B-6 NMSA 1978", after "complaint regarding", added "commonly numbered courses or", and after "courses contained in a", added "meta-major or transfer".

**The 2005 amendment**, effective June 17, 2005, added Subsection D to provide that if a student's articulation complaint is upheld, the receiving institution shall reimburse the student the cost of each course the student was required to repeat.

### **21-1B-5.1. Articulation complaint process; notification.**

The receiving institution shall publish in the student handbook or otherwise notify transfer students of the complaint process to be followed in the event that a transfer module course is not accepted for credit. The notification shall include the remedy available to the student if the complaint is upheld.

**History:** Laws 2005, ch. 272, § 6.

## **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 272 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **21-1B-6. Reporting.**

A. Prior to December 31 of each year, the department shall report to the legislative finance committee and the governor regarding the status of articulation programs and the transfer of students between institutions.

B. The report developed by the department shall include the statewide meta-major and transfer modules available, an analysis of the number of students transferring between New Mexico's higher education institutions, the graduation rates and time to earn degrees of transfer students at receiving institutions, the average number of credit hours earned by graduating transfer students compared to the average number of credit hours earned by graduates who originated at the institution and a summary of student

complaints regarding articulation. The report shall include data and other information obtained on both a statewide and individual institution basis.

C. The report shall look at outcomes with regard to such factors as transfer rates, persistence rates after transfer and graduation rates.

D. The report shall identify each institution against which a meritorious complaint has been filed. The report shall summarize the recommendations of the department with regard to those complaints.

E. All institutions shall provide articulation information required by the department for the development of the annual report prior to September 30 of each year.

**History:** Laws 1995, ch. 224, § 6; 2005, ch. 272, § 7; 2017, ch. 18, § 5.

### **ANNOTATIONS**

**The 2017 amendment**, effective July 1, 2017, required the higher education department to include in its annual report the statewide meta-major and transfer modules available, graduation rates of transfer students, and the time to earn degrees for transfer students at receiving institutions; substituted "department" for "commission" throughout the section; in Subsection A, after "legislative finance committee", deleted "the legislative education study committee"; in Subsection B, after "shall include", added "the statewide meta-major and transfer modules available", after "transferring between", deleted "campuses, the number of credits being requested and accepted for transfer, institutions denying transfer of credits and reasons for denial" and added "New Mexico's higher education institutions", and after the next occurrence of "the", deleted "progress" and added "graduation rates and time to earn degrees"; and deleted Subsection F, which related to the effective dates of certain discipline modules.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection B that the report shall include the average number of credit hours earned by graduating transfer students compared to the average number of credit hours earned by graduates who originated at the institution; added Subsection C to provide that the report shall look at outcomes with regard to such factors as transfer rates, persistence rates after transfer and graduation rates; provided in Subsection D that the report shall summarize recommendations with regard to complaints; and added Subsection F to provide deadlines the preparation of the general education core, modules, and the common course numbering and naming system.

## **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.

## **ANNOTATIONS**

**Cross references.** — For additional duties of higher education department, see 21-1-26.11 NMSA 1978.

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

As used in the Post-Secondary Educational Planning Act:

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.

14A C.J.S. Colleges and Universities §§ 2, 5; 78 C.J.S. Schools and School Districts § 66.

### **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 [higher education department] is designated the state commission. For the purposes of the Post-Secondary Educational Planning Act, the commission on higher education [higher education department], 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [higher education department] shall develop a funding formula that will provide funding for each institution of higher education to accomplish its mission as determined by a statewide plan.

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

(1) improve the quality of programs central to each institution's mission;

(2) develop and enhance programs that meet targeted post-secondary educational needs and the related needs of public schools;

(3) eliminate unnecessary, unproductive or duplicative programs;

- (4) consider faculty salaries and benefits adjustment to a competitive level with similar institutions in similar states, when such compensation adjustments are supported by detailed analyses of faculty workloads and educational outcomes assessments, 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) recognize additional costs incurred through increases in enrollment;
- (6) provide for equipment and equipment maintenance and library acquisitions and operations since the development of the prior funding formula;
- (7) fund off-campus courses and other nontraditional course delivery systems at a level sufficient to allow their development;
- (8) provide incentives to institutions to pursue private or alternative funding sources;
- (9) encourage the sharing of expertise, equipment and facilities and development of joint instructional programs, research and public service projects;
- (10) implement uniform articulation agreements and facilitation of transfer of students between institutions;
- (11) encourage energy conservation;
- (12) require mechanisms to track expenditures to ensure greater accountability; and
- (13) require each institution of higher education that offers distance learning and computer-based courses of study to provide accompanying electronic formats that are usable by an individual with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.

**History:** 1978 Comp., § 21-2-5.1, enacted by Laws 1988, ch. 164, § 1; 1995, ch. 224, § 19; 2003, ch. 162, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2003 amendment**, effective June 20, 2003, added Paragraph B(13).

**The 1995 amendment**, effective June 16, 1995, substituted "statewide plan" for "statewide planning effort" at the end of Subsection A, and, in Subsection B, rewrote Paragraph (2), inserted "when such compensation adjustments are supported by detailed analyses of faculty workloads and educational outcomes assessments" in Paragraph (4), added Paragraph (10), redesignated former Paragraphs (10) and (11) as Paragraphs (11) and (12), and made stylistic changes.

## **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 public education commission;
- (3) the public education department;
- (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 the secretary's designee;
- (11) persons familiar with the education needs of persons with a disability and persons disadvantaged by economic, racial or ethnic status;
- (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 public education commission and the public education department 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; 2007, ch. 46, § 8.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1978, ch. 54, § 1 repealed former 73-44-6, 1953 Comp. (former 21-2-6 NMSA 1978) and enacted a new 73-44-6, 1953 Comp.

**The 2007 amendment,** effective June 15, 2007, amended Paragraphs (2) and (3) of Subsection A and Subsection B to change the names of the departments and made other non-substantive language changes.

**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 [21-2-5 NMSA 1978], Items I, J and K 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 [21-2-6 NMSA 1978] 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 notes.** — 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 (P.L. 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 notes.** — Section 1202 of the Higher Education Act of 1965, as amended by P.L. 92-318, June 23, 1972, was compiled at 20 U.S.C. 1142a but was repealed by P.L. 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 P.L. 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 P.L. 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 (P.L. 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 notes.** — Section 1055(a) of the Higher Education Act of 1965, as amended by P.L. 92-318, June 23, 1972, was compiled at 20 U.S.C. 1135b-4(a), and was repealed by P.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 2A**

### **College District Tax**

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

Sections 21-2A-1 through 21-2A-10 NMSA 1978 may be cited as the "College District Tax Act".

**History:** Laws 1995, ch. 224, § 7; 2013, ch. 37, § 1.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, deleted "Sections 7 through 16 of this act" and added "Sections 21-2A-1 through 21-2A-10 NMSA 1978".

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

As used in the College District Tax Act:

A. "board" means the governing board of the college district;

B. "college" means a two-year, public post-secondary educational institution organized pursuant to the provisions of the Community College Act, Chapter 21, Article 14 NMSA 1978, the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978] or the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978];

C. "college district" means a district in which a college is located or is proposed to be located, the exterior boundaries of which are determined pursuant to the statutory provisions under which the college is organized;

D. "debt" means an obligation payable from ad valorem property tax revenues or the general fund of a college district and that may be secured by the full faith and credit of a college district and a pledge of its taxing powers;

E. "education technology equipment" means tools used in the educational process that constitute learning and administrative resources and may include:

(1) closed-circuit television systems; educational television and radio broadcasting; cable television, satellite, copper and fiber-optic transmission; computer, network connection devices; digital communications equipment, including voice, video and data; servers; switches; portable media such as discs and drives to contain data for electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in colleges and related facilities;

(2) improvements, alterations and modifications to, or expansions of, existing buildings or personal property necessary or advisable to house or otherwise accommodate any of the tools listed in Paragraph (1) of this subsection; and

(3) expenditures for technical support and training expenses of college district employees who administer education technology projects funded by a lease-purchase arrangement and may include training by contractors; and

F. "lease-purchase arrangement" means a financing arrangement constituting debt of a college district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the college district for nominal consideration after payment of the final periodic lease payment. "Lease-purchase arrangement" also means any debt of the college district incurred for the purpose of acquiring educational technology equipment whether designated as a general obligation lease, note or other instrument evidencing a debt of the college district.

**History:** Laws 1995, ch. 224, § 8; 2019, ch. 252, § 1.

## **ANNOTATIONS**

**The 2019 amendment**, effective April 4, 2019, defined "debt", "education technology equipment", and "lease-purchase arrangement" for purposes of the College District Tax Act; in Subsection B, after "Technical and Vocational Institute Act", deleted "Chapter 21, Article 17 NMSA 1978"; and added Subsections D through F.

### **21-2A-3. Purpose.**

The purpose of the College District Tax Act is to provide a uniform procedure for the authorization, imposition and collection of tax levies for the operation of college districts and the issuance of college district general obligation and revenue bonds for capital improvements in a college district.

**History:** Laws 1995, ch. 224, § 9.

## ANNOTATIONS

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### 21-2A-4. Application of act.

The College District Tax Act applies to all educational institutions organized pursuant to the provisions of Chapter 21, Article 14 [13] NMSA 1978, the Community College Act, Chapter 21, Article 17 [16] NMSA 1978, the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978] and the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978].

**History:** Laws 1995, ch. 224, § 10.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The Community College Act is compiled as Chapter 21, Article 13, not Article 14.

The Technical and Vocational Institute Act is compiled as Chapter 21, Article 16, not Article 17.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### 21-2A-5. Special tax levy for college district operation.

A. In each college district, the board may call an election within the college district for the purpose of authorizing that board to levy taxes on all taxable property within the district to be used for current operations, maintenance and capital improvements of the college district. The taxes, if authorized as provided in the College District Tax Act, shall be in addition to the taxes authorized for the payment of general obligation bonds pursuant to the provisions of the College District Tax Act. 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 [Chapter 7, Articles 35 to 38 NMSA 1978]. If approved by a majority of the electors voting on the issue, the board of county commissioners, at the direction of the board, shall levy the taxes in an amount certified by the commission on higher education [higher education department] as necessary to meet the annual budget approved by the commission on higher education

[higher education department], 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 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 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 board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the 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 board without calling an election.

**History:** Laws 1995, ch. 224, § 11.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

**21-2A-6. College district general obligation bonds; interest; form; payment.**

A. Any board, other than a board created pursuant to the provisions of the Off-Campus Instruction Act [21-14A-1 to 21-14A-10 NMSA 1978], may borrow money for the purpose of:

- (1) erecting, furnishing, constructing, purchasing, remodeling and equipping buildings and utility facilities, exclusive of stadiums;
- (2) making other real property improvements;
- (3) purchasing grounds; and
- (4) purchasing and installing computer hardware and software with a useful life equal to or exceeding the maturity of the bonds.

B. To carry out the purposes of the College District Tax Act, the board may issue negotiable general obligation bonds of the college district, if approved by the higher education department and then approved at an election by a majority of the qualified electors voting on the issue; provided, however, no bonds shall be issued that create a total bonded indebtedness in the college district in excess of three percent of the assessed valuation of the taxable property within the 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 that 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 at a public sale or may be sold at private sale to the state of New Mexico or the New Mexico finance authority at the price and upon such terms and conditions as the board and the state of New Mexico or the New Mexico finance authority may determine. The bonds may be in such denominations and registered and pay interest as the board determines.

C. The bonds shall be due and payable either annually or semiannually commencing not later than three years from their date. The bonds shall be issued for a term of not more than twenty years. The form and terms of the bonds, including provisions for their payment and optional or mandatory redemption, shall be as determined by the board. If the board so determines, the bonds may be redeemable prior to maturity upon payment of a premium not exceeding one percent of the principal of the bonds. The bonds shall be executed in the name of and on behalf of the college district, signed by the chair of the board, with the seal of the college district affixed to the bonds, and attested by the secretary of the 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].

D. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to the provisions of the College District Tax Act, upon approval of the bonds at an election by a majority of the qualified electors in the 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 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 is the duty of all tax officials and authorities to cause taxes authorized by this subsection to be levied, assessed and collected.

E. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the College District Tax Act; provided that no building shall be built without prior approval of detailed plans by the higher education department; 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.

F. Prior to the issuance and sale of bonds, the attorney general shall approve all bond transcripts and certify 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 College District Tax Act for the issuance of bonds shall be deemed exclusive of the provisions of all other laws.

**History:** Laws 1995, ch. 224, § 12; 2013, ch. 37, § 2.

## **ANNOTATIONS**

**Cross references.** — For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2013 amendment**, effective June 14, 2013, allowed for the expenditure of bond proceeds on computer hardware and software; in Paragraph (3) of Subsection A, after "purchasing grounds", deleted "exclusive of stadiums"; added Paragraph (4) of Subsection A; in Subsection B, in the first sentence, after "issue negotiable", deleted "coupon", after "if approved by the", deleted "commission on", after "higher education", added "department", and after "bonded indebtedness in the", added "college", in the third sentence, after "The bonds shall be sold", deleted "and" and added the remainder of the sentence, and in the fourth sentence, at the beginning of the sentence, added "The bonds", after "in such denominations", added "and registered and pay interest", and after "board determines", deleted "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"; in Subsection C, after "due and payable", deleted "serially", in the second sentence, after "for a term of not", deleted "less than five or", in the third sentence, after "their payment and", added "optional or mandatory", in the fourth sentence, after "premium not exceeding", deleted "three" and added "one", and deleted

the former seventh sentence which provided that interest coupons shall bear the original or facsimile signature of the chairman of the board; and in Subsection E, after "detailed plans by the", deleted "commission on" and after "higher education", added "department".

## **21-2A-7. Payment of general obligation bonds; bond provisions.**

A. The principal of and interest on general obligation bonds authorized in the College District Tax Act 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 for general obligation bond issuances established in the College District Tax Act, and except to the extent other revenues are made available for that purpose. All bonds shall be the general obligations of the college district, and the full faith and credit of the college district shall be pledged for the payments of the bonds.

B. It may be provided in any proceedings authorizing any bonds under the College District Tax Act that the bond shall recite that it is issued under authority of the College District Tax Act. The recital shall conclusively impart full compliance with all of the provisions of the College District Tax 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 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 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 board may in any proceedings authorizing bonds under the College District Tax 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 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:** Laws 1995, ch. 224, § 13.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-2A-8. Refunding bonds; general obligation college district bonds.**

The board of any college district may, with the approval of the commission on higher education [higher education department], issue bonds, to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the college district. Whenever the board of any 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 board and the amount of refunding bonds that the 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 board, with the seal of the college district affixed thereto, and shall be attested by the secretary of the 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 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:** Laws 1995, ch. 224, § 14.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **21-2A-9. College district revenue bonds; refunding bonds.**

A. The board of any college district may issue revenue bonds for the purpose of constructing, purchasing, improving, remodeling, furnishing or equipping any necessary buildings, structures or facilities of the 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 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 college district and its board.

B. The revenue bonds shall be authorized by resolution of the board approved by majority vote of the board. The commission on higher education [higher education department] 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 board.

D. The 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 property, buildings, structures, activities, services, operations or other facilities of the college district; 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 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 colleges of the college district in the amounts and in the manner determined and provided by the 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 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 colleges of the college district; 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 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 colleges of the college district; provided that the 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 board of a college district may by bond resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the College District Tax Act, 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 College District Tax 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 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:** Laws 1995, ch. 224, § 15.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-2A-10. Procedure for election.**

A. In all elections held under the College District Tax Act, the board shall issue a resolution calling for an election. The resolution shall be filed with each county clerk in the college district.

B. All elections held under the College District Tax Act shall be conducted and canvassed pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. Any person or corporation may institute, in the district court of any county in which the college district affected lies, an action or suit to contest the validity of any proceedings held under the College District Tax 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:** Laws 1995, ch. 224, § 16; 2019, ch. 212, § 215.

### ANNOTATIONS

**The 2019 amendment**, effective April 3, 2019, revised certain notice provisions, and provided that all elections held under the College District Tax Act shall be conducted pursuant to the Local Election Act; in Subsection A, deleted the last sentence of the subsection, which provided "The board shall publish the resolution in a newspaper of general circulation in the 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."; and in Subsection B, after "conducted and canvassed" deleted "in the same manner as municipal school elections, unless otherwise specifically provided in the College District Tax Act" and added "pursuant to the provisions of the Local Election Act".

## **21-2A-11. Extended learning programs; purpose; commission on higher education [higher education department] responsibilities; reporting.**

A. The commission on higher education [higher education department] shall coordinate the role and participation of public post-secondary higher education institutions in the development and operation of extended learning programs. Extended learning programs shall be established to ensure equitable student access to educational opportunities throughout the state. The commission [department] shall work to ensure access, efficiency, coordination and accountability in the development and operation of the extended learning programs.

B. In coordinating the development and operation of extended learning programs, the commission on higher education [higher education department] shall make awards from the extended learning fund for the purpose of establishing pilot extended learning programs. Pilot programs shall focus on the creation and operation of community-based extended learning centers, the development of regional resources and the expanded use of technology in instruction.

C. Annually, prior to October 1, the commission on higher education [higher education department] shall report to the legislature and the governor on the status of extended learning programs and make recommendations on the funding level for such projects for the upcoming year.

**History:** Laws 1995, ch. 224, § 17.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **21-2A-12. Extended learning fund created; distribution of fund.**

The "extended learning fund" is created in the state treasury. Money in the fund is appropriated to the commission on higher education [higher education department] for the purpose of making awards to public schools and public post-secondary institutions for the purpose of developing and operating extended learning programs throughout the state. The commission [department] shall establish by regulation a procedure for

application and award of money in the fund. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the executive director [secretary] of the commission on higher education [higher education department]. Any unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

**History:** Laws 1995, ch. 224, § 18.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-2A-13. College district lease-purchase arrangements; notice; process for approving lease-purchase arrangements; limitation of action.**

A. When a college district contemplates entering into a lease-purchase arrangement payable in whole or in part from ad valorem taxes, the board, before initiating any proceedings for approval of such lease-purchase arrangement, shall forward to the higher education department a written notice of the proposed lease-purchase arrangement.

B. The higher education department, upon the receipt of the notice provided for in Subsection A of this section, shall furnish all necessary information with reference to the valuation, present outstanding bonded indebtedness, present outstanding lease-purchase arrangements and limitations as to tax rates and debt contracting power and other information useful to the board in the consideration of a proposed lease-purchase arrangement. Upon entering into a lease-purchase arrangement, the board shall prepare two true and complete transcripts of proceedings relating to the lease-purchase arrangement, one to be immediately filed with the higher education department and one to be kept by the board.

C. At a regular or special meeting called for the purpose of considering a lease-purchase arrangement, a board shall:

(1) make a determination of the necessity for lease-purchasing the educational technology equipment;

- (2) determine the estimated cost of the equipment needed;
- (3) review a summary of the terms of the proposed lease-purchase arrangement;
- (4) identify the source of funds for the payment of debt;
- (5) if all or part of the funds needed require or anticipate the imposition of an ad valorem tax, determine the estimated rate of the ad valorem tax and what, if any, the percentage increase in ad valorem taxes for all taxable property in the college district would be;
- (6) set a date for a meeting to consider a resolution granting final approval to the lease-purchase arrangement; and
- (7) direct that notice of the meeting provided for in Paragraph (6) of this subsection be published once each week for the two weeks immediately preceding the meeting in a newspaper having general circulation in the college district and that the notice include the information required in Paragraphs (1) through (5) of this subsection.

D. At a regular or special meeting called for the purpose of considering a lease-purchase arrangement as set forth in Subsection C of this section, a board may adopt an authorizing instrument in compliance with the requirements of Section 6-14-10.2 NMSA 1978. The requirements of Paragraphs (6) and (7) of Subsection C of this section shall not apply if the board adopts such an authorizing instrument.

E. At a meeting scheduled pursuant to Paragraph (6) of Subsection C of this section, the board may adopt a final resolution approving the lease-purchase arrangement only by an affirmative vote of a majority of all members of the board.

F. After the adoption by the board of a final resolution approving the lease-purchase arrangement or after the final approval of a lease-purchase arrangement by delegation as provided for in Subsection D of this section, the board shall publish notice of the adoption of the resolution or the approval of the lease-purchase arrangement once in a newspaper having general circulation in the college district. After the passage of thirty days from the publication required by this subsection, any action attacking the validity of the proceedings taken by the board preliminary to, in the authorization of and entering into the lease-purchase arrangement described in the notice is perpetually barred.

**History:** Laws 2019, ch. 252, § 2.

## **ANNOTATIONS**

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

## **21-2A-14. College district lease-purchase arrangements; tax levy; terms of lease-purchase arrangements; refunding or refinancing.**

A. The officials charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments due on lease-purchase arrangements. Annual payments due on lease-purchase arrangements may be combined with other college district general obligation debt when determining the annual debt service tax levy pursuant to Section 7-37-8 NMSA 1978 and the College District Tax Act. This annual debt service tax levy shall not exceed five dollars (\$5.00) per one thousand dollars (\$1,000) of taxable value; provided, however, that this limitation may be exceeded in any year in which the valuation of property in the college district declines to a level lower than the valuation of property in the year in which the applicable debt was issued. Nothing in the College District Tax Act shall be so construed as to prevent a college district from applying any other legally available funds, including funds that may be in its general fund or investment income actually received from investments, to the payments due on or any prepayment premium payable in connection with such lease-purchase arrangements as the same become due, and, upon such payments, the levy or levies provided for in this section may, to that extent, be reduced.

B. Lease-purchase arrangements may:

- (1) have interest, appreciated principal value, or any part thereof, payable at intervals or at maturity as may be determined by the board;
- (2) be subject to prior redemption or prepayment at the option of the board at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the board;
- (3) have a final payment date or mature at any time or times not exceeding five years after the date of issuance;
- (4) be payable at one time or in installments or may be in such other form as may be determined by the board;
- (5) be priced at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and
- (6) be sold or issued at public sale, negotiated sale or private sale to the New Mexico finance authority.

C. The board shall not adopt a resolution for or approve a lease-purchase arrangement that exceeds five years or creates a total general obligation indebtedness in the college district which, when combined with other outstanding college district

general obligation debt, exceeds three percent of the assessed valuation of the taxable property within the college district as shown in the preceding general assessment.

D. College districts are authorized to enter into lease-purchase arrangements for the purpose of refunding or refinancing any lease-purchase arrangements then outstanding, including the payment of any prepayment of redemption premiums thereon and any interest accrued or to accrue to the date of purchase, prepayment, redemption or maturity of the outstanding lease-purchase arrangements. Until the proceeds of the lease-purchase arrangements issued for the purpose of refunding or refinancing outstanding lease-purchase arrangements are applied to the purchase, prepayment, redemption or retirement of the outstanding lease-purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the board, also be applied to the payment of the outstanding lease-purchase arrangements to be refunded or refinanced by purchase, prepayment, redemption or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the board to be used for payment of the refunding or refinancing lease-purchase arrangement. All such refunding or refinancing lease-purchase arrangements shall be entered into under, secured and subject to the provisions of the College District Tax Act in the same manner and to the same extent as any other lease-purchase arrangements entered into pursuant to that act.

**History:** Laws 2019, ch. 252, § 3.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

### **21-2A-15. College district lease-purchase arrangements; agreement of the state; legal investments; tax exemption; cumulative and complete authority.**

A. The state does hereby pledge to and agree with the holders of any lease-purchase arrangement entered into pursuant to the College District Tax Act that the state will not limit or alter the rights hereby vested in college districts to fulfill the terms of any lease-purchase arrangement or in any way impair the rights and remedies of the holders of lease-purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. College districts are authorized to include this pledge and agreement of the state in any lease-purchase arrangement.

B. Lease-purchase arrangements entered into pursuant to the College District Tax Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public



bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

C. The state covenants with the purchasers and all subsequent holders and transferees of lease-purchase arrangements entered into by boards, in consideration of the acceptance of and payment for the lease-purchase arrangements entered into pursuant to the College District Tax Act, that lease-purchase arrangements and the income from the lease-purchase arrangements shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

D. The College District Tax Act shall be deemed to provide an additional and alternative method for acquiring educational technology equipment and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The College District Tax Act shall be deemed to provide complete authority for acquiring educational technology equipment and entering into lease-purchase arrangements. No other approval of any state agency or officer, except as provided in that act, shall be required with respect to any lease-purchase arrangements, and the board acting pursuant to provisions of that act need not comply with the requirements of any other law applicable to the issuance of debt by college districts; provided, however, that a board may submit to a vote of qualified electors of the college district the question of creating debt by entering into a lease-purchase arrangement; and provided further that the board shall abide by the vote of the majority of those persons voting on the question.

**History:** Laws 2019, ch. 252, § 4.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

#### **21-2A-16. Liberal interpretation.**

The College District Tax Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to the effect of the purposes of the act.

**History:** Laws 2019, ch. 252, § 5.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

#### **21-2A-17. Severability.**

If any part or application of the College District Tax Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**History:** Laws 2019, ch. 252, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Compiler's notes.** — This section bore no history line in the 1915 Code. The compilers appear to have correlated the two acts now cited to the history line to create it.

**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.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

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

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

**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*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**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*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**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*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**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 § 30.

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 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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 §§ 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

### **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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

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

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

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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

For 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.

Validity and construction of public school regulation of student distribution of religious documents at school, 136 A.L.R. Fed. 551.

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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Compiler's notes.** — 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Eminent Domain § 68.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Cross references.** — For authority of state treasurer to purchase bonds, see 6-13-6 NMSA 1978.

For regulations concerning sale of bonds, see 6-13-6 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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 repealed former 21-3-15 NMSA 1978 and enacted a new 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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 33.

14A 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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 [21-3-13, 21-3-14, 21-3-16 to 21-3-28 NMSA 1978], 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.

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

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

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

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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 § 59 et seq.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

## **21-3-26. [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.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

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

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

### **21-3-30. [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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Cross references.** — For election of officers, see 21-3-5 NMSA 1978.

**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*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**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*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**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 § 30.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed 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 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 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 northern New Mexico college.

The management and control of the northern New Mexico state school at El Rito, also known as northern New Mexico college, and the appointment, qualification, powers and duties of its board of regents shall be the same as provided in Article 12, Section 13 of the constitution of New Mexico for the other state educational institutions mentioned in Article 12, 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; 2005, ch. 304, § 1; 2005, ch. 308, § 1.

#### ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, changed "Spanish American school" to "northern New Mexico state school" and provided that the school is also known as northern New Mexico college.

Laws 2005, ch. 304, § 1 and Laws 2005, ch. 308, § 1, both effective June 17, 2005, enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 308, § 1. See 12-1-8 NMSA 1978.

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the

handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**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 § 30.

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 college" for common convenience.**

Except for financial transactions, the use of the name northern New Mexico college is hereby permitted in lieu of northern New Mexico state school, 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; 2005, ch. 304, § 2; 2005, ch. 308, § 2.

### **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, changed "state school" to "college" and changed "the Spanish American school at El Rito" to "northern New Mexico state school".

Laws 2005, ch. 304, § 2 and Laws 2005, ch. 308, § 2, both effective June 17, 2005, enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 308, § 2. See 12-1-8 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 §§ 387, 388.

## **21-4-3. Northern New Mexico college; purpose of instruction; academic courses; boarding of students.**

A. The courses of instruction at northern New Mexico college 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 that are useful and necessary in the economy of New Mexico; and

(3) provide academic, technical and vocational instruction beyond the high school level and accredited college level academic instruction.

B. The board of regents of northern New Mexico college may 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.

D. The board of regents of northern New Mexico college may develop, implement and seek accreditation for a baccalaureate degree program in teacher education.

**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; 2004, ch. 84, § 1; 2005, ch. 304, § 1; 2005, ch. 308, § 1.

## ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, changed "northern New Mexico state school at El Rito" to "northern New Mexico college" in Subsection A; deleted the former provision in Subsection A(3), which provided that in the event the university of New Mexico northern branch is dissolved, the college shall provide accredited college level instruction at those areas presently served by the University of New Mexico northern branch and by the northern New Mexico state school; deleted the former provision of Subsection D, which provided that the board of regents is authorized to develop a degree program in teacher education for the Espanola campus; and deleted the former provisions of Subsection D(1) and (2), which provided that the program for teacher education at the Espanola campus shall be authorized when the board of regents certifies that the program has been developed and is ready for implementation and is ready to receive the accreditation review team and that the northern New Mexico state school shall engage in a partnership with New Mexico highlands university.

Laws 2005, ch. 304, § 3 and Laws 2005, ch. 308, § 3, both effective June 17, 2005, enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 308, § 2. See 12-1-8 NMSA 1978.

**The 2004 amendments**, effective May 19, 2004, added Subsection D.

**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 §§ 219, 220, 298 to 302.

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; 78A C.J.S. Schools and School Districts § 782 et seq., 815.

## **21-4-4. Establishment of a solar energy research park and academy.**

A. There is established at northern New Mexico state school a "solar energy research park and academy" to conduct applied research on solar energy storage devices, on photovoltaic technology, on solar thermal and concentrated solar technologies and on other alternative renewable energy sources. Northern New Mexico state school shall collaborate with Los Alamos national laboratory to develop technology transfer applications related to solar energy.

B. In addition to the research park, the academy shall provide new academic programs, including three levels of engineering degrees: associate of science, bachelor of science and master of science in mechanical engineering with a major in solar energy.

**History:** Laws 2008, ch. 52, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2008, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

## **ARTICLE 5**

### **New Mexico School for the Blind and Visually Impaired**

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

The New Mexico school for the blind [New Mexico school for the blind and visually impaired] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

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

**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 Op. Att'y Gen. No. 25-3868.

**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.** — 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 § 4 et seq.

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

A. The management and control of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired], 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 money appropriated by the state or that shall otherwise come into the school's possession shall be vested in a board of five regents, at least one of whom shall be visually handicapped and at least one other of whom shall be the parent of a visually handicapped child.

B. The regents and their successors in office shall constitute a body corporate under the name and style of "the board of regents of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired]". The board has 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 Chapter 21, Article 5 NMSA 1978. A majority of the board shall constitute a quorum for the transaction of business, but a smaller 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 board of regents of the university of New Mexico.

C. The board of regents of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired] shall comply with provisions of the fourteenth amendment to the United States constitution, the federal Civil Rights of Institutionalized Persons Act and the Individuals with Disabilities Education Act.

**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; 1997, ch. 232, § 1; 1999, ch. 116, § 1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Cross references.** — For the federal Civil Rights of Institutionalized Persons Act, see 42 USC § 1997 et seq.

For the Individuals with Disabilities Education Act, see 20 USCS § 1400 et seq.

**The 1999 amendment**, effective June 18, 1999, added Subsection C.

**The 1997 amendment**, effective June 20, 1997, substituted "New Mexico school for the visually handicapped" for "state institutions" in the section heading, designated the existing language as Subsections A and B, made minor stylistic changes in and rewrote the last three sentences of Subsection A; in Subsection B, in the first sentence, inserted "The regents" at the beginning and substituted "board of regents" for "trustees" near the middle, in the second sentence inserted "The board has" at the beginning and substituted "Chapter 21, Article 5 NMSA 1978" for "this article" at the end, in the fourth sentence, inserted "board of regents of the" near the end, and deleted the last two sentences in Subsection B relating to the board requiring corporate surety bonds in reasonable amounts set by the board and the governor being an ex-officio member of the board, but not having the right to vote or be eligible to office on the board.

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**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 § 30.

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, recompiled former 21-5-3 NMSA 1978 as 22-14-20 NMSA 1978, effective June 17, 1983.

Laws 1983, ch. 60, contained 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 [New Mexico school for the blind and visually impaired]."]**

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 [New Mexico school for the blind and visually impaired]."

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 9.

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

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 116, § 2 repealed 21-5-5 NMSA 1978, as amended by Laws 1973, ch. 138, § 29, requiring parents and guardians to send blind students to school, effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

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

That the superintendent of such institute [New Mexico school for the blind and visually impaired], 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.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 240 to 251.

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 blind and visually impaired] 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 [21-5-6, 21-5-7 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.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 65 to 67.

78 C.J.S. Schools and School Districts § 100 et seq.

## 21-5-8. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 116, § 2 repealed 21-5-8 NMSA 1978, as enacted by Laws 1915, ch. 33, § 4, relating to the penalty for violating provisions for compulsory education of the blind, effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

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

## ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 60, § 3, recompiled former 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, effective June 17, 1983.

## 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 blind and visually impaired], 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 blind and visually impaired] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**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 blind and visually impaired].

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

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**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 [New Mexico school for the blind and visually impaired] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Repeals and reenactments.** — Laws 1983, ch. 265, § 38, repealed former 21-5-14 NMSA 1978, effective April 7, 1983, and enacted a new 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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 blind and visually impaired] 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Cross references.** — For establishment of interest and retirement fund, see 21-5-17 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 59 et seq.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

### **21-5-21. [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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

### **21-5-22. [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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

### **21-5-23. [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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 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.

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**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 Op. Att'y Gen. No. 55-6169.

**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. 1962 Op. Att'y Gen. No. 62-73 (see Section 38-5-18 NMSA 1978).

**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. 1962 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 § 30.

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 persons of either sex who are residents within the state and between the ages of five years and the age of majority and who are deaf or hard-of-hearing; 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 the 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 vocational rehabilitation division of the public education department to provide instruction for adults with a disability in vocations or lip reading taught at the school, but such 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 a school year. 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 United States government and the proper authorities of other states and territories for the reception and education of such children, and the president is further authorized to receive and receipt for all money 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; 2007, ch. 46, § 9.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, amended the section to make non-substantive language changes.

**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 Op. Att'y Gen. No. 45-4803.

**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 Op. Att'y Gen. No. 55-6170.

**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 Op. Att'y Gen. No. 55-6302.

**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 Op. Att'y Gen. No. 55-6302.

**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 Op. Att'y Gen. No. 55-6302.

**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 §§ 212, 213.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 228 to 239.

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. Schools and School Districts § 100 et seq.; 78A C.J.S. Schools and School Districts § 734 et seq.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

For management and control, see N.M. Const., art. XII, § 13.

**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.*, 1927-NMSC-047, 32 N.M. 428, 258 P. 571.

**Law reviews.** — For note, "Student Discipline Cases in State Universities of New Mexico - Procedural Due Process," see 1 N.M.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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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 geology and mineral resources, see 69-1-2 NMSA 1978.

**Temporary provisions.** — Laws 2011, ch. 76, § 1 directed the health sciences center to conduct a study of the feasibility of a program to allow qualified students to matriculate directly from a bachelor of arts degree program to dental school for a doctor of dental science or doctor of dental surgery degree.

**Appropriations.** — Laws 2012, ch. 62, § 1, effective May 16, 2012, appropriated \$1,000,000 from the tobacco settlement program fund to the board of regents of the university of New Mexico for the health sciences center for expenditure in fiscal year 2013 to conduct lung biology research focused on smoking studies, lung cancer and chronic obstructive pulmonary disease drug development under the Speaker Ben Lujan Lung Cancer Research Project.

**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. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**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.*, 1971-NMSC-043, 82 N.M. 460, 483 P.2d 934.

**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.

**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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.*, 1955-NMSC-077, 60 N.M. 41, 287 P.2d 237.

**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. 14-1230.

**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.

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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For 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*, 1917-NMSC-031, 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*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**Treasurer of state university may transfer a certificate of deposit** from one depository to another. *State v. Llewellyn*, 1917-NMSC-031, 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*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**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. President; secretary and treasurer; duties and powers.**

The president of the board of regents of the university of New Mexico shall preside at all meetings of the board, except that when the president is absent the board may appoint a president pro tem, and sign all instruments required to be executed by the board. The president shall appoint committees of the board. The secretary shall provide for attesting all instruments required to be signed by the president of the board, shall keep a true record of all the proceedings of the board and generally do all other things required of the secretary by the 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; 1995, ch. 167, § 2.

## ANNOTATIONS

**Compiler's notes.** — Notwithstanding the section heading, this section, as a result of the 1995 amendment, no longer provides for the office of treasurer.

**Cross references.** — For prohibition of interest in contracts for supplies, see 21-1-35 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, rewrote this section to the extent that a detailed comparison is impracticable.

**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. Board of regents; rules and regulations.**

The board of regents shall have power and it shall be its duty to enact laws, rules and regulations for the government of the university of New Mexico. The board of regents may hire a president for the university of New Mexico as its chief executive officer and shall determine the scope of the president's duties and authority.

**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; 1995, ch. 167, § 3.

## ANNOTATIONS

**The 1995 amendment,** effective June 16, 1995, inserted "board of", substituted "its" for "their", substituted "the university of New Mexico" for "the university", and added the last sentence.

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the

manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Independence of board of regents.** — The board of regents is an independent governing body which has a very real, though somewhat ill-defined, independence from outside control. The reason for the regents' autonomy is to assure that the educational process is free of interference from the capricious whims of the political process. *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236.

**Constitutionality of Public Employees Bargaining Act.** — The Public Employees Bargaining Act, compiled in Chapter 10, Article 7E, which requires government entities, including the University of New Mexico, to allow all employees except those specifically exempted by that act to engage in collective bargaining, does not violate the autonomy of the University's Board of Regents as granted by N.M. Const., art. 12, § 13. *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For removal of president or faculty member for cause after trial, see 21-1-7 NMSA 1978.

**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.*, 1975-NMCA-111, 88 N.M. 392, 540 P.2d 872.

**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.

**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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **21-7-9.2. El centro de la raza created; purpose.**

The "el centro de la raza" is created as a service center within the division of student affairs of the university of New Mexico. The center shall provide training, technical assistance, research assistance, student academic support in the form of instruction and tutoring and information dissemination for Hispanic student recruitment and retention. The training, technical assistance, research assistance and information dissemination shall be made available to persons who participate in el centro de la raza. El centro de la raza shall prepare an annual report for the legislature showing the progress of the center in providing services to Hispanic students.

**History:** Laws 2005, ch. 164, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 164 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For purchase of university bonds by state treasurer, see 21-7-24 NMSA 1978.

**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*, 1933-NMSC-056, 37 N.M. 385, 24 P.2d 253; *State v. Regents of Univ. of N.M.*, 1927-NMSC-047, 32 N.M. 428, 258 P. 571.

**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.*, 1927-NMSC-047, 32 N.M. 428, 258 P. 571.

**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 Op. Att'y Gen. No. 33-650.

**State treasurer may purchase bonds of state university** herein authorized. 1932 Op. Att'y Gen. No. 32-443.

**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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 repealed former 21-7-15 NMSA 1978 and enacted a new 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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

### **21-7-21. [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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 59 et seq.

### **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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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 material was inserted by the compiler to correspond with 21-7-17 to 21-7-19 and 21-7-21 NMSA 1978, 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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

### **21-7-25. [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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

### **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.

### **21-7-28. Creation of the Taos branch community college of the university of New Mexico.**

On July 1, 2003, the "Taos branch community college" of the university of New Mexico is created.

**History:** Laws 2002, ch. 73, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

### **21-7-29. Rio Rancho campus for the university of New Mexico and other institutions.**

The board of regents of the university of New Mexico may create a campus of the university in Rio Rancho, which it may operate separately or jointly with any other post-secondary educational institution.

**History:** Laws 2009, ch. 40, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **21-7-30. State digital geospatial data clearinghouse designated; powers and duties.**

A. The resource geographic information system within the earth data analysis center of the university of New Mexico is designated as the "state digital geospatial data clearinghouse" to serve as a publicly accessible repository for digital geospatial data. For the purposes of this section, "digital geospatial data" means electronic information that includes the geographic or spatial location and characteristics of features and boundaries on, above or below the earth's surface.

B. The state digital geospatial data clearinghouse shall:

(1) coordinate, acquire, manage, inventory, maintain, secure and deliver geospatial data to state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(2) ensure compliance with the Public Records Act [Chapter 14, Article 3 NMSA 1978] for geospatial data that originate with a state agency or local government;

(3) provide online access to other geospatial data repositories, distributed data resources and mapping services developed or maintained and for use by state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(4) support the data needs for pilot and prototype geospatial mapping projects in conjunction with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(5) participate in the updates to and implementation of the state geospatial information technology strategic plan;

(6) provide access to reference maps, images and data for geospatial information system projects for and among state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(7) collaborate with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities to facilitate the coordination of geospatial data acquisition;

(8) serve as the reference repository for geospatial data in the state; provided, however, that the originating agency or entity retains custody and responsibility of the data generated by the agency or entity;

(9) implement systems that are compliant with web-based standards and best-practice technologies;

(10) participate in the identification, development and implementation of state geospatial standards and facilitate adherence to those standards; and

(11) submit an annual report to the information technology commission, the legislative finance committee and an appropriate interim legislative committee that includes:

(a) an inventory of publicly accessible geospatial information available from the clearinghouse;

(b) descriptions of how geospatial information is managed and accessed; and

(c) a summary of clearinghouse enhancements, collaborations and data acquisitions toward maintaining best-available geospatial information.

C. The state digital geospatial data clearinghouse may:

(1) enter into contracts and agreements with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities to share or provide geospatial data;

(2) coordinate geospatial data-acquisition projects with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities; and

(3) leverage funds and data from state agencies, local governments, tribal governments, universities, federal agencies or private sector entities to carry out the purposes of the clearinghouse.

**History:** Laws 2013, ch. 18, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### **21-7-31. Stephen Easley center for telehealth.**

The center for telehealth at the university of New Mexico shall be named the "Stephen Easley telehealth videoconferencing center", after Representative Stephen Easley, who died in office on August 14, 2013.

**History:** Laws 2015, ch. 158, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 158 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### **21-7-32. Off-campus instructional center for university of New Mexico in Valencia county.**

Pursuant to Section 21-1-26.9 NMSA 1978, the board of regents of the university of New Mexico is authorized to create an off-campus instructional center in Valencia county.

**History:** Laws 2019, ch. 178, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Cross references.** — For designation as state educational institution, see N.M. Const., art. XII, § 11.

For acceptance of land grants, see N.M. Const., art. XII, § 12.

For management by board of regents, see N.M. Const., art. XII, § 13.

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Compiler's notes.** — "This act" refers to Laws 1889, ch. 138. For the compilation of operative sections, consult the tables of corresponding code sections.

**Cross references.** — For board of regents, number, appointment, qualifications and duties, see N.M. Const., art. XII, § 13.

**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*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**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*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**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. 1962 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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Cross references.** — For officers of New Mexico 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.

**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*, 1917-NMSC-031, 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*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**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*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**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 [employees], 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**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.

**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*, 1917-NMSC-031, 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*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**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*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See also 21-8-2 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*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**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*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Cross references.** — For tuition and matriculation fees, see 21-1-2 NMSA 1978.

For removal of faculty member for cause after trial, see 21-1-7 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Cross references.** — For establishment of state chemical laboratory at New Mexico state 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 Chapter 76, Article 11 NMSA 1978.

For enforcement of Produce Marketing Act, see 76-15-10 to 76-15-21 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.

**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.

### **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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Compiler's notes.** — 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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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 notes.** — 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.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 [repealed] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The act of August 11, 1955, c. 790, 69 Stat. 674, compiled as 7 U.S.C. §§ 361a to 361i, repealed 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 [repealed] 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The act of August 11, 1955, c. 790, 69 Stat. 674, compiled as 7 U.S.C. §§ 361a to 361i, repealed 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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Compiler's notes.** — Section two of the act of August 30, 1890, was 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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Compiler's notes.** — 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, repealed 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, effective April 7, 1983, and enacted a new 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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 59 et seq.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.



### **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 material was inserted by the compiler and is not part of the law.

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.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14 Am. Jur. 2d Cemeteries § 34.

14 C.J.S. Cemeteries § 26.

## **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.

### **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.

## **21-8-39. Waste management education and research consortium created; purpose.**

A. The "waste management education and research consortium" is created and shall be a division of New Mexico state university.

B. Participating institutions in the consortium shall be New Mexico state university, the university of New Mexico, New Mexico institute of mining and technology, Dine college, Sandia national laboratories and Los Alamos national laboratory. The purposes of the consortium are to:

- (1) engage in theoretical and practical education of and research on environmental and natural resource issues;
- (2) disseminate knowledge acquired through educational programs;
- (3) provide assistance in efforts to address environmental and natural resource problems; and
- (4) cooperate with state and federal agencies.

C. The board of regents of New Mexico state university shall prepare reports showing the progress and condition of the consortium as the board deems necessary. The reports of the consortium may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of New Mexico state university.

D. The consortium may receive appropriations from the legislature through the board and may receive any or other items of value from public or private sources.

**History:** Laws 2003, ch. 40, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

## **21-8-40. Water resources research institute created; purpose.**

A. The "water resources research institute" is created and shall be a division of New Mexico state university.

B. Participating institutions associated with the water resources research institute shall be New Mexico state university, the university of New Mexico, New Mexico institute of mining and technology, New Mexico highlands university, eastern New



Mexico university and western New Mexico university. The purposes of the institute are to:

- (1) provide research and training in water conservation, planning and management; atmospheric-surface-ground water relations; and water quality;
- (2) transfer water information through the use of technical and miscellaneous publications, newsletters, conferences and presentations;
- (3) provide expertise, specialized assistance and information to address water problems; and
- (4) cooperate with local, state and federal water agencies.

C. The board of regents of New Mexico state university shall prepare reports showing the progress and condition of the water resources research institute as the board deems necessary. The reports of the institute may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of New Mexico state university.

D. The water resources research institute may receive appropriations from the legislature through the board of regents of New Mexico state university and may receive any other items of value from public or private sources.

**History:** Laws 2005, ch. 37, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 37 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **21-8-41. College assistance migrant program.**

A. The "college assistance migrant program" is created at New Mexico state university to serve educational needs of migrants and seasonal farm workers who are students at the university by offering sufficient support to ensure participants' success in the first year of college and by maintaining communication with former participants to ensure they receive the support they need to graduate.

B. The program shall:

- (1) address the achievement gap of farm worker students in higher education and bridge educational outreach issues within that population;

(2) assist each student to graduate from New Mexico state university with a bachelor's degree;

(3) provide students with assistance with housing and meal costs, comprehensive health examinations, art and cultural activities, tutoring and mentoring services, leadership training workshops and school supplies; and

(4) provide overall educational support and communication with family, community members and university administrators and faculty that serve as the educational support network for each student.

**History:** Laws 2007, ch. 118, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 118, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **21-8-42. Regional educational technology assistance center created.**

The "regional educational technology assistance center" is created as a professional development center at New Mexico state university's college of extended learning. The center shall provide technology integration training into teaching and learning; professional development dossier creation; use of data to drive instruction to improve student learning outcomes; internet safety, online teaching and learning and technical assistance; faculty development in integrating technology and distance learning tools; and implementing the New Mexico learning network. All of the services provided shall be available to pre-kindergarten through college throughout New Mexico. The regional educational technology assistance center shall prepare an annual report for the legislature detailing the activities and accomplishments of the center.

**History:** Laws 2007, ch. 281, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 281 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **21-8-43. Alliance for underrepresented students created; purpose.**

A. "The alliance for underrepresented students" is created at New Mexico state university.

B. Participating organizations in the alliance shall be the New Mexico alliance for minority participation and the regional alliance for science, engineering and mathematics for students with disabilities. The purposes of the alliance are to:

- (1) promote science, technology, engineering and mathematics education and retention at the undergraduate and graduate level for underrepresented students;
- (2) engage in research on and development of programs that support student retention and achievement;
- (3) disseminate knowledge acquired through education and retention programs; and
- (4) collaborate with and provide assistance to kindergarten through twelfth grade educators and post-secondary educational institutions to support science, technology, engineering and mathematics education and student achievement.

C. The alliance shall submit an annual report to the board of regents of New Mexico state university and the legislature detailing the activities and accomplishments of the alliance. The reports of the alliance may be printed and distributed by the university as appropriate, and revenue from the sale of the reports shall be paid into the account of the New Mexico state university.

D. The alliance may receive appropriations from the legislature through the board of regents and may receive gifts, grants and donations from public or private sources.

**History:** Laws 2007, ch. 280, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 280 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **21-8-44. Public-private partnership for university campus in San Luis Potosi, Mexico.**

A. The board of regents of New Mexico state university may establish a New Mexico state university campus in San Luis Potosi, Mexico.

B. The university shall not use state funds for capital investment or make financial contributions to private investors for the operation of the San Luis Potosi campus. Student and other data from the San Luis Potosi campus shall not be used to calculate instruction and general purposes for New Mexico state university or for capital funding.

C. Any contract between New Mexico state university and any private vendor or contractor entered into pursuant to the authority granted by this section shall be subject to resolution of disputes by international arbitration or to the jurisdiction of the district court of the third judicial district of New Mexico. The university's financial information related to the operation and financing of the San Luis Potosi campus is subject to the Audit Act [12-6-1 to 12-6-14 NMSA 1978]. Nothing in this section serves as a waiver of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] or the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

**History:** Laws 2019, ch. 267, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 267 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **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.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893,

ch. 61, § 24, changed 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 changed the name to the New Mexico state university. See *also* 21-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 33; 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. Drugs and Narcotics §§ 8 to 10.

## **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 § 29.

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 § 29.

#### **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 § 58 et seq.

#### **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.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed word in the second sentence was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

### **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 § 29.

### **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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**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.

**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

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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

**Bracketed material.** — The bracketed material was inserted by the compiler 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 §§ 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Compiler's notes.** — 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.

**Cross references.** — For number, appointment, qualifications and terms of members of the board of regents, see N.M. Const., art. XII, § 13.

**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*, 1955-NMSC-047, 59 N.M. 320, 284 P.2d 211.

**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. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 10, 11.

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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Cross references.** — For election duties of officers of state university, see 21-7-5, 21-7-6 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 [employees] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**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.

**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.

### **21-11-8.1. Institute for complex additive systems analysis established; function of institute.**

A. The board of regents of the New Mexico institute of mining and technology shall establish an institute for complex additive systems analysis.

B. The function of the institute for complex additive systems analysis is to:

(1) offer formal degree programs that integrate components of the computer science, engineering and management departments at the New Mexico institute of mining and technology;

(2) use joint faculty appointments and fellowships to recruit teachers from the ranks of academia, government and private industry;

(3) perform basic research and applied research for the purpose of analyzing and understanding complex interdependent systems;

(4) use research developed at the institute to help solve issues regarding complex interdependent systems that arise in the public and private sectors; and

(5) stimulate commerce by serving as an information age extension service for New Mexico businesses.

**History:** Laws 2001, ch. 39, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 39, § 2 made the act effective July 1, 2001.

### **21-11-8.2. Geophysical research center.**

A. The "geophysical research center" is created at the New Mexico institute of mining and technology. The center may enter into contracts and receive public and private gifts, grants and donations to carry out its activities.

B. The geophysical research center shall conduct research:

- (1) in areas related to and affected by water, with emphasis on atmospheric, surface and underground water;
- (2) on the relationships among lightning, thunderstorms and precipitation;
- (3) in earthquake, volcanology and environmental geophysics; and
- (4) in basic geophysical processes and their applications to state and national issues.

**History:** Laws 2003, ch. 44, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-11-8.3. Energetic materials research and testing center established; function of center.**

A. The board of regents of the New Mexico institute of mining and technology shall establish the energetic materials research and testing center.

B. The function of the energetic materials research and testing center is to:

- (1) conduct research, development, testing and evaluation of ordinance, explosives and energetic materials;
- (2) conduct programs in energetic materials and related technologies that provide research opportunities for New Mexico institute of mining and technology undergraduate students, graduate students, faculty and staff;
- (3) conduct training courses for governmental, academic and commercial entities in explosives handling and safety, emergency response, terrorist incident response and counterterrorism methods;
- (4) prepare, publish and distribute reports and other documentation presenting the scientific and technical results of the energetic materials research and testing center efforts; and



(5) actively participate in technical and professional societies and organizations, including attending and presenting papers and talks at their functions and conferences.

**History:** Laws 2003, ch. 121, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 121 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-11-8.4. National cave and karst research institute created; purpose.**

A. The "national cave and karst research institute" is created in Carlsbad and shall be a division of the New Mexico institute of mining and technology.

B. The purposes of the institute are to:

- (1) further the science of speleology;
- (2) centralize and standardize speleological information;
- (3) foster interdisciplinary cooperation in cave and karst research programs;
- (4) promote public education;
- (5) promote national and international cooperation in protecting the environment for the benefit of cave and karst land forms; and
- (6) promote and develop environmentally sound and sustainable resource management practices.

C. The board of regents of New Mexico institute of mining and technology shall prepare reports showing the progress and condition of the institute as the board deems necessary. The reports of the institute may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of the New Mexico institute of mining and technology.

D. The institute may receive appropriations from the legislature through the board of regents of New Mexico institute of mining and technology and may receive any other items of value from public or private sources.

**History:** Laws 2004, ch. 33, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

### **21-11-8.5. Repealed.**

**History:** Laws 2005, ch. 81, § 1; repealed by Laws 2009, ch. 66, § 15.

## ANNOTATIONS

**Repeals.** — Laws 2009, ch. 66, § 15 repealed 21-11-8.5 NMSA 1978, as enacted by Laws 2005, ch. 81, § 1, relating to the technology research collaborative, effective April 2, 2009. For provisions of former section, see the 2008 *NMOneSource.com*.

### **21-11-8.6. Technology research collaborative created; purpose.**

A. The "technology research collaborative" is created. The New Mexico institute of mining and technology shall be the fiscal agent for the collaborative.

B. Participating institutions associated with the collaborative shall include national laboratories, other major research institutes and all of the post-secondary educational institutions in New Mexico.

C. The purpose of the collaborative is to:

- (1) establish advanced technology centers based on the wealth of scientific and technical talent that exists in the member institutions;
- (2) develop and create new intellectual property for the state, encourage new opportunities for business and increase jobs;
- (3) commercialize the intellectual property that is created; and
- (4) create a work force to support enterprises based on the intellectual property that is created.

D. Intellectual property created by an employee or agent of an institution associated with the collaborative shall be owned by that institution. Intellectual property created jointly by the collaborative and an institution shall be owned jointly by those entities. If the intellectual property is created using federal funds, the applicable federal laws and regulations shall govern the ownership.

E. The collaborative may receive appropriations from the legislature through the board of regents of the New Mexico institute of mining and technology and may receive any other items of value from public or private sources.

F. The "board of the technology research collaborative" is created. The board shall consist of eleven members as follows:

- (1) the governor or the governor's designee, who shall chair the collaborative;
- (2) the presidents, or their designees, of the university of New Mexico, New Mexico state university and New Mexico institute of mining and technology;
- (3) five members at large, appointed by the governor with the consent of the senate;
- (4) the director of Sandia national laboratories or the director's designee; and
- (5) the director of Los Alamos national laboratory or the director's designee.

G. Appointed members shall serve for two-year terms at the pleasure of the governor. Members shall serve until their successors have been appointed. The governor may fill any vacancy on the board for the remainder of an unexpired term.

H. The board may elect officers as it deems necessary to carry out its duties. A majority of the members of the board shall constitute a quorum for the transaction of business, and the board shall meet four times per year. Board members shall not vote by proxy.

I. Public members of the board shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

J. The board shall:

- (1) employ a director and other staff, who shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978], as the board deems necessary to provide continuity and management of the collaborative; and
- (2) prepare annual reports to the legislature on the expenditures and progress of the collaborative.

**History:** Laws 2013, ch. 130, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 130 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14 2013, 90 days after the adjournment of the legislature.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 §§ 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Cross references.** — For removal of faculty member for cause after trial, see 21-1-7 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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 21-11-26 NMSA 1978].

**History:** 1941 Comp., § 55-2613, enacted by Laws 1947, ch. 119, § 1; 1953 Comp., § 73-27-15.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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 21-11-26 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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, repealed former 21-11-17 NMSA 1978, and enacted a new 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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

### **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 21-11-26 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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 § 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 21-11-26 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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 59 et seq.

### **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

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

### **21-11-24. [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.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 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 21-11-26 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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **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 21-11-26 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 185, § 1 repealed 21-11-27 NMSA 1978, as enacted by Laws 1947, ch. 119, § 13, relating to classroom facilities outside the city of Socorro,

effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*.

## **21-11-28. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 28, § 2 repealed 21-11-28 NMSA 1978, as enacted by Laws 1982, ch. 4, § 5, relating to the New Mexico tech sinking fund, effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — 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.

**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.

For management by board of regents, see N.M. Const., art. XII, § 13.

**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.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler 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 §§ 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For board of regents to fix admission requirements, see 21-1-1 NMSA 1978.

For removal of 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.

**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. 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.

**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.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — 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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **21-12-11. General Richard T. Knowles legislative scholarship program created; purpose.**

There is created the "General Richard T. Knowles legislative 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 who might not otherwise have the opportunity to participate in a military education and environment.

**History:** Laws 1989, ch. 44, § 1; 1989, ch. 45, § 1; 1998 (1st S.S.), ch. 4, § 1.

#### **ANNOTATIONS**

**The 1998 amendment**, effective on August 2, 1998, substituted "General Richard T. Knowles legislative scholarship program" for "legislator scholarship program" in the section heading and in the first sentence.

### **21-12-12. Program administration; criteria.**

A. The General Richard T. Knowles legislative 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 for 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. If a legislator has no applicant from the legislator's district, that senator or representative may choose to nominate an applicant from a senate or representative district contiguous to the legislator's own district, thus maintaining geographical diversity in the corps of cadets while affording a greater opportunity for more New Mexicans to receive a scholarship. In

the event no applicant is available by July 1 of each year from either the legislator's district or a contiguous district, the scholarship may be awarded to any of the qualified nominees from any state legislative district.

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. 44, § 2; 1989, ch. 45, § 2; 1998 (1st S.S.), ch. 4, § 2; 2009, ch. 228, § 1.

### ANNOTATIONS

**The 2009 amendment**, effective June 19, 2009, in Subsection B, added the last sentence.

**The 1998 amendment**, effective on August 2, 1998, in Subsection A, substituted "General Richard T. Knowles legislative scholarship program" for "legislator scholarship program", and substituted "for" for "in" near the end; and added the last sentence in Subsection B.

### 21-12-13. Fund created.

The "legislative scholarship fund" is created. No money appropriated to the legislative scholarship fund or accruing to it through gifts, grants or bequests shall be transferred to another fund; provided that up to five hundred thousand dollars (\$500,000) may be transferred annually to the Luciano "Lucky" Varela opportunity scholarship fund. The legislative scholarship fund shall not revert at the end of any fiscal year. Any interest earned from investment of the legislative scholarship fund shall be credited to the legislative scholarship fund for the purpose of implementing the General Richard T. Knowles legislative scholarship program. Money in the legislative scholarship fund is appropriated to the New Mexico military institute.

**History:** 1978 Comp., § 21-12-13, enacted by Laws 1990, ch. 109, § 1; 1998 (1st S.S.), ch. 4, § 3; 2018, ch. 20, § 5.

### ANNOTATIONS

**The 2018 amendment**, effective July 1, 2018, authorized the transfer of funds from the legislative scholarship fund to the Luciano "Lucky" Varela opportunity scholarship fund; after "No money appropriated to the", added "legislative scholarship", after "transferred to another fund", added "provided that up to five hundred thousand dollars (\$500,000) may be transferred annually to the Luciano "Lucky" Varela opportunity scholarship

fund", after "The", added "legislative scholarship", after "investment of", added "legislative scholarship", and after "Money in the", added "legislative scholarship".

**The 1998 amendment**, effective on August 2, 1998, substituted "General Richard T. Knowles legislative scholarship program" for "legislative scholarship program" in the third sentence.

## **21-12-14. Investment of fund.**

The board of regents of New Mexico military institute may invest and reinvest the legislative scholarship fund in accordance with state investment council policy for market rate investments for the severance tax permanent fund, subject to the approval of the state investment council after explanation and presentation of the investment plan.

**History:** 1978 Comp., § 21-12-14, enacted by Laws 1990, ch. 109, § 2; 1997, ch. 225, § 1.

### **ANNOTATIONS**

**The 1997 amendment**, effective June 20, 1997, rewrote this section.

## **21-12-15. New Mexico military institute; transfer of budget balances.**

With the approval of the commission on higher education [higher education department], the board of regents of New Mexico military institute may, each fiscal year, transfer up to five hundred thousand dollars (\$500,000) of the institute's budget balances to the legislative scholarship fund established to implement the General Richard T. Knowles legislative scholarship program.

**History:** Laws 2005, ch. 161, § 1.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2005, ch. 161 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-12-16. Public safety education; scholarships.**

A. The board of regents of the New Mexico military institute may establish a public safety officer education program for students interested in careers in public safety.

B. Subject to available funding, the board of regents of the New Mexico military institute may offer public safety officer education scholarships to New Mexico residents who enroll in the public safety officer education program. With the advice of the department of public safety, the board of regents shall establish criteria for awarding the public safety officer education scholarships and, with the cooperation of the department of public safety, may establish internship programs with public safety agencies for scholarship recipients.

**History:** Laws 2005, ch. 162, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 162 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-12-17. Corrections education; scholarships.**

A. The board of regents of the New Mexico military institute may establish a corrections education program for students interested in careers in corrections.

B. Subject to available funding, the board of regents may offer corrections education scholarships to New Mexico residents who enroll in the corrections education program. With the advice of the corrections department, the board of regents shall establish criteria for awarding the corrections education scholarships and, with the cooperation of the corrections department, may establish internship programs at corrections department facilities for scholarship recipients.

**History:** Laws 2005, ch. 163, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 163 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-12-18. Luciano "Lucky" Varela opportunity scholarship created; purpose.**

The Luciano "Lucky" Varela opportunity scholarship is created at the New Mexico military institute. The purpose of the scholarship is to increase the number of New Mexico high school students attending the New Mexico military institute who meet need-based requirements and who might not otherwise have the opportunity to participate in a military education and environment.

**History:** Laws 2018, ch. 20, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 1 effective July 1, 2018.

#### **21-12-19. Program administration; criteria.**

A. The Luciano "Lucky" Varela opportunity scholarship shall be administered by the board of regents of the New Mexico military institute. The board of regents shall annually establish a number of Luciano "Lucky" Varela opportunity scholarships available to New Mexico high school students who meet need-based requirements.

B. Scholarships shall be awarded to qualifying New Mexico residents for a term not to exceed four years.

C. The board of regents of the New Mexico military institute shall establish criteria based on need, up to the total cost of attendance, in accordance with New Mexico military institute admission requirements for New Mexico high school residents.

**History:** Laws 2018, ch. 20, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 2 effective July 1, 2018.

#### **21-12-20. Luciano "Lucky" Varela opportunity scholarship fund.**

A. Subject to available funding, the "Luciano "Lucky" Varela opportunity scholarship fund" is created. Money appropriated to the fund or accruing to it through gifts, grants or bequests shall not be transferred to another fund. The fund shall not revert at the end of a fiscal year. Any interest earned from investment of the fund shall be credited to the Luciano "Lucky" Varela opportunity scholarship fund for the purpose of implementing the Luciano "Lucky" Varela opportunity scholarship. Money in the fund is appropriated to the board of regents of the New Mexico military institute.

B. The board of regents of the New Mexico military institute may invest and reinvest the Luciano "Lucky" Varela opportunity scholarship fund in accordance with state investment council policy.

**History:** Laws 2018, ch. 20, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 3 effective July 1, 2018.

### **21-12-21. New Mexico military institute; transfer of budget balances.**

With the approval of the higher education department, the board of regents of the New Mexico military institute may, each fiscal year, transfer up to five hundred thousand dollars (\$500,000) of the institute's budget balances, including existing scholarship endowments, to the Luciano "Lucky" Varela opportunity scholarship fund established to implement the Luciano "Lucky" Varela opportunity scholarship.

**History:** Laws 2018, ch. 20, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 4 effective July 1, 2018.

## **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:

A. "community college" means a public educational institution that 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, which district is 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; 1998, ch. 61, § 3.

## ANNOTATIONS

**Cross references.** — For public school fund, see 22-8-14 NMSA 1978.

For current school fund, see 22-8-32 NMSA 1978.

**The 1998 amendment,** effective March 9, 1998, in Subsection A, substituted "that" for "which" near the beginning and in the first sentence in Subsection B, deleted "or proposed to be created" following "located" and substituted "is" for "shall be".

**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*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

**Legislative intent.** — The legislature did not intend junior college districts to come within the general school system. *Daniels v. Watson*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

**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. Repealed.**

**History:** 1953 Comp., § 73-33-3, enacted by Laws 1963, ch. 17, § 3; 1985, ch. 238, § 3; repealed by Laws 1998, ch. 61, § 1.

#### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-3 NMSA 1978, as enacted by Laws 1963, ch. 17, § 3, relating to community college purpose, effective March 9, 1998. For provisions former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### **21-13-4. Repealed.**

**History:** 1953 Comp., § 73-33-4, enacted by Laws 1964 (1st S.S.), ch. 16, § 2; 1985, ch. 238, § 4; repealed by Laws 1998, ch. 61, § 1.

#### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-4 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 2, relating to community college districts, effective March 9, 1998. For provisions former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### **21-13-4.1. Limitations on community colleges.**

There shall be no new community college, branch campus or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 5.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### **21-13-4.2. Name change.**

A. Luna vocational-technical institute shall be known as "Luna community college", and Mesa technical college shall be known as "Mesalands community college" and shall be organized as provided in Chapter 21, Article 13 NMSA 1978.

B. The governing board of the Luna vocational-technical institute shall be the governing board of Luna community college, and the governing board of the Mesa technical college shall be the governing board of the Mesalands community college.

C. All taxes levied to pay any principal and interest on bonds of the Luna vocational-technical institute or Mesa technical college for operating, maintaining and providing facilities shall continue in effect until dissolution pursuant to procedures set forth in Chapter 21, Article 13 NMSA 1978.

D. All references in law to the Luna vocational-technical institute shall be construed to be references to Luna community college, and all references in law to the Mesa technical college shall be construed to be references to Mesalands community college.

**History:** Laws 2005, ch. 193, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### **ANNOTATIONS**

**Temporary provisions.** — Laws 2005, ch. 193, § 2, provided that all functions, personnel, appropriations, money, records, equipment and other property of Luna vocational-technical institute shall be transferred to Luna community college and of Mesa technical college shall be transferred to Mesalands community college and that all existing contracts and agreements in effect as to Luna vocational-technical institute shall be binding on Luna community college and as to Mesa technical college shall be binding on Mesalands community college.

### **21-13-5. Repealed.**

**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; repealed by Laws 1998, ch. 61, § 16.

#### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-5 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 3, relating to feasibility survey, effective March 9, 1998. For former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

## **21-13-6. Repealed.**

**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; repealed by Laws 1998, ch. 61, § 16.

### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-6 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 4, relating to notice and conduct of community college district referendum election, effective March 9, 1998. For former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

## **21-13-7. Repealed.**

**History:** 1953 Comp., § 73-33-6, enacted by Laws 1964 (1st S.S.), ch. 16, § 5; 1985, ch. 238, § 7; repealed by Laws 1998, ch. 61, § 16.

### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-7 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 5, relating to form of ballot for referendum election, effective March 9, 1998. For former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

## **21-13-8. Community college board.**

A. Community college board members shall be qualified electors and residents of the community college district.

B. Community college board members shall be elected for staggered terms of six years. Elections shall be held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. 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. An individual appointed by the remaining members of the board to fill a vacancy in office shall serve until the next community college board election, at which time candidates shall file for and be elected to fill the vacant position to serve the remainder of the unexpired term.

D. A community college board shall select from its members a chair 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; 1995, ch. 90, § 1; 1998, ch. 61, § 4; 1999, ch. 219, § 1; 2008, ch. 43, § 1; 2018, ch. 79, § 83.

## ANNOTATIONS

**The 2018 amendment**, effective July 1, 2018, revised the criteria for community college board members, provided that elections for community college board members shall be held pursuant to the Local Election Act, and made technical and conforming changes; in Subsection A, after "members shall be", deleted "over twenty-one years of age"; and in Subsection B, after "terms of six years", deleted "beginning on April 1, succeeding their elections", deleted former Paragraphs B(1) and B(2) and added "pursuant to the Local Election".

**The 2008 amendment**, effective May 14, 2008, added Paragraphs (1) and (2) of Subsection B.

**The 1999 amendment**, effective July 1, 1999, added "Community college" at the beginning of Subsections A and B and made minor stylistic changes in Subsection C.

**The 1998 amendment**, effective March 9, 1998, rewrote this section.

**The 1995 amendment**, effective June 16, 1995, in Subsection A, substituted "executive director" for "secretary" and "commission on higher education" for "board of educational finance", and, in Subsection B, added the last sentence and made minor stylistic changes.

**Immunity.** — The New Mexico junior college is a local governing body with specific discretionary powers and, following the analysis in *Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, 120 N.M. 97, 898 P.2d 1235, is not protected from suit under the Eleventh Amendment. *Leach v. N.M. Junior Coll.*, 2002-NMCA-039, 132 N.M. 106, 45 P.3d 46, cert. denied, 132 N.M. 83, 44 P.3d 529.

**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*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

**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 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 is 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 community college 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; 1996, ch. 71, § 5; 2000, ch. 52, § 3; 2003, ch. 390, § 1; 2007, ch. 73, § 2; 2014, ch. 80, § 8.

## ANNOTATIONS

**The 2014 amendment**, effective March 12, 2014, eliminated provisions relating to the lottery tuition fund; deleted former Subsection C, which authorized the community college board to award legislative lottery scholarships to qualified resident students; deleted former Subsection D, which provided that the legislative lottery scholarship applied only to full-time resident students who were accepted by a community college upon graduation from high school for up to two years; deleted Subsection E, which required the higher education department to prepare guidelines setting forth continuing eligibility criteria and guidelines for the administration; and deleted former Subsection F, which required the higher education department to define "full time" and the maximum number of semesters of eligibility for students with disabilities who required special accommodation.

**The 2007 amendment**, effective July 1, 2007, provides that the maximum number of consecutive semesters of eligibility and the criteria of "full time" be adjusted for students with disability.

**The 2003 amendment**, effective June 20, 2003, in Subsection C, deleted the former last sentence which read "All other scholarship funds available to the board shall be used before granting any lottery tuition scholarships"; in Subsection E, substituted "resident student tuition scholarships" for "scholarship" at the end of the second sentence.

**The 2000 amendment**, effective July 1, 2000, added the last sentence in Subsection C and deleted "resident student tuition" preceding "scholarship" at the end of Subsection E.

**The 1996 amendment**, effective May 15, 1996, added Subsections C through E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 19, 20, 35.

Validity, construction and application of "hazing" statutes, 30 A.L.R.5th 683.

14A C.J.S. Colleges and Universities §§ 14, 15, 17, 19, 25, 31.

### **21-13-11. Standards and accrediting of community colleges.**

A. The community college board shall prescribe the course of study for the community college and shall define, in conjunction with the higher education department, 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 that accredits other colleges and universities of the state.

B. The department shall annually inspect, or investigate through the requirement of reports prescribed by the department, each community college. 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 promulgated by the department. A report of each inspection or final investigation by report shall be made to the department.

C. In the event of any serious deviation from established practices and procedures or any deficiencies that impair the quality of the instructional program in any community college, the department shall first call these to the attention of the president of the community college and the community college board.

D. In the case of repeated failure to meet the standards provided for in Subsection A of this section, the department may take action discontinuing the approval of any community college so delinquent. Upon a showing that the unsatisfactory conditions have been remedied, the department 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; 1999, ch. 219, § 2; 2005, ch. 289, § 26.

### **ANNOTATIONS**

**The 2005 amendment,** effective April 7, 2005, changed "commission on higher education" to "higher education department".

**The 1999 amendment,** effective July 1, 1999, in Subsection A deleted "board of educational finance shall, in conjunction with the" preceding "community college board", substituted the second instance of "community college" for "community colleges established pursuant to the Community College Act", and inserted "in conjunction with the commission on higher education"; deleted former Subsection B, relating to community college board election to affiliate with the board of regents of a higher educational institution, and redesignated subsequent subsections accordingly; and rewrote Subsections B, C and D.

**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. Degrees and certificates awarded.**



A. The community college board of a community college may award the appropriate degree upon the completion of a curriculum organized for that purpose and approved by the commission on higher education [higher education department]. An associate degree or certificate may be awarded only to students as recommended by the faculty, the chief academic officer and the president of the community college as having completed satisfactorily the prescribed course of study.

B. The community college board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistant shall be approved by the state board of education.

**History:** 1953 Comp., § 73-33-11, enacted by Laws 1963, ch. 17, § 11; 1980, ch. 53, § 7; 1985, ch. 238, § 12; 1999, ch. 219, § 3; 2001, ch. 299, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 2001 amendment**, effective June 15, 2001, designated the former section as Subsection A; and added Subsection B.

**The 1999 amendment**, effective July 1, 1999, substituted "Degrees and certificates" for "Titles" in the section heading and in the second sentence; substituted "commission on higher education" for "board of educational finance" at the end of the first sentence; and substituted "chief academic officer and the president" for "chief academic administrative officer" in the second sentence.

**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.** — For 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 § 99.

## **21-13-14. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-14 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 7, relating to community college district bonds, interest, form, payment, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-13-15. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-15 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 8, relating to payment of bonds, bond provisions,

effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-13-16. Repealed.**

**History:** 1953 Comp., § 73-33-13.2, enacted by Laws 1966, ch. 3, § 3; 1985, ch. 238, § 16; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-16 NMSA 1978, as enacted by Laws 1966, ch. 3, § 3, relating to validation of community college bonds, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-13-17. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-17 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 9, relating to special tax levy for community college operation, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-13-18. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-18 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 10, relating to procedure for election, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-13-18.1. Repealed.**

**History:** 1978 Comp., § 21-13-18.1, enacted by Laws 1993, ch. 75, § 3; 2008, ch. 43, § 2; repealed by Laws 2018, ch. 79, § 175.

## ANNOTATIONS

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-13-18.1 NMSA 1978, as enacted by Laws 1993, ch. 75, § 3, relating to regular community college election, resolution, publication, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

### 21-13-18.2. Repealed.

**History:** 1978 Comp., § 21-13-18.2, enacted by Laws 1993, ch. 75, § 4; repealed by Laws 2018, ch. 79, § 175.

## ANNOTATIONS

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-13-18.2 NMSA 1978, as enacted by Laws 1993, ch. 75, § 4, relating to declaration of candidacy, write-in candidates, filing date, penalty, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

### 21-13-19. Enrollment defined; payments.

A. For those students in community colleges taking college-level courses, full-time-equivalent students shall be defined and computed by the higher education department in the same manner in which it defines and computes full-time-equivalent students for all other college-level programs within its jurisdiction.

B. 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.

C. The higher education department 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 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 to 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.

D. The higher education department shall require from the community college such reports as the department deems necessary for the purpose of determining the number of full-time-equivalent students at the community college eligible to receive support under this section.

E. A community college board shall establish tuition and fee rates for its respective institutions for full-time, part-time, resident and nonresident students, as defined by the higher education department.

F. A community college board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-13-10 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection 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 community college board of the president's institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. All of the gratis scholarships established and granted by each community college board each year shall be granted on the basis of financial need.

**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; 1999, ch. 219, § 4; 2003, ch. 390, § 2; 2007, ch. 227, § 2; 2009, ch. 47, § 2; 2014, ch. 12, § 2.

## ANNOTATIONS

**The 2014 amendment**, effective July 1, 2014, provided for dual credit parity for home school and private school students; and deleted Subsection G which provided that a student in a home school or a private school could apply for dual credit courses if the student paid the full cost of the dual credit courses.

**The 2009 amendment**, effective June 19, 2009, in Subsection F, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "All".

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that the public school district transfer to the community college the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the college and adds Subsection G.

**The 2003 amendment**, effective June 20, 2003, in Subsection F, deleted "Except as provided for lottery scholarships" following "fees, or both", inserted the second sentence, and inserted "pursuant to this subsection" following "established and granted".

**The 1999 amendment**, effective July 1, 1999, deleted former Subsections A and B and the first sentence in Subsection C, relating to the definition of a "full-time-equivalent student", formulas to be used for the computation of the number of full-time-equivalent

students and the calculation of the community college payment; designated the second sentence of former Subsection C as Subsection A; deleted former Subsection E, relating to a distribution of \$650 to each community college for each full-time-equivalent student; redesignated subsequent subsections accordingly; deleted "approved by the electors pursuant to Section 21-13-17 NMSA 1978" following "upon a rate" near the middle of Subsection C; substituted "commission deems" for "board may deem" in Subsection D; deleted former Subsection H, relating to establishment of tuition and fee rates by the community college board; and added Subsections E and F.

**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 school board of a 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 by resolution petition the higher education department to be added to the community college district. The resolution may be initiated by the school board or upon presentation to the school board of a petition signed by ten percent of the qualified electors of the district.

B. In reviewing the resolution, the higher education department shall ascertain the attitude of the community college board and ensure that the petitioning district is not already within another institution's service area. If the department finds that the proposed addition of the petitioning district is not within another institution's service area and the proposed addition is acceptable to the community college district, it shall approve the resolution. Thereafter, the petitioning district and the established community college district shall call an election pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] on the question of the inclusion of the area in the community college district.

C. If it appears on canvass of the results of the election a majority of the votes cast in each of the petitioning areas and within the established community college district was in favor of the addition of the petitioning area, the secretary of higher education shall declare the extension of the boundaries of the community college district to include the petitioning area 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; 1999, ch. 219, § 5; 2019, ch. 212, § 216.

## **ANNOTATIONS**

**Cross references.** — For executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**The 2019 amendment**, effective April 3, 2019, revised certain notice provisions, and provided that all elections held under the College District Tax Act shall be conducted pursuant to the Local Election Act; in Subsection A, deleted the last sentence of the subsection, which provided "The board shall publish the resolution in a newspaper of general circulation in the 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."; and in Subsection B, after "conducted and canvassed" deleted "in the same manner as municipal school elections, unless otherwise specifically provided in the College District Tax Act" and added "pursuant to the provisions of the Local Election Act".

**The 1999 amendment**, effective July 1, 1999, substituted references to the commission on higher education for "board of educational finance" throughout; substituted "district" for "area" in the second and third sentences in Subsection B; and substituted "executive director" for "executive secretary" in two places in Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 29 to 43.

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 § 18 et seq.

**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 §§ 240 to 251.

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 director [secretary] of the commission on higher education [higher education department] 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 director [secretary] 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 director [secretary] of the commission on higher education [higher education department] 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 director [secretary] 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 director [secretary] of the commission on higher education [higher education department] 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 director [secretary], 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; 1999, ch. 219, § 6.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment**, effective July 1, 1999, substituted "executive director" for "executive secretary" and "commission on higher education" for "board of educational finance" throughout.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 29 to 43.

78 C.J.S. Schools and School Districts § 18 et seq.

#### **21-13-24. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-24 NMSA 1978, as amended by Laws 1985, ch. 238, § 24, relating to refunding bonds, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

**21-13-24.1. Establishing procedures for independence; funding; tuition; appropriation; local support level; outstanding indebtedness.**

Any institution established in accordance with Chapter 21, Article 14 or 16 NMSA 1978 that desires to become an independent institution pursuant to the Community College Act 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 commission on higher education [higher education department];

B. tuition rates shall be recommended by the commission on higher education [higher education department] and shall be set by the community college board;

C. the commission on higher education [higher education department] shall recommend an appropriation for the institution based upon expenditure levels determined by commission [department] 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 [Chapter 7, Articles 35 to 38 NMSA 1978]; and

E. 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; 1999, ch. 219, § 7.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment**, effective July 1, 1999, substituted references to the commission on higher education for "board of educational finance" throughout; in the introductory paragraph, updated article references and substituted "pursuant to the Community College Act" for "under Laws 1980, Chapter 53"; substituted "community college board" for "legislature" in Subsection B; deleted former Subsection E, relating to community colleges operating occupational education programs for secondary school students in

cooperation with public school districts located within the community college district; and redesignated former Subsection F as Subsection E.

**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, 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. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-26 NMSA 1978, as enacted by Laws 1992, ch. 97, § 1, relating to revenue bonds, effective June 16, 1995. For provisions of former section, see the 1993 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 13A**

### **Workforce Training**

#### **21-13A-1. Short title.**

This act [21-13A-1 to 21-13A-5 NMSA 1978] may be cited as the "Workforce Training Act".

**History:** Laws 2003, ch. 30, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

#### **21-13A-2. Purposes.**

The purposes of the Workforce Training Act are to:

A. provide funding for non-credit customized training at community colleges;

B. establish the workforce training program to deliver customized training for members of the workforce who require specialized training to obtain or advance in employment with small and large businesses in New Mexico;

C. provide a statewide program of customized training that supplements the state's workforce development efforts and offers opportunities for state residents to obtain skills needed to provide a well-trained workforce for employers in New Mexico; and

D. enable community colleges to better respond to the needs of their communities and to participate in attracting, retaining and recruiting employers that can provide employment for trained workers in the community.

**History:** Laws 2003, ch. 30, § 2.

## **ANNOTATIONS**

**Cross references.** — For work force skills development fund, see 21-13A-6 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-13A-3. Definitions.**

As used in the Workforce Training Act:

A. "commission" means the commission on higher education [higher education department];

B. "community college" means a public post-secondary educational institution located in New Mexico offering technical or vocational training or two-year degrees;

C. "customized training" means vocational or technical training:

- (1) offered by a community college;
- (2) that provides specialized employee training for a particular business or industry;
- (3) for which a student who successfully completes the training does not receive college credit; and
- (4) that enhances workforce development in the state;

D. "tier-2 undergraduate funding level" means tier 2 of the higher education funding formula developed by the commission [department]; and

E. "workforce training program" means the program created by the Workforce Training Act to provide customized training at community colleges in New Mexico.

**History:** Laws 2003, ch. 30, § 3.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-13A-4. Distribution of funds.**

A. Beginning in the budget cycle following the effective date of the Workforce Training Act, the commission [department] shall include in its annual budget an amount calculated to be necessary to implement a workforce training program in the state.

B. During the first year of funding, a base number of students shall be projected by the commission [department] for each community college offering customized training pursuant to the Workforce Training Act after consultation with each community college. To determine the funding to be distributed to each community college, the total appropriation made by the legislature to implement that act shall be multiplied by a fraction, the numerator of which is the projected number of student credit hours in customized training at the community college receiving the funding and the denominator of which is the total projected number of student credit hours in customized training at all of the community colleges participating in the workforce training program.

C. Following the first year of implementation of the Workforce Training Act, the commission [department] shall determine the number of students enrolled in customized training at each community college in the state according to the most recent year for which data is available.

D. Using a predetermined credit-hour equivalent of courses normally considered under the tier-2 undergraduate funding level, the amount to be budgeted for the program shall be developed and included in the commission [department] budget for each subsequent fiscal year.

E. Beginning in the second year of implementation of the Workforce Training Act, the funding to be distributed to each community college shall be determined by multiplying the total appropriation made by the legislature to implement the Workforce Training Act by a fraction, the numerator of which is the number of student credit hours in customized training at that community college in the prior year and the denominator of which is the total number of student credit hours in customized training in the prior year at all of the community colleges participating in the workforce training program.

F. A community college that previously was not included in the distribution but seeks to participate in the workforce training program for the first time shall negotiate with the commission [department] to establish the base level of funding for the community college based on the projected number of students expected to enroll in customized training and shall be added to the formula to determine the budget expansion to be requested.

**History:** Laws 2003, ch. 30, § 4.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Cross references.** — For work force skills development fund, see 21-13A-6 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

The effective date of the Workforce Training Act, referred to in Subsection A, means the effective date of Laws 2003, ch. 30 which was June 20, 2003.

### **21-13A-5. Eligible funding recipients.**

A. To be eligible to receive funding pursuant to the Workforce Training Act, a community college shall provide customized training for at least one business each year.

B. To remain eligible to receive funding to participate in the workforce training program following the first year in which customized training is offered, a community college shall:

(1) increase the number of businesses receiving customized training in each succeeding year by at least one business that did not receive customized training in the prior year; or

(2) increase the total number of employees enrolled in customized training for each succeeding year.

C. To qualify as a business that may participate in the customized training opportunities offered at a community college:

(1) a business shall be located in New Mexico;

(2) may be either a new or an established business;

(3) shall provide full-time job opportunities for the successful participants of the workforce training program; and

(4) shall pay more than minimum wage to successful participants of the workforce training program.

**History:** Laws 2003, ch. 30, § 5.

## **ANNOTATIONS**

**Cross references.** — For work force skills development fund, see 21-13A-6 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

### **21-13A-6. Work force skills development fund created; allocations; application review panels.**

A. The "work force skills development fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the commission on higher education [higher education department] and money in the fund is appropriated to the commission [department] to provide matching funds to community colleges for the development, expansion and support of broad-based entry-level high-skills training programs. Money from the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the executive director of the commission on higher education [higher education department] or his authorized representative.

B. Individual community colleges or a consortium of community colleges may apply for matching grants from the work force skills development fund in accordance with rules promulgated by the commission on higher education [higher education department]. Allocations from the fund shall be based on a competitive process with applications reviewed by a panel of education, business and labor experts established by the commission [department]. To apply for a grant, a community college or consortium must have equal or greater matching funds for the proposal from sources other than the state.

**History:** Laws 2003, ch. 368, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2003, ch. 368 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

## **ARTICLE 14**

### **Branch Community Colleges**

#### **21-14-1. Branch community college educational program 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 that is recognized by the instructional support and vocational education division of the public education department as an area vocational school or in courses that are approved by the secretary of public education. 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.



**History:** Laws 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; 1999, ch. 219, § 8; 2007, ch. 227, § 3.

## **ANNOTATIONS**

**Cross references.** — For the College District Tax Act, see 21-2A-1 NMSA 1978 et seq.

**The 2007 amendment,** effective June 15, 2007, eliminated the provision that the public school district transfer to the branch community college the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the college.

**The 1999 amendment,** effective July 1, 1999, in Subsection B, deleted the former second sentence, which read "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".

**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. 80-03.

**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.

### **21-14-1.1. Elementary and secondary education curriculum and coursework.**

The branch community college board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistant shall be approved by the state board of education.

**History:** Laws 2001, ch. 299, § 2.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**Effective dates.** — Laws 2001, ch. 299 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

## **21-14-2. Board duties; relationship with parent institution; elections.**

A. As used in Chapter 21, Article 14 NMSA 1978, "board" means either the local school board or the combined local school boards 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) enter into written agreements with the board of regents of the parent institution, subject thereafter to biennial review by all parties concerned and to the review and commentary of the higher education department;
- (2) 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;
- (3) approve an annual budget for the branch community college for recommendation to the board of regents of the parent institution;
- (4) certify to the board of county commissioners the tax levy; and
- (5) conduct the election for tax levies for the branch community college.

C. Except for the branch community college of northern New Mexico college, the board and the board of regents of the parent institution of the branch community college shall jointly conduct a search for qualified candidates for director. The board of regents of the parent institution, after consultation with the board, shall then select a director for the branch community college.

D. The board and the board of regents of the parent institution shall enter into a written agreement, which shall include provisions for:

- (1) the parent institution to have full authority and responsibility in relation to all academic matters;
- (2) the parent 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.

E. 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 general obligation or revenue bonds, neither the board nor the board of regents may terminate the 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.

F. 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 the College District Tax Act [21-2A-1 to 21-2A-10 NMSA 1978].

G. 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 public education department;
- (4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned;
- (5) for the branch community college of northern New Mexico college, be eligible for separate state appropriations through the higher education funding formula; and
- (6) for the branch community college of northern New Mexico college, any courses, students, student credit hours and degrees and certificates awarded shall be reported to the higher education department along with and in the same manner as

those for northern New Mexico college. These courses, students, student credit hours and degrees and certificates awarded shall be included in all reports and funding formula calculations by the higher education department for northern New Mexico college.

H. 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.

I. 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; 1997, ch. 167, § 2; 1998, ch. 61, § 6; 2005, ch. 117, § 1; 2019, ch. 77, § 2; 2019, ch. 212, § 217.

## **ANNOTATIONS**

**Cross references.** — For provisions relating to legislative findings for branch community colleges, see 21-1-39 NMSA 1978.

For public school fund, see 22-8-14 NMSA 1978.

For current school fund, see 22-8-32 NMSA 1978.

**2019 Multiple Amendments.** — Laws 2019, ch. 77, § 2, effective June 14, 2019, and Laws 2019, ch. 212, § 217, effective April 3, 2019, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 212, § 217, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 77, § 2 and Laws 2019, ch.

212, § 217 are described below. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 77, § 2, exempted the branch community college of northern New Mexico college from the requirement that the board and board of regents of the parent institution of the branch community college conduct a search for qualified candidates for director, provided that the branch community college of northern New Mexico college is not eligible for separate state appropriations through the higher education funding formula, and required that any courses, students, student credit hours and degrees and certificates awarded by the branch community college of northern New Mexico college be reported to the higher education department and be included in all reports and funding formula calculations by the higher education department for northern New Mexico college, and Laws 2019, ch. 212, § 217, provided the higher education department with the duty of issuing the proclamation for the election for tax levies, provided that all elections held pursuant to the branch community college laws shall be conducted pursuant to the Local Election Act, and provided that the territory of a branch of community college may be extended to include additional school districts in the same manner as provided for community colleges.

**Laws 2019, ch. 77, § 2**, effective June 14, 2019, exempted the branch community college of northern New Mexico college from the requirement that the board and board of regents of the parent institution of the branch community college conduct a search for qualified candidates for director, provided that the branch community college of northern New Mexico college is not eligible for separate state appropriations through the higher education funding formula, and required that any courses, students, student credit hours and degrees and certificates awarded by the branch community college of northern New Mexico college be reported to the higher education department and be included in all reports and funding formula calculations by the higher education department for northern New Mexico college; in Subsection C, added "Except for the branch community college of northern New Mexico college"; in Subsection D, replaced each occurrence of "higher education", with "parent"; and in Subsection G, added Paragraphs G(5) and G(6).

**Laws 2019, ch. 212, § 217**, effective April 3, 2019, provided the higher education department with the duty of issuing the proclamation for the election for tax levies, provided that all elections held pursuant to the branch community college laws shall be conducted pursuant to the Local Election Act, and provided that the territory of a branch of community college may be extended to include additional school districts in the same manner as provided for community colleges; in Subsection B, in Paragraph B(5), after the paragraph designation, deleted "conduct" and added "issue the proclamation for", and after "for the branch community college", added "if the tax levies are to be presented to the voters of the district at a special election, or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election"; in Subsection H, after "shall be", deleted former Paragraphs H(1) and H(2) and added "pursuant to the provisions of the Local Election Act"; and added

new Subsection I and redesignated former Paragraph H(3) as Subsection J and former Subsection I as Subsection K.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection C that the board of a branch community college and the board of regents of the parent institution shall jointly conduct a search for qualified candidates for director and that the board of regents, after consultation with the board of the branch community college shall select the director of the branch community college.

**The 1998 amendment**, effective March 9, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1997 amendment** added "method; parent institution method" to the section heading; added Subsection B and redesignated the remaining subsections accordingly; inserted "if the board has initiated the establishment of the branch community college" in Paragraph C(2); added Subsection L; substituted "commission on higher education" for "board of educational finance" throughout the section; and made minor stylistic changes throughout the section.

**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 §§ 37, 38, 52 to 70.

14A C.J.S. Colleges and Universities §§ 15 to 17; 78 C.J.S. Schools and School Districts § 22 et seq.

### **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. Board members shall be qualified electors and residents of the branch community college district. The members of the board shall continue to serve until the next regular local election, at which time five board members shall be elected by the qualified electors of the branch community college district. The candidates shall file for and be elected to a particular position number. 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. 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 chair and secretary who shall serve in these offices until the next regular local election. In January after each regular local 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; 2019, ch. 212, § 218.

## ANNOTATIONS

**Temporary provisions.** — Laws 2019, ch. 212, § 278 provided that:

A. The term of a branch community college district, special hospital district, solid waste authority district, lower Rio Grande public water works authority or watershed district board member that was set to expire on or before June 30, 2020 shall expire on December 31, 2019, and that member's successor shall be elected in the regular local election held on the first Tuesday after the first Monday of November 2019 for a term beginning on January 1, 2020.

B. The term of a branch community college district, special hospital district, solid waste authority district, lower Rio Grande public water works authority or watershed district board member that was set to expire on or after July 1, 2020 but on or before June 30, 2022 shall expire on December 31, 2021, and that member's successor shall be elected in the local election held on the first Tuesday after the first Monday of November 2021 for a term beginning on January 1, 2022.

C. The term of a special hospital district or watershed district board member that was set to expire on or after July 1, 2022 shall expire on December 31, 2023, and that member's successor shall be elected in the local election held on the first Tuesday after the first Monday of November 2023 for a term beginning on January 1, 2024.

**The 2019 amendment**, effective April 3, 2019, revised the procedures for electing branch community college board members; in Subsection A, after the third occurrence of "branch community college board", deleted "The persons elected shall be assigned position numbers one through five.", after "Board members shall be", deleted "over twenty-one years of age", after "regular local election", deleted "to be held on the first Tuesday of February of each odd-numbered year", after "particular position number.", deleted "The candidate receiving the highest number of votes for a particular position shall be elected.", and after "terms of four years", deleted "from March 1 succeeding their election"; and in Subsection B, after "next regular", deleted "branch community college board" and added "local", and after "regular local election.", added "In January".

**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.

### **21-14-2.2. Limitations on branch community colleges.**

There shall be no new branch community college or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 7.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### **21-14-2.3. Branch community college board; optional form.**

A. The branch community college board of a branch community college may, by adoption of a resolution, establish a board composed of five members elected from single-member districts within the branch community college district 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. If a member no longer resides in the election district from which that member was elected, the member shall be deemed to have resigned and the vacancy created by the resignation shall be filled in the manner provided by law for the filling of vacancies on the board of a branch community college.

B. The board members shall draw lots to determine which board position will coincide with which election district during the meeting at which the board is resolved to change to a districted board.

C. The board shall redistrict once after each federal decennial census. The board may adopt a resolution to have the board's election districts coincide with the county commission districts if the county commission has five districts and the boundaries of the county and branch community college district are identical.

**History:** Laws 2007, ch. 27, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 27, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.



### **21-14-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-14-3 NMSA 1978, enacted by Laws 1972, ch. 36, § 3, relating to approval required of local school board, effective March 9, 1998. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### **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 § 359.

### **21-14-5. Financing of branch community colleges; tuition and fee waivers.**

A. Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available pursuant to the provisions of the College District Tax Act [21-2A-1 to 21-2A-10 NMSA 1978] or Chapter 21, Article 14 NMSA 1978.

B. The board of regents of the respective parent institution of the branch community college may establish and grant gratis scholarships to students of the branch community college who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-1-4.3 NMSA 1978 [repealed], the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in the branch community college 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 the president's institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and

granted by the board of regents for a branch community college each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

**History:** 1953 Comp., § 73-30-20, enacted by Laws 1957, ch. 143, § 4; 1963, ch. 162, § 4; 1995, ch. 224, § 20; 1999, ch. 219, § 9; 2009, ch. 47, § 3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 21-1-4.3 NMSA 1978 was repealed by Laws 2014, ch. 80, § 10, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "Beginning with the fall semester of 2010, a minimum of one-half"; and at the end of the last sentence, added the language following "financial need".

**The 1999 amendment,** effective July 1, 1999, added the Subsection A designation; updated the statutory reference in Subsection A; and added Subsection B.

**The 1995 amendment,** effective June 16, 1995, inserted "of the parent institution", substituted the language beginning "pursuant to" for "except as otherwise provided in Sections 73-30-17 through 73-30-25 New Mexico Statutes Annotated, 1953 Compilation" at the end of the section, and made a minor stylistic change.

**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. Repealed.

**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; repealed by Laws 1995, ch. 224, § 29.

## ANNOTATIONS

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-6 NMSA 1978, as enacted by Laws 1963, ch. 162, § 5, relating to tax levies authorized, contingent state funding, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-14-6.1. Repealed.**

**History:** 1978 Comp., § 21-14-6.1, enacted by Laws 1987, ch. 22, § 1; repealed by Laws 1995, ch. 224, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-6.1 NMSA 1978, as enacted by Laws 1963, ch. 162, § 5, relating to special tax levy election, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-14-7. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-7 NMSA 1978, as enacted by Laws 1972, ch. 36, § 1, relating to additional levies, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-14-7.1. Repealed.**

**History:** 1978 Comp., § 21-14-7.1, enacted by Laws 1985, ch. 238, § 32; 1986, ch. 32, § 14; repealed by Laws 1995, ch. 224, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-7.1 NMSA 1978, as enacted by Laws 1985, ch. 238, § 32, relating to special area-vocational levy, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-14-8. Repealed.**

**History:** 1953 Comp., § 73-30-22, enacted by Laws 1963, ch. 162, § 6; 1985, ch. 238, § 33; repealed by Laws 1995, ch. 224, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-8 NMSA 1978, as enacted by Laws 1963, ch. 162, § 6, relating to election on levy, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-14-9. State support; appropriation.**

A. The higher education department shall recommend an appropriation for each branch community college, except the branch community college of northern New Mexico college, and junior college based upon the college's financial requirements in relation to its authorized program and its available funds from non-general 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 higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any branch community college that levies a tax at a rate less than one dollar (\$1.00), 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 of at least one dollar (\$1.00) 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 to 38 NMSA 1978], or any branch 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.

**History:** 1953 Comp., § 73-30-23, enacted by Laws 1973, ch. 371, § 1; 1995, ch. 224, § 22; 2019, ch. 77, § 3.

### **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.

**The 2019 amendment,** effective June 14, 2019, provided that the higher education department shall not recommend an appropriation for the branch community college of northern New Mexico college; and in Subsection A, added "except the branch community college of northern New Mexico college".

**The 1995 amendment,** effective June 16, 1995, designated the formerly undesignated provision as Subsection A; added Subsection B; and, in Subsection A, substituted "commission on higher education" for "board of educational finance" and made minor stylistic changes.

**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. 80-03.

**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. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-14-11 NMSA 1978, as enacted by Laws 1963, ch. 162, § 9, designating community colleges as a branches of higher education institutions, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

## **21-14-12. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-12 NMSA 1978, as enacted by Laws 1965, ch. 162, § 1, relating to branch community college bonds, interest, form, payment, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-14-13. Repealed.**

**History:** 1953 Comp., 73-30-27, enacted by Laws 1965, ch. 162, § 2; 1983, ch. 265, § 45; repealed by Laws 1995, ch. 224, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-13 NMSA 1978, as enacted by Laws 1965, ch. 162, § 2, relating to payment of bonds, bond provisions, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **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. Repealed.**

**History:** 1953 Comp., 73-30-27, enacted by Laws 1965, ch. 162, § 2; 1983, ch. 265, § 45; repealed by Laws 1995, ch. 224, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-15 NMSA 1978, as enacted by Laws 1989, ch. 24, § 1, relating to refunding bonds of branch community college districts, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-14-16. Ruidoso branch community college.**

The Ruidoso branch community college may be created as provided in Chapter 21, Article 14 NMSA 1978.

**History:** Laws 2005, ch. 40, §1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2005, ch. 40, § 2 provided that the eastern New Mexico university off-campus instruction program in Ruidoso is terminated when the Ruidoso branch community college is created and that the eastern New Mexico university may transfer funds and property to the university pertaining to the Ruidoso off-campus instruction program to the Ruidoso branch community college.

#### **21-14-17. Northern New Mexico college; branch community college for technical and vocational courses.**

A. The board of regents of northern New Mexico college may choose to partner with one or more area school districts to be the parent institution of a branch community college established by the school districts to provide technical and vocational education. The branch community college may be co-located on the northern New Mexico college main campus or on its El Rito campus. Notwithstanding the provisions of Chapter 21, Article 14 NMSA 1978, the co-located branch community college shall be under the direction of the president of northern New Mexico college and shall operate under the administrative structure of northern New Mexico college. Otherwise, the board of the branch community college shall have the same powers over financing and financial control as provided for boards of other branch community colleges in Chapter 21, Article 14 NMSA 1978.

B. The board of regents and the area school boards or the elected board of the branch community college may agree to have northern New Mexico college offer its technical and vocational courses through the branch community college. If so offered, those courses shall not be eligible for funding from the northern New Mexico state school land grant permanent fund income fund or be eligible to benefit in any way as a land grant beneficiary.

**History:** Laws 2019, ch. 77, §1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 77 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

# 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

**Compiler's notes.** — 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:

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. 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.

**History:** Laws 1982, ch. 42, § 2; 1990, ch. 25, § 3; 1999, ch. 219, § 10; 2007, ch. 227, § 4.

### ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that the public school district transfer to the parent institution the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the off-campus site.



**The 1999 amendment**, effective July 1, 1999, deleted the former second sentence in Subsection B, which read "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".

### **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, "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 higher education department;

(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 higher education department;

(5) act in an 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) issue the proclamation for the election for tax levies for the off-campus instruction program if the tax levies are to be presented to the voters of the district at a

special election; or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election.

D. Upon evidence of a demand for an off-campus instruction program, the off-campus board shall cause a survey to be made. The higher education department 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 department.

E. If need is established, the off-campus board, in accordance with the higher education department 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 department. The department 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 higher education department 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 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 public education department under Article 12, Section 6 of the constitution of New Mexico;

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned; and

(5) include the major attendance center of northern New Mexico college at Espanola.

I. All elections held pursuant to the Off-Campus Instruction Act shall be called, conducted and canvassed pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

J. 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.

K. 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; 2019, ch. 212, § 219.

### **ANNOTATIONS**

**The 2019 amendment**, effective April 3, 2019, revised the duties of an off-campus board, and provided that all elections held pursuant to the Off-Campus Instruction Act be conducted pursuant to the Local Election Act, and made certain technical amendments; in Subsection C, in Paragraph C(8), after the paragraph designation, deleted "conduct" and added "issue the proclamation for", and after "program", added "if the tax levies are to be presented to the voters of the district at a special election; or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election"; and in Subsection I, after "shall be", deleted former Paragraphs I(1) and I(2), redesignated former Paragraph I(3) as Subsection J and former Subsection J as Subsection K, and added "pursuant to the Local Election Act".

**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 Schools §§ 298, 299.

78 C.J.S. Schools and School Districts § 63 et seq.; 78A C.J.S. Schools and School Districts § 782 et seq.

### **21-14A-3.1. Elementary and secondary education curriculum and coursework.**

The off-campus board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistants shall be approved by the state board of education.

**History:** Laws 2001, ch. 299, § 3.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**Effective dates.** — Laws 2001, ch. 299 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### **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 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 used for other purposes within the scope of authority of the local school board. No real property may be acquired pursuant to this section after July 1, 1998.

**History:** Laws 1993, ch. 344, § 1; 1998, ch. 61, § 8.

#### **ANNOTATIONS**

**The 1998 amendment**, effective March 9, 1998, substituted "used" for "utilized" near the middle of the third sentence and added the last sentence.

### **21-14A-5.2. Property ownership prohibited.**

An off-campus board may not own, accept as a gift or purchase land, buildings or other form of real property.

**History:** Laws 1998, ch. 61, § 9.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### **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 of the parent institution, by gifts and grants and by other

funds as may be made available, pursuant to the Off-Campus Instruction Act or College District Tax Act [21-2A-1 to 21-2A-10 NMSA 1978].

**History:** Laws 1982, ch. 42, § 6; 1995, ch. 224, § 21.

#### **ANNOTATIONS**

**The 1995 amendment**, effective June 16, 1995, inserted "of the parent institution", substituted the language beginning "pursuant to" for "except as otherwise provided in the Off-Campus Instruction Act" at the end of the section, and made a minor stylistic change.

### **21-14A-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14A-7 NMSA 1978, as amended by Laws 1990, ch. 54, § 1, providing for the authorization of tax levies by off-campus boards, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-14A-8. State support; appropriation.**

A. The commission on higher education [higher education department] 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.

B. The commission on higher education [higher education department] shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any off-campus instruction program 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 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 to 38 NMSA 1978], or any off-campus board 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.

**History:** Laws 1982, ch. 42, § 8; 1995, ch. 224, § 23.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**The 1995 amendment**, effective June 16, 1995, designated the formerly undesignated provision as Subsection A; added Subsection B; and, in Subsection A, substituted "commission on higher education" for "board of educational finance".

### **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 repealed 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 the 1989 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 15**

### **Community College and Vocational-Technical Center at Walker Air Force Base (Repealed.)**

#### **21-15-1. Repealed.**

**History:** 1953 Comp., § 73-30-29, enacted by Laws 1967, ch. 66, § 1; repealed by Laws 1999, ch. 219 § 21.

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-15-1 NMSA 1978, as enacted by Laws 1967, ch. 66, § 1, relating to purpose, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## **21-15-2. Repealed.**

**History:** 1953 Comp., § 73-30-30, enacted by Laws 1967, ch. 66, § 2; repealed by Laws 1999, ch. 219 § 21.

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-15-2 NMSA 1978, as enacted by Laws 1967, ch. 66, § 2, relating to authorization for acquisition, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## **21-15-3. Repealed.**

**History:** 1953 Comp., § 73-30-31, enacted by Laws 1967, ch. 66, § 4; repealed by Laws 1999, ch. 219 § 21.

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-15-3 NMSA 1978, as enacted by Laws 1967, ch. 66, § 4, relating to approval of operations, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 16**

### **Technical and Vocational Institute Districts**

#### **ANNOTATIONS**

**Temporary provisions.** — Laws 1999, ch. 219, § 20, effective July 1, 1999, provided that on July 1, 1999, those post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 shall be deemed organized pursuant to Chapter 21, Article 16 NMSA 1978; provided that all personnel, money, appropriations, records, equipment and other property acquired by the post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 prior to July 1, 1999, shall be deemed transferred to the respective technical and vocational institution deemed to be organized pursuant to Chapter 21, Article 16 NMSA 1978 on July 1, 1999, and held by that technical and vocational institute until the institute is dissolved pursuant to the procedures of the Technical and Vocational Institute Act; provided that all taxes levied to pay for any principal and interest on bonds of the area vocational schools in addition to taxes levied for operating, maintaining and providing facilities for area vocational schools shall continue in effect until the levy is disapproved pursuant to the procedures set out in the Technical and Vocational Institute Act; provided for the binding nature of all existing contracts and agreements as to the area vocational schools; and provided that all references in law to area vocational schools organized pursuant to Chapter 21, Article 17 NMSA 1978 existing before July 1, 1999, shall be construed to be references



to technical and vocational institutes organized pursuant to Chapter 21, Article 16 NMSA 1978 after July 1, 1999.

### **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 Chapter 21, Article 16 NMSA 1978:

A. "technical and vocational institute" means a public educational institution, including a post-secondary educational institution organized before July 1, 1999 as an area vocational school pursuant to Chapter 21, Article 17 NMSA 1978 [repealed] that provides not to exceed two years of vocational and technical curricula and, in addition, some appropriate courses and programs in the arts and sciences;

B. "board" means the governing board of the district;

C. "full-time equivalent student" means that term as it is defined in Section 21-16-9 NMSA 1978 [repealed];

D. "school district" means that term as it is defined in Subsection J [Subsection R] of Section 22-1-2 NMSA 1978; and

E. "district" means a technical and vocational institute district.

**History:** 1953 Comp., § 73-34-2, enacted by Laws 1963, ch. 108, § 2; 1999, ch. 219, § 11.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1999, ch. 219 § 21 repealed 21-17-1 to 21-17-7, 21-17-9, 21-17-11, 21-17-12, and 21-17-14 to 21-17-17 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 219, § 21 repealed 21-16-9 NMSA 1978, effective July 1, 1999.

The reference to Subsection J of Section 22-1-2 NMSA, in Subsection D, probably should be to Subsection R of Section 22-1-2 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, rewrote this section, adding a definition of "district" and deleting a definition of "part-time student-equivalent".

### **21-16-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-16-3 NMSA 1978, enacted by Laws 1963, ch. 108, § 3, relating to formation, effective March 9, 1998. For provisions of former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

#### **21-16-3.1. Limitations on technical and vocational institutes.**

There shall be no new technical and vocational institute branch campus or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 12.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### **21-16-4. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-16-4 NMSA 1978, enacted by Laws 1963, ch. 108, § 4, relating to election of technical and vocational institute districts, effective March 9, 1998. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### **21-16-5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-5 NMSA 1978, as amended by Laws 1994, ch. 83, § 2, relating to boards of technical and vocational institute districts,

effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 21-16-5.1 NMSA 1978.

### **21-16-5.1. Board members; elected from districts; elections.**

A. A district board shall be composed of five or seven members elected for four-year terms who shall reside in and be elected from single-member districts as provided in this section. If the board is a seven-member board, 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. If the board is a five-member board, board members elected to positions 1, 3 and 5 shall be elected for initial terms of two years and board members elected to positions 2 and 4 shall be elected for initial terms of four years. After the initial election for a district board, each board member shall be elected for a term of four years.

B. All election proceedings for technical and vocational institute district elections shall be conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. Once following each federal decennial census, the board shall redistrict the technical and vocational institute district into election districts to ensure that the districts remain as equal in population as is practicable and shall notify the county clerk of the new boundaries upon completion of the redistricting process. The 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 the 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 the election need not reside in the new single-member districts corresponding to their position numbers and may serve out their terms. 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 shall reside in and be elected from the appropriate single-member district.

D. All election districts covered by this section shall be contiguous, compact and as equal in population as is practicable.

E. 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; provided, however, that a vacancy that occurs in an election district where a nonresident board member had been serving shall be filled by a resident of that district.

**History:** Laws 1994, ch. 83, § 3; 1999, ch. 219, § 12; 2000, ch. 11, § 1; 2018, ch. 79, § 84.

### **ANNOTATIONS**

**The 2018 amendment**, effective July 1, 2018, provided that all election proceedings for technical and vocational institute district elections shall be conducted pursuant to the provisions of the Local Election Act, required the board to notify the county clerk of new boundaries after redistricting following each federal decennial census, and made technical and conforming changes; in Subsection A, deleted "Any board, the members of which have not been elected from single-member districts, shall district and hold a special election to coincide with the school district elections of 2001"; in Subsection B, deleted "Except where specific provision is otherwise provided by law", and after "pursuant to the provisions of the", deleted "School Election Law with the president of the institute serving in the place of the superintendent of schools in every case" and added "Local Election Act"; and in Subsection C, after "as is practicable", added "and shall notify the county clerk of the new boundaries upon completion of the redistricting process".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2000 amendment**, effective May 17, 2000, in the second sentence of Subsection A, deleted "On July 1, 1999" from the beginning and substituted "to coincide with the school district elections of 2001" for "within one year from the effective date of this 1999 act" at the end.

**The 1999 amendment**, effective July 1, 1999, rewrote Subsection A; added present Subsection B and redesignated the subsequent subsections accordingly; deleted specification of seven election districts in the first sentence in Subsection C; and added the language at the beginning of Subsection E preceding the proviso.

## **21-16-6. Board; powers and duties.**

A. The board shall:

(1) 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;

(2) fix fee rates and tuition rates for students;

(3) have authority to issue certificates of proficiency;

(4) 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 commission on higher education [higher education department];

(5) 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;

(6) 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; and

(7) adopt a name for or change the name of the technical and vocational institute or the institute's campuses, provided no name is adopted in honor of a living person.

B. Whenever the board changes the name of a technical vocational institute or the institute's campuses:

(1) functions, personnel, appropriations, money, records, equipment and other property of the formerly named institute or campuses shall be transferred to the newly named institute or campuses;

(2) existing contracts and agreements in effect as to the formerly named institute or campuses shall be binding on the newly named institute or campuses; and

(3) references in state or local law to the formerly named institute or campuses shall be deemed to refer to the newly named institute or campuses.

**History:** 1953 Comp., § 73-34-6, enacted by Laws 1963, ch. 108, § 6; 1986, ch. 18, § 1; 2005, ch. 32, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 2005 amendment,** effective June 17, 2005, permitted a technical and vocational institute district board to adopt or to change the name of the institute or the institute's campuses; prohibited the adoption of a name to honor a living person; and provided for the continuation of the institute under the new name.

**Positions of legislator and president of a technical and vocational institute are not incompatible.** — The position of president of a technical and vocational institute is not a civil office or a state office and the positions of state legislator and president of a technical vocational institute are not necessarily physically and/or functionally incompatible. Consequently, a legislator may serve as president of a technical and

vocational institute without resigning office and without violating N.M. Const. art. 4, § 3 or 28, Section 2-1-3 NMSA 1978, or any other provision of law regarding incompatibility. 2006 Op. Att'y Gen. No. 06-01.

**Entertainment, travel, and meal expenditures.** — Officials and employees of a technical-vocational institute may, within limitations, spend public money for certain entertainment, meals, travel, and membership expenses without violating the antidonation clause (N.M. Const., art. 9, § 14) if the expenditures are demonstrably related to the institute's constitutionally or statutorily authorized functions and do not amount to a subsidy of private individuals or businesses. 1997 Op. Att'y Gen. No. 97-02.

**Scholarships out of public money permitted.** — Based on its authority to provide and charge tuition for educational services, a technical-vocational institute may, consistently with the antidonation clause (N.M. Const., art. 9, § 14), use public money for scholarships in the form of tuition waivers or reductions if the criteria used to award them are education-related and applied in a reasonable and even-handed manner. Past opinions suggesting that scholarship awards violate the antidonation clause are overruled to the extent they limit scholarships to those paid from private or federal sources. 1997 Op. Att'y Gen. No. 97-02.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 65 to 67.

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 § 81 et seq.; 78A C.J.S. Schools and School Districts §§ 503, 805.

### **21-16-6.1. Fiscal agent and depository.**

A. The board may designate a bank or savings and loan association doing business in New Mexico and having an unimpaired tier one capital of at least ten million dollars (\$10,000,000), as defined by the federal deposit insurance corporation, as the fiscal agent of the technical and vocational institute. The selection of the fiscal agent shall be made pursuant to the procedures of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

B. The bank or savings and loan association so designated shall enter into an agreement with the technical and vocational institute for any or all of the following services:

- (1) the collection for the technical and vocational institute of all checks and other items received by the technical and vocational institute on any account;
- (2) the handling of the checking account of the technical and vocational institute;
- (3) the handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the technical and vocational institute or the purchase by the technical and vocational institute of bonds or other securities;
- (4) the investment of funds of the technical and vocational institute;
- (5) the safekeeping of bonds or other securities belonging to or held by the technical and vocational institute or any official thereof;
- (6) implementation of a cash management system to provide daily sweeps of balances into a revenue generating account;
- (7) processing of credit card transactions involving the technical and vocational institute;
- (8) administration of direct deposit payroll and other payment programs; and
- (9) acting as the agent of the technical and vocational institute in fiscal matters generally.

C. The agreement shall contain the terms and conditions which are necessary, in the judgment of the board, for the proper conduct of the fiscal affairs and the safekeeping of the money of the technical and vocational institute.

**History:** Laws 1997, ch. 123, § 1.

#### ANNOTATIONS

**Effective dates.** — Laws 1997, ch. 123 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 1997, 90 days after adjournment of the legislature.

### **21-16-6.2. Elementary and secondary education curriculum and coursework.**

The board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistants shall be approved by the state board of education.

**History:** Laws 2001, ch. 299, § 4.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**Compiler's notes.** — As enacted by Laws 2001, ch. 299, § 4, this section was designated 21-16-6.1 NMSA 1978 but was redesignated as 21-16-6.2 NMSA 1978, as another 21-16-6.1 NMSA 1978 had previously been enacted by Laws 1997, ch. 123, § 1.

**Effective dates.** — Laws 2001, ch. 299 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### **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. The board, in conjunction with the commission on higher education [higher education department], 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; 1999, ch. 219, § 13.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment,** effective July 1, 1999, added "The board, in conjunction with the commission on higher education" at the beginning of the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 298 to 302.

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 § 85 et seq.

### **21-16-8. Purpose of act.**

It is the purpose of the Technical and Vocational Institute Act 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.

**History:** 1953 Comp., § 73-34-7.1, enacted by Laws 1968, ch. 59, § 1; 1974, ch. 51, § 1; 1999, ch. 219, § 14.

## **ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, deleted the first sentence, which set out the findings in support of the act and substituted "the Technical and Vocational Institute Act" for "this act" near the beginning.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 92 to 100.

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. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-9 NMSA 1978, as amended by Laws 1990, ch. 25, § 4, defining enrollment in technical and vocational institutions, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### **21-16-10. Appropriation; distribution.**

A. The higher education department 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 non-general 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 higher education department shall by rule 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 the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources.

C. The higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any technical and vocational institute 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 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 to 38 NMSA 1978], or any technical and vocational institute 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.

D. The board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-16-10.1 NMSA 1978 [repealed] and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in the technical and vocational institute and shall not be established and granted for summer sessions. The president of the technical and vocational institute shall select and recommend to the board as recipients of scholarships students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and granted by the board each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and

granted by each board of regents each year shall be granted on the basis of financial need.

**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; 1995, ch. 224, § 24; 1999, ch. 219, § 15; 2003, ch. 390, § 3; 2007, ch. 227, § 5; 2009, ch. 47, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 21-16-10.1 NMSA 1978 was repealed by Laws 2014, ch. 80, § 10, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

**The 2009 amendment**, effective June 19, 2009, in Subsection D, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "Beginning with the fall semester of 2010, a minimum of one-half"; and at the end of the last sentence, added the language following "financial need".

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that the public school district transfer to the technical and vocational institute the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the institute.

**The 2003 amendment**, effective June 20, 2003, in Subsection D, deleted "Except as provided in Section 21-16-10.1 NMSA 1978" from the beginning of the former second sentence, inserted the present second sentence, and inserted "pursuant to this subsection" following "established and granted" in the third sentence.

**The 1999 amendment**, effective July 1, 1999, in Subsection B substituted "rule" for "regulation" in the first sentence and added the last sentence; and added Subsection D.

**The 1995 amendment**, effective June 16, 1995, deleted "or if he is counted in the average daily membership of a public school district for the same period" at the end of Subsection B; added Subsection C; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 92 to 100.

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.

**21-16-10.1. Repealed.**

**History:** Laws 1996, ch. 71, § 6; 1999, ch. 219, § 16; 2000, ch. 52, § 4; 2003, ch. 390, § 4; 2007, ch. 73, § 3; repealed by Laws 2014, ch. 80, § 10.

#### **ANNOTATIONS**

**Repeals.** — Laws 2014, ch. 80, § 10 repealed 21-16-10.1 NMSA 1978, as enacted by Laws 1996, ch. 71, § 6, relating to legislative lottery scholarships authorized, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

### **21-16-11. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-11 NMSA 1978, as amended by Laws 1983, ch. 265, § 46, relating to bonds authorized by the Technical and Vocational Institute Act, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **21-16-11.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-11.1 NMSA 1978, as enacted by Laws 1993, ch. 28, § 1 and ch. 114, § 1, relating to refunding bonds, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### **21-16-12. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-12 NMSA 1978, as amended by Laws 1989, ch. 307, § 1, relating to special assessments in technical and vocational institute districts, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

### **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 or portions of school districts to existing technical and vocational institute districts.**

A. A technical and vocational institute district may be expanded by either the procedure in Subsections B, C and D of this section or the procedure in Subsections E and F of this section.

B. The qualified voters of a school district, portion of a school district, group of school districts within a county containing a technical and vocational institute district or in an adjoining county, not included in the technical and vocational institute district as originally formed, may petition the public education department to be added to the technical and vocational institute district. The department shall examine the petition, and if it finds that the petition is signed by a number of qualified voters residing within the pertinent school district or portion of a school district equal to ten percent of the votes cast for governor in such school district or portion of such school district in the last preceding general election, the department shall cause a survey to be made of the petitioning district or districts to determine the desirability of the proposed expansion of the technical and vocational institute district.

C. In conducting the survey, the public education department, in conjunction with the higher education department, shall ascertain the attitude of the technical and vocational institute board and collect other information it deems necessary. If, on the basis of the survey, the public education department finds that the proposed addition of the petitioning area will promote an improved education service in the area, it shall approve the petition. The secretary of public education shall proceed to issue a proclamation and call an election pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] within the petitioning area and in the established technical and vocational institute district on the question of the inclusion of the petitioning area in the institute district.

D. If a majority of the votes cast in the petitioning area and a majority of the votes cast within the established institute district are in favor of the addition of the area, the public education department shall notify the local school board of each affected 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 area in which the proposed addition referendum carried by a majority vote.

E. If a technical and vocational institute district includes less than all of a school district, the institute board, by resolution of a majority of the members of the board, may call an election within the institute district and in the portion of the school district that is not included in the institute district on the question of the addition of the excluded portion of the school district to the established institute district. Such election shall be conducted pursuant to the provisions of the Local Election Act.

F. If a majority of the votes cast in the institute district and the portion of the school district that is outside the institute district are in favor of the addition of the excluded portion of the school district to the institute district, the board of the institute district shall declare the institute district to be expanded to include all of such school district.

G. Each area added to an 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; 1999, ch. 219, § 17; 2005, ch. 47, § 1; 2018, ch. 79, § 85.

### ANNOTATIONS

**The 2018 amendment**, effective July 1, 2018, provided that an election on the question of adding a school district to an existing technical and vocational institute district shall be called by the secretary of public education, and conducted pursuant to the provisions of the Local Election Act, and made technical and conforming changes; in Subsection C, after "survey, the", added "public education", after "conjunction with the", deleted "commission on", after "higher education", added "department", after "survey, the", added "public education", after "shall proceed to", added "issue a proclamation and", and after "call an election", added "pursuant to the provisions of the Local Election Act"; in Subsection D, after "of the area, the", added "public education"; and in Subsection E, deleted "Except where specific provision is otherwise provided by law", after "conducted pursuant to the provisions of the", deleted "School Election Law with the president of the institute district serving in the place of the superintendent of schools in every case; provided that:" and added "Local Election Act", and deleted former Paragraphs E(1) through E(3).

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2005 amendment**, effective June 17, 2005, provided two procedures for expanding the boundaries of a technical and vocational institute district by providing that qualified voters may petition for the addition of a school district, portion of a school district or group of school districts to a technical and vocational institute district and that an election be held in petitioning area and the technical and vocational institute district on the addition of the petitioning area to the technical and vocational institute district and by providing that if a technical and vocational institute district includes less than all of a school district, the institute board may call an election to be held pursuant to the School Election Law in the technical and vocational institute district and in the portion of the school district not included in the technical and vocational institute district on the addition of the area to the technical and vocational institute district.

**The 1999 amendment**, effective July 1, 1999, inserted "of education" following "state board" in four places; made a statutory reference substitution in the second sentence of Subsection A and in the first sentence of Subsection B; in Subsection A, inserted "technical and vocational" in the first sentence; in Subsection B, inserted "in conjunction with the commission on higher education" in the first sentence and inserted "or districts" in two places; and, in Subsection C, substituted "local school board of" for "boards of education within" near the middle.

**Am. Jur. 2d, A.L.R. and C.J.S. references.**— 68 Am. Jur. 2d Schools §§ 29 to 43.

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 § 18 et seq.

## **21-16-15. Dissolution of districts.**

Technical and vocational institute districts may be dissolved in the following manner:

A. a plan for the dissolution of the technical and vocational institute district shall be submitted 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 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 technical and vocational institute district;

B. if a majority of the qualified electors voting at the special election authorizes the dissolution, the 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 and the commission on higher education [higher education department]; and

C. upon receipt of the final report of the board, the state board of education, in conjunction with the commission on higher education [higher education department], shall examine the report to determine whether any outstanding obligations exist and whether the terms of the approved plan have been accomplished. If upon determination by the state board of education no obligations are outstanding and the provisions of the plan have been fulfilled, the state board of education shall formally declare the technical and vocational institute district dissolved.

**History:** 1953 Comp., § 73-34-12, enacted by Laws 1963, ch. 108, § 12; 1999, ch. 219, § 18.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment**, effective July 1, 1999, in Subsection B, deleted "technical and vocational institute district" preceding "board shall" in the first sentence and added "and the commission on higher education" at the end; and, in Subsection C, inserted "in conjunction with the commission on higher education" near the beginning.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 29 to 43.

78 C.J.S. Schools and School Districts § 18 et seq.

## **21-16-16. Alternate procedures permitted.**

In addition to the election procedures provided in Chapter 21, Article 16 NMSA 1978 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 the Technical and Vocational Institute Act may be used for those purposes.

**History:** 1953 Comp., § 73-34-13, enacted by Laws 1964 (1st S.S.), ch. 12, § 1; 1998, ch. 61, § 10.

### **ANNOTATIONS**

**The 1998 amendment**, effective march 9, 1998, substituted "Chapter 21, Article 16 NMSA 1978" for "Laws 1963, Chapter 108" following "provided in"; deleted "for the creation of a technical and vocational institute district and for an election" following "an election"; substituted "the Technical and Vocational Institute" for "this", and made a minor stylistic change.

**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.**

In any election 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 are those qualified electors residing within an affected school district.



**History:** 1953 Comp., § 73-34-14, enacted by Laws 1964 (1st S.S.), ch. 12, § 2; 1998, ch. 61, § 11.

### ANNOTATIONS

**The 1998 amendment,** effective March 9, 1998, deleted Subsection A, pertaining to any election held relating to creation of a technical and vocational institute district; deleted the designation "B"; deleted "held under this act" following "any election" and substituted "are those" for "shall be" following "qualified to vote".

**Effect of constitutional amendment.** — The effect of the amendment to N.M. Const., art. VIII, § 2, was to amend this section and former 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 §§ 183, 188; 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. Repealed

### ANNOTATIONS

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-18 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 3, defining "board" for 21-16-16 to 21-16-24 NMSA 1978, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present provisions, see 21-16-2 NMSA 1978.

## 21-16-19. Repealed

### ANNOTATIONS

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-16-19 NMSA 1978, enacted by Laws 1964 (1st S.S.), ch. 12, § 4, relating to submission of questions, creation of institute, tax levy and expenses of election, effective March 9, 1998. For provisions of former section, see 1997 NMSA 1978 on *NMOneSource.com*.

## 21-16-20. Submission at election; notice; certification.

If a question is submitted pursuant to Section 21-16-16 NMSA 1978 at an election, the submitting board shall notify the county clerk pursuant to the Local Election Act

[Chapter 1, Article 22 NMSA 1978]. The submitting board shall furnish to the county clerk of each county in which an affected school district is situate a certificate specifying the question to be submitted.

**History:** 1953 Comp., § 73-34-17, enacted by Laws 1964 (1st S.S.), ch. 12, § 5; 2018, ch. 79, § 86.

## **ANNOTATIONS**

**The 2018 amendment**, effective July 1, 2018, added the section heading, required the governing board of the district to give notice to the county clerk pursuant to the Local Election Act regarding elections called to approve or disapprove a tax levy, and made technical and conforming changes; added the section heading; after "submitted", added "pursuant to Section 21-16-16 NMSA 1978", after "board shall", deleted "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" and added "notify the county clerk pursuant to the Local Election Act", after "submitting board shall", deleted "not less than thirty days before the election", and after "specifying the question to be submitted", deleted the remainder of the section, which related to placement of the question on the ballots and voting machines and the certification of the election results.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 383 et seq.

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. Repealed.**

**History:** 1953 Comp., § 73-34-18, enacted by Laws 1964 (1st S.S.), ch. 12, § 6; repealed by Laws 2018, ch. 79, § 175.

## **ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-16-21 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 6, relating to submission at special election, conduct of election, hours of voting, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

## **21-16-22. Repealed.**

**History:** 1953 Comp., § 73-34-19, enacted by Laws 1964 (1st S.S.), ch. 12, § 7; repealed by Laws 2018, ch. 79, § 175.

### **ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-16-22 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 7, relating to canvass of vote, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

## **21-16-23. Repealed.**

**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; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-23 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 8, relating to tax levies, certificates of election results, distribution of proceeds, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **21-16-24. Repealed.**

**History:** 1953 Comp., § 73-34-21, enacted by Laws 1964 (1st S.S.), ch. 12, § 9; repealed by Laws 1995, ch. 224, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-24 NMSA 1978, as enacted by Laws 1964 (1st S.S.) ch. 12, § 9, relating to maximum tax levies, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 16A**

### **Learning Centers**

## **21-16A-1. Short title.**

Chapter 21, Article 16A NMSA 1978 may be cited as the "Learning Center Act".

**History:** Laws 2000, ch. 105, § 1; 2002, ch. 19, § 1.

### **ANNOTATIONS**

**The 2002 amendment**, effective May 15, 2002, substituted "Chapter 21, Article 16A NMSA 1978" for "This act."

## **21-16A-2. Findings; purpose.**

A. The legislature finds that there are significant populations in New Mexico whose post-secondary education and workforce development needs are unserved or underserved and new and more effective means of delivering educational services must be explored.

B. It is the purpose of the Learning Center Act to:

(1) provide quality educational services to residents of the state based upon need and without regard to place of residence by enabling communities to establish learning centers to make necessary and appropriate educational programs available;

(2) avoid construction of new campuses and buildings; and

(3) encourage the use of technology by promoting innovation, collaboration and cooperation among existing institutions, public schools, government agencies, communities and the private sector through sharing of resources for educational purposes.

**History:** Laws 2000, ch. 105, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

## **21-16A-3. Definitions.**

As used in the Learning Center Act:

A. "board" means a learning center district board;

B. "commission" means the commission on higher education [higher education department];

C. "community college board" means the governing body of a community college district;

D. "district" means a learning center district;

E. "extended learning services" means academic and vocational educational programs offered by an institution away from a campus of the institution without the facility of a learning center and as defined by commission [department] rule consistent with the Learning Center Act;

F. "institution" means a regionally accredited public or private post-secondary educational institution;

G. "local school board" means the governing body of a school district; and

H. "taxable value of property" means the sum of the following:

(1) the "net taxable value", as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of property subject to taxation under the Property Tax Code;

(2) the "assessed value" of "products" as those terms are defined in the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(3) the "assessed value" of "equipment" as those terms are defined in the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(4) the "taxable value" of "copper mineral property" as those terms are defined in the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

**History:** Laws 2000, ch. 105, § 3.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

#### **21-16A-4. Establishment of learning center districts; determination of need; approval; advisory committee.**

A. A learning center district may be established in a school district or community college district upon adoption of a resolution by the local school board or community college board calling for establishment of a district and a showing of need for such a district. A district may also be established to include more than one school district and, in that case, the two or more local school boards shall jointly adopt a resolution and determine the need for a learning center. A district may also be established by a board of county commissioners upon adoption of a resolution by the board of county commissioners calling for establishment of a district and a showing of need for such a district; provided that each community college board or local school board located wholly or partially within the county shall approve of the establishment prior to the adoption of the resolution. The boundaries of the district shall be coterminous with the boundaries of the school district, community college district, combined school districts or county constituting the district. No district shall be established without the written approval of the commission [department].

B. Upon a determination of need and receipt of written approval from the commission [department], the district shall be established and the local school board, community college board, combined local school boards or board of county commissioners authorizing the district shall serve as the board. The board shall act as a representative of the communities in the district for the purpose of assessing local educational needs and contracting with one or more institutions to offer educational programs or services at one or more learning centers.

C. The board may appoint an advisory committee consisting of business representatives and citizens from the area being served by a learning center to advise and assist the board in determining the most appropriate educational and training programs and services to be offered at the learning center.

D. A learning center shall not be deemed to be an institution, but the students enrolled at the center shall be students of the respective institutions providing educational programs and services.

E. The commission [department] shall develop criteria for determining the need for a district and the process and procedures for establishing and operating a learning center.

**History:** Laws 2000, ch. 105, § 4; 2002, ch. 19, § 2.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 2002 amendment**, effective May 15, 2002, in Subsection A added the third sentence beginning "A district may also be established" and in the next to last sentence added "or county"; and in Subsection B, added "or board of county commissioners" in the first sentence.

## **21-16A-5. Learning center board; powers and duties.**

A. To carry out the provisions of the Learning Center Act, the board shall:

(1) manage the operation of one or more learning centers in the district and the contracts with the institutions providing educational programs and services at the learning centers;

(2) select and contract with one or more institutions to:

(a) offer accredited educational programs and services at the learning center that meet local needs or provide degrees and certificates for students completing program requirements at an institution without the requirement that students relocate or commute to existing campuses of the institution;

(b) provide for transfer of credits for course work obtained by students from institutions other than the institution contracting to provide an educational program at the learning center; and

(c) set tuition and fees for educational programs and services provided by the institution at the learning center;

(3) monitor and evaluate how well the educational and training needs of the local communities are being served by the learning center and the participating institutions; and

(4) assess in an ongoing way the educational and training needs of the region to assure delivery and coordination of educational programs and services to the communities located within the district.

B. The board may:

(1) employ staff and enter into contracts and agreements as necessary to carry out its duties pursuant to the Learning Center Act;

(2) authorize the imposition of a property tax levy for the purpose of funding the operations of a learning center and provide for an election to submit the proposal to the voters of the district; and

(3) seek grants, gifts and other sources of funds for the operation of a learning center.

**History:** Laws 2000, ch. 105, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

### **21-16A-6. Learning center tax levy authorized; election.**

A. A board may adopt a resolution authorizing, for learning center operational purposes, the imposition of a property tax upon the taxable value of property in the district. The total tax imposition that may be authorized under the Learning Center Act shall not exceed a rate of five dollars (\$5.00) on each one thousand dollars (\$1,000) of taxable value of property in each district. The tax authorized pursuant to this section may not be imposed for a period of more than six years.

B. The tax authorized in Subsection A of this section shall not be imposed in a district unless the question of authorizing the imposition of the tax is submitted to the voters of the district at an election held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. A resolution adopted pursuant to Subsection A of this section shall specify:

- (1) the rate of the proposed tax;
- (2) the date of the election at which the question of imposition of the tax will be submitted to the voters of the district;
- (3) the period of time the tax is authorized to be imposed; and
- (4) the proposed use of the revenues from the proposed tax.

D. The election required by this section shall be called, conducted and canvassed as provided in the Local Election Act.

E. If a majority of the voters voting on the question votes for a learning center tax levy pursuant to a resolution adopted under the Learning Center Act, the tax shall be imposed. The tax rate shall be certified by the department of finance and administration



and imposed, administered and collected in accordance with the provisions of the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

F. If a majority of the voters voting on the question votes against a learning center tax levy pursuant to a resolution adopted under the Learning Center Act, the tax shall not be imposed. The board shall not again adopt a resolution authorizing the imposition of a tax levy pursuant to the Learning Center Act for at least two years after the date of the resolution that the voters rejected.

G. The board may discontinue by resolution the imposition of any tax authorized pursuant to the Learning Center Act. The discontinuance resolution shall be mailed to the department of finance and administration no later than June 15 of the year in which a tax rate pursuant to that act is not to be certified.

**History:** Laws 2000, ch. 105, § 6; 2018, ch. 79, § 87.

#### **ANNOTATIONS**

**The 2018 amendment**, effective July 1, 2018, provided that elections on the question of authorizing the imposition of a property tax for learning center operational purposes shall be called, conducted and canvassed as provided in the Local Election Act, and made technical and conforming changes; in Subsection B, after "voters of the district at", deleted "a regular school district" and added "an", and after "election", deleted "or a special election called for that purpose" and added "held pursuant to the Local Election Act"; and in Subsection D, after "as provided in the", deleted "School Election Law" and added "Local Election Act".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

#### **21-16A-7. Availability of school facilities.**

Public school facilities in a district shall be available to a learning center, if needed, but in a manner that will not interfere with the regular program of instruction and provided no public school funds shall be expended for the learning center. The learning center may arrange for the use of any other available facilities as needed and appropriate.

**History:** Laws 2000, ch. 105, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

## **21-16A-8. Learning centers subject to approval and provisions of Learning Center Act.**

No person, institution or other entity shall undertake to operate a learning center except with the written approval of the commission [department] and in accordance with the provisions of the Learning Center Act; provided that nothing in the Learning Center Act shall prohibit the provision of extended learning services or the provision of educational services by any organization or business for its own members or employees directly or by contracting with a provider of educational programs.

**History:** Laws 2000, ch. 105, § 8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

## **ARTICLE 17**

### **Area Vocational Schools (Repealed.)**

#### **21-17-1 to 21-17-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-17-1 to 21-17-7, 21-17-9, 21-17-11, 21-17-12, and 21-17-14 to 21-17-17 NMSA 1978, relating to area vocational schools, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

Laws 1995, ch. 224, § 29 repealed 21-17-8, 21-17-10, and 21-17-13 NMSA 1978, as amended by Laws 1986, ch. 32, § 18, Laws 1985, ch. 238, § 42, and Laws 1988, ch. 65, § 5, relating to tax levies for revenue to establish and operate area vocational schools, effective June 16, 1995. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 18**

### **Vocational Capital Improvements (Repealed.)**

**21-18-1 to 21-18-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1978, ch. 150, § 1, repealed 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, repealed 21-19-1 through 21-19-6 NMSA 1978, relating to development training, effective June 17, 1983. For present provisions, see 21-19-7 through 21-19-11 NMSA 1978.

#### **21-19-7. Development training.**

A. The economic development department shall establish a development training program that provides quick-response classroom training, in-plant training and skill-enhancement training to furnish qualified workforce resources for new or expanding industries, nonretail service sector businesses and film and multimedia production companies in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom designed for, and based on the special requirements of, each company or preemployment training program for the film and multimedia industry. 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" composed of:

- (1) the director of the economic development division of the economic development department;
- (2) the director of the instructional support and vocational education division of the public education department;
- (3) the director of the governor's office of workforce training and development;
- (4) the executive director of the commission on higher education;

- (5) an employee of the workforce solutions department;
- (6) one member from organized labor appointed by the governor; and
- (7) one public member from the business community appointed by the governor.

C. The industrial training board shall establish policies and promulgate rules for the administration of appropriated funds and shall provide review and oversight to ensure 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 while preserving the ecological state of New Mexico and its people. For fiscal years 2018 through 2022, in expending money from the fund, except that for film and multimedia production companies and preemployment training programs for that industry, the board shall employ a preference for training or instructional services for trainees who meet the criterion in Subparagraph (a) of Paragraph (3) of Subsection F of this section over training or instructional services for trainees who meet the criterion in Subparagraph (b) of that paragraph.

D. Subject to the approval of the industrial training board, the economic development division of the economic development department 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' workforce needs;
- (5) contract for the implementation of all training programs;
- (6) provide for training by educational institutions or by a company through in-plant training, at that company's request; and
- (7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The instructional support and vocational education division of the public education department shall provide technical assistance to the economic development department concerning the development of agreements, the determination of the most appropriate instructional training to be provided and the review of training program implementation.

F. Except as provided in Section 21-19-7.1 NMSA 1978 for film and multimedia production companies and preemployment training programs for that industry, 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) payment shall not be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;

(2) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(3) trainees shall be of legal status for employment and:

(a) have resided within the state for at least one year at any time before the start of the training program; or

(b) for fiscal years 2018 through 2022, have resided within the state for at least one day at any time before the start of the training program if the salary of the job guaranteed to the trainee upon successful completion of the training is at least: 1) sixty thousand dollars (\$60,000) for a job performed in, based in or within ten miles of the external boundaries of a municipality with a population, according to the most recent federal decennial census, of sixty thousand or more or a job performed in or based in an H class county; or 2) forty thousand dollars (\$40,000) for a job performed in or based in a municipality with a population, according to the most recent federal decennial census, of less than sixty thousand or for a job performed in or based in the unincorporated area, not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than an H class county;

(4) payment for institutional classroom training shall be made pursuant to any accepted training contract for a qualified training program;

(5) payment shall not be made pursuant to any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;

(6) trainees shall be eligible under the federal Fair Labor Standards Act of 1938, as amended, and shall not have terminated a public school program within the past three months except by graduation;

(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;

(8) payment shall not 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; and

(9) if a company hires twenty or more trainees, payment shall not be made for training in a municipality with a population, according to the most recent decennial census, of more than forty thousand or in a class A county, unless the company:

(a) offers its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code [Chapter 59A NMSA 1978]; and

(b) contributes at least fifty percent of the premium for the health insurance plan for those employees who choose to enroll in it; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered.

**History:** Laws 1983, ch. 299, § 1; 1989, ch. 354, § 2; 1991, ch. 21, § 34; 1993, ch. 135, § 1; 1997, ch. 71, § 1; 1999, ch. 155, § 1; 2003, ch. 352, § 1; 2003, ch. 353, § 1; 2003, ch. 360, § 3; 2005, ch. 102, § 1; 2017, ch. 40, § 1.

## ANNOTATIONS

**Cross references.** — For Workforce Training Act, see 21-13A-1 NMSA 1978 et seq.

For the federal Fair Labor Standards Act, see 29 U.S.C.S. § 201 et seq.

**The 2017 amendment**, effective June 16, 2017, temporarily allowed for the reduction of the residency requirement for the workforce development training program of the economic development department when the training provided is for high-wage jobs in certain locations of the state, provided a preference for training or instructional services for trainees who have resided within the state for at least one year in the expenditure of money from the development training fund, and revised the composition of the industrial training board; in Subsection A, after "furnish qualified", deleted "manpower" and added "workforce"; in Subsection B, Paragraph B(2), after "director of the", added "instructional support and", in Paragraph B(5), after "employee of the", added "workforce solutions", and after "department", deleted "of labor"; in Subsection C, after "oversight to", deleted "assure" and added "ensure", after "legal limits", added "while", and added the second sentence; in Subsection D, Paragraph D(4), after "companies", deleted "manpower" and added "workforce"; in Subsection E, after "The", added "instructional support and"; in Subsection F, Paragraph F(2), deleted "training applicants" and added "trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training", added new paragraph designation "(3)" and redesignated former Paragraphs F(3) through F(5) as Paragraphs F(4) through F(6), respectively, in Paragraph F(3), added "trainees", after "shall", deleted "have resided within the state for a minimum of one year at any time prior to the commencement of the training program and", and after "employment", added "and", and added new Subparagraphs F(3)(a) and

F(3)(b), in Paragraph F(6), deleted "all applicants" and added "trainees", deleted former Paragraph F(6), in Paragraph F(9), after "municipality", deleted "having" and added "with", after "population", deleted "of more than forty thousand", after "decennial census", added "of more than forty thousand", and after "or", added "in", and in Subparagraph F(9)(b), after "contributes", deleted "not less than" and added "at least", after "health insurance", added "plan", and after "choose to enroll", added "in it".

**The 2005 amendment**, effective April 4, 2005, added in Subsection A requirement that the economic development department establish programs for class room training and skill enhancement training to furnish qualified manpower resources for film and multimedia production companies and added the provision that training shall be costumed designed for pre-employment training programs for the film and multimedia industry; modified Subsection B by removing the director of the job training division of the labor department as a member of the board and substituting the director of the governor's office of workforce training and development and adding an employee of the department of labor as a member of the board; provided in Subsection F that except as provided in Section 21-19-7.1 NMSA 1978 for film and multimedia production companies and pre-employment training programs for that industry, the state shall contract for the provision of training and instructional services and that training applicants shall have resided in the state for a minimum of one year at any time prior to commencement of the training program; and deleted the exception in Subsection F(2) for waiver of residency requirement prior to July 1, 2004.

**Compiler's notes.** — Laws 2005, ch. 102 is contingent upon an "appropriation for development training in the General Appropriations Act of 2005". The General Appropriations Act of 2005 does not provide for an appropriation for development training, but rather authorizes use of cash balances in the "development training fund". The actual appropriation of funds from the "development training fund" is provided by 21-19-11 NMSA 1978 and not the General Appropriations Act of 2005. Section 21-19-11 NMSA 1978 provides that "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." Laws 2005, ch. 33, Subsection D of § 4 of the General Appropriations Act of 2005 provides as follows: "Notwithstanding Section 21-19-7 NMSA 1978 and Section 21-9-7.1 NMSA 1978, the economic development department may use up to five percent of the cash balances in the development training fund as of December 31, 2004 for skill-enhancement training and pre-employment training programs for the film and multimedia industry." This is not actually an appropriation by an authorization to use funds appropriated by Section 21-19-11 NMSA 1978. The prohibition against using funds for another purpose is found in 21-19-11 NMSA 1978 and not 21-19-7 or 21-9-7 NMSA 1978.

**The 2003 amendment**, effective January 1, 2004, in Subsection A, deleted "the particular company" and "shall be" following "designed for" in the second sentence; and added Paragraph F(9).

**The 1999 amendment**, effective June 18, 1999, added the proviso at the end of the introductory language in Paragraph F(2) and added Subparagraphs F(2)(a) through F(2)(d).

**The 1997 amendment**, effective April 8, 1997, made a minor stylistic change in Subsection B; substituted "economic development division of the economic development department" for "vocational education division of the state department of public education" in Subsection D; added Subsection E and redesignated former Subsection E as F; and substituted "of legal status for employment" for "citizens of the United States" in Paragraph F(1).

### **21-19-7.1. Development training for film and multimedia production companies.**

A. After consulting with the New Mexico film division of the economic development department, the industrial training board shall promulgate rules for development funding for film and multimedia production companies. The rules shall provide:

(1) for preapproval by the New Mexico film division of personnel who:

(a) are New Mexico residents;

(b) have participated in on-the-job training or attended a training course sponsored in part by an accredited educational institution in New Mexico or by the New Mexico film division; and

(c) have been certified as film and multimedia trainees by the New Mexico film division;

(2) for submission to the New Mexico film division of the economic development department by a film or multimedia production company, after completing production in New Mexico, of employment, salary and related information concerning those personnel who have been:

(a) approved by the New Mexico film division pursuant to Subsection A of this section; and

(b) employed by the production company in a film or multimedia production in New Mexico;

(3) after approval by the New Mexico film division, for reimbursement from the development training fund to the production company of fifty percent of the salaries paid to the personnel for whom information is submitted pursuant to Paragraph (2) of this subsection; and



(4) that the reimbursement shall be made by the New Mexico film division without further action or approval of the industrial training board.

B. The New Mexico film division of the economic development department shall establish a film and multimedia preemployment training program to furnish qualified manpower resources for the film and multimedia industry. The New Mexico film division shall adopt rules implementing the preemployment training program.

**History:** Laws 2003, ch. 353, § 2; 2005, ch. 102, § 2.

### **ANNOTATIONS**

**The 2005 amendment**, effective April 4, 2005, provided in Subsection A(1)(b) that the rules shall provide for pre-approval of personnel who have participated in on-the-job training; deleted the labor department as a sponsor of training courses in Subsection A(1)(b); changed "economic development division" to "New Mexico film division" in Subsection A(2), (3) and (4); and added Subsection B which provides for a film and multimedia pre-employment training program.

**Compiler's notes.** — Laws 2005, ch. 102, is contingent upon an "appropriation for development training in the General Appropriations Act of 2005". The General Appropriations Act of 2005 does not provide for an appropriation for development training, but rather authorizes use of cash balances in the "development training fund". The actual appropriation of funds from the "development training fund" is provided by 21-19-11 NMSA 1978 and not the General Appropriations Act of 2005. Section 21-19-11 NMSA 1978 provides that "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." Laws 2005, ch. 33, Subsection D of § 4 of the General Appropriations Act of 2005 provides as follows: "Notwithstanding Section 21-19-7 NMSA 1978 and Section 21-9-7.1 NMSA 1978, the economic development department may use up to five percent of the cash balances in the development training fund as of December 31, 2004 for skill-enhancement training and pre-employment training programs for the film and multimedia industry." This is not actually an appropriation by an authorization to use funds appropriated by Section 21-19-11 NMSA 1978. The prohibition against using funds for another purpose is found in 21-19-11 NMSA 1978 and not 21-19-7 or 21-9-7 NMSA 1978.

### **21-19-8. Repealed.**

**History:** Laws 1983, ch. 299, § 2; 1987, ch. 161, § 6; repealed by Laws 1991, ch. 21, § 46.

### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 21, § 46 repealed 21-19-8 NMSA 1978, as enacted by Laws 1983, ch. 299, § 2, relating to technical innovation centers, effective March 27, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## **21-19-9. Repealed.**

**History:** Laws 1983, ch. 299, § 3; 1987, ch. 161, § 7; repealed by Laws 1991, ch. 21, § 46.

### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 21, § 46 repealed 21-19-9 NMSA 1978, as enacted by Laws 1983, ch. 299, § 3, relating to technical excellence centers, effective March 27, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## **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 [11-6-1 NMSA 1978].

**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.

**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 is appropriated to the economic development department. Money in the fund shall be expended upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or his authorized representative to carry out the purposes specified 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 [11-6-1 NMSA 1978]. 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; 1997, ch. 71, § 2.

## ANNOTATIONS

**The 1997 amendment,** effective April 8, 1997, added the third sentence and rewrote the last sentence in Subsection A.

**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.

**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 §§ 92 to 100.

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.

**21-19-12. Temporary provision; appropriation of fund balances.**

The economic development department may expend money in the development training fund in the 1997 and subsequent fiscal years that was appropriated in prior fiscal years to carry out the purposes of Section 21-9-7 [21-19-7] NMSA 1978.

**History:** Laws 1997, ch. 71, § 3.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The reference to Section 21-9-7 NMSA 1978 appears to be a reference to 21-19-7 NMSA 1978, as there is no 21-9-7 NMSA 1978.

**Emergency clauses.** — Laws 1997, ch. 71, § 5 contained an emergency clause and was approved April 8, 1997.

### **21-19-13. Distributions of development training funds.**

A. Of appropriations made in any fiscal year for development training, up to two-thirds shall be expended in urban communities in the state. At least one-third of the appropriations made in any fiscal year for development training shall be expended in nonurban communities.

B. Of money available in the development training fund, the economic development department may use in any fiscal year:

(1) up to fifty thousand dollars (\$50,000) to generally administer the development training program; and

(2) in addition to the general administration funding allowed in Paragraph (1) of this subsection, up to fifty thousand dollars (\$50,000) to administer the provisions of Section 21-19-7.1 NMSA 1978.

C. Up to two million dollars (\$2,000,000) of development training funds may be used to reimburse film and multimedia production companies and to provide preemployment training for that industry pursuant to the provisions of Section 21-19-7.1 NMSA 1978.

D. Up to one million dollars (\$1,000,000) disbursed annually from the development training program may be dedicated to development training in green industries.

E. As used in this section:

(1) "green industries" means industries that contribute directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries

provide opportunities for advancement along a career track of increasing skills and wages. Green industries include:

- (a) energy system retrofits to increase energy efficiency and conservation;
  - (b) production and distribution of biofuels and vehicle retrofits for biofuels;
  - (c) building design and construction that meet the equivalent of best available technology in energy and environmental design standards;
  - (d) organic and community food production;
  - (e) manufacture of products from non-toxic, environmentally certified or recycled materials;
  - (f) manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells;
  - (g) solar technology installation and maintenance;
  - (h) recycling, green composting and large-scale reuse of construction and demolition materials and debris; and
  - (i) water system retrofits to increase water efficiency and conservation;
- (2) "nonurban community" means a municipality that is not an urban community or is the unincorporated area of a county; and
- (3) "urban community" means a municipality with a population of forty thousand or more according to the most recent federal decennial census.

**History:** Laws 2005, ch. 102, § 3; 2009, ch. 282, § 1.

## **ANNOTATIONS**

**The 2009 amendment**, effective June 19, 2009, added Subsection D, and Paragraph (1) of Subsection E.

## **ARTICLE 19A**

### **Apprenticeship Assistance**

#### **21-19A-1. Short title.**

Chapter 21, Article 19A NMSA 1978 may be cited as the "Apprenticeship Assistance Act".

**History:** Laws 1992, ch. 93, § 1; 2014, ch. 51, § 1.

## **ANNOTATIONS**

**Cross references.** — For Workforce Training Act, see 21-13A-1 NMSA 1978 et seq.

For New Mexico Youth Conservation Corps Act, see 9-5B-1 NMSA 1978 et seq.

For public works apprenticeship and training, see 13-4D-1 NMSA 1978 et seq.

For apprenticeship council, see 50-7-3 NMSA 1978.

**The 2014 amendment**, effective July 1, 2014, added the NMSA chapter and article for the Apprenticeship Assistance Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 21, Article 19A NMSA 1978".

**Temporary provisions.** — Laws 2014, ch. 51, § 10 provided that on July 1, 2014:

A. all functions, appropriations, money, files, records and other property for or used in the administration or oversight of provisions of the Apprenticeship Assistance Act are transferred from the instructional support and vocational education division of the public education department to the workforce solutions department; and

B. all contractual obligations directly related to the administration or oversight of the provisions of the Apprenticeship Assistance Act and entered into by the instructional support and vocational education division of the public education department for that purpose are transferred to the workforce solutions department.

## **21-19A-2. Purpose.**

The purpose of the Apprenticeship Assistance Act is to assist apprenticeship programs that will develop skilled craftsmen in occupations recognized by the office of apprenticeship and the state apprenticeship agency 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; 2014, ch. 51, § 2.

## **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, changed the names of federal and state agencies involved in the administration of the Apprenticeship Assistance Act; and after "recognized by the", deleted "bureau" and added "office of apprenticeship", and after "office of apprenticeship and the", deleted "council" and added "state apprenticeship agency".

## **21-19A-3. Definitions.**

As used in the Apprenticeship Assistance Act:

A. "advisory committee" means the apprenticeship and training advisory committee to the division;

B. "apprentice" means a person at least sixteen years of age 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 written agreement provides for reasonably continuous employment of the person for not less than two thousand hours in the given trade in which that person is apprenticed in an approved schedule of work experience and for at least one hundred forty-four hours per year of related and 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 the apprenticeship as required by the state apprenticeship agency and the office of apprenticeship;

E. "department" means the workforce solutions department;

F. "division" means the labor relations division of the department;

G. "office of apprenticeship" means the office of apprenticeship of the employment and training administration of the United States department of labor;

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;

I. "state apprenticeship agency" means the state apprenticeship agency within the department; and

J. "supplementary instruction" means new or upgrading skill training for those already employed as journeymen craftsmen.

**History:** Laws 1992, ch. 93, § 3; 2014, ch. 51, § 3.

### **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, added definitions to move the administration of the Apprenticeship Assistance Act to the workforce solutions

department; in Subsection B, after "for an employer, which", deleted "apprentice" and added "written", after "continuous employment", added "of the person for", after "two thousand hours", deleted "required for any" and added "in the", after "in the given trade", deleted "for" and added "in which", after "in which that person", deleted "for his participation" and added "is apprenticed", after "schedule of work experience", deleted "through employment", and after "per year of related", added "and"; in Subsection D, after "required by the", deleted "council" and added "state apprenticeship agency" and after "agency and the", deleted "bureau" and added "office of apprenticeship"; deleted former Subsection E which defined "bureau"; deleted former Subsection F which defined "council"; added Subsection E; in Subsection F, after "means the", deleted "vocational education" and added "labor relations", after "division of the", deleted "state", and after "department", deleted "of public education"; added Subsections G and I; and in Subsection J, after "supplementary", added "instruction".

## **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 apprentice, 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; 2014, ch. 51, § 4.

## **ANNOTATIONS**



**The 2014 amendment**, effective July 1, 2014, corrected the reference to apprentice; and in Subsection G, after "reporting of", deleted "student" and added "apprentice".

## **21-19A-5. Criteria for apprenticeship programs.**

A. An apprenticeship program shall be registered by the state apprenticeship agency or the office of apprenticeship.

B. An apprenticeship program shall be under the direction of an apprenticeship committee and structured according to Title 29, Part 29 of the Code of Federal Regulations. 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 employment and training, which standards shall conform substantially with the standards of apprenticeship as registered by the state apprenticeship agency or the office of apprenticeship.

**History:** Laws 1992, ch. 93, § 5; 2014, ch. 51, § 5.

### **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, changed the names of governmental entities to move the administration of the Apprenticeship Assistance Act to the workforce solutions department; in Subsection A, after "registered by the", deleted "council" and added "state apprenticeship agency", and after "agency or the", deleted "bureau" and added "office of apprenticeship"; in Subsection B, after "according to", deleted "CFR 29.29" and added "Title 29, Part 29 of the Code of Federal Regulations"; and in Subsection C, after "registered by the", deleted "council" and added "state apprenticeship agency" and after "apprenticeship agency or", deleted "bureau" and added "the office of apprenticeship".

## **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.

**History:** Laws 1992, ch. 93, § 6.

## **21-19A-7. Apprenticeship and training advisory committee.**

A. The division shall appoint an apprenticeship and training advisory committee composed of nine 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; and
- (5) the state apprenticeship director of the department, who shall serve as chair.

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) two persons designated by and representing the New Mexico college and university system of vocational education;
- (2) one person designated by and representing the office of apprenticeship; and
- (3) 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 chair.

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; 2014, ch. 51, § 6.

## **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, changed the membership of the apprenticeship and training advisory committee; in Subsection A, in the introductory paragraph, in the first sentence, after "composed of", deleted "ten" and added "nine"; in Subsection A, Paragraph (5), after "the", added "state apprenticeship", after "director of the", deleted "council" and added "department", and after "shall serve as", deleted "chairman" and added "chair"; in Subsection A, deleted Paragraph (6), which designated the supervisor of trades and industry with the division as a member of the advisory committee; in Subsection D, deleted former Paragraph (1), which designated one person representing the advisory council for vocational education as a nonvoting member of the advisory committee; in Subsection D, Paragraph (1), at the beginning of the paragraph, deleted "one person" and added "two persons"; and in Subsection D, Paragraph (2), after "representing the", deleted "bureau" and added "office of apprenticeship".

### **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 21-19A-10 NMSA 1978, 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; 2014, ch. 51, § 7.

## **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, changed a statutory reference to the Apprenticeship Assistance Act; and in Subsection B, after "Section", deleted "10 of the Apprenticeship Assistance Act" and added "21-19A-10 NMSA 1978".

## **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.

## **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 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.

## **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.

## **21-19A-12. Budget; disbursement and appropriation.**

A. For the first two years after the effective date of the Apprenticeship Assistance Act, 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 21-19A-10 NMSA 1978.

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, that the division shall not fund any apprenticeship committee not certified by the state apprenticeship agency or the office of apprenticeship.

**History:** Laws 1992, ch. 93, § 12; 2014, ch. 51, § 8.

## **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, changed the names of governmental entities to move the administration of the Apprenticeship Assistance Act to the workforce solutions department; in Subsection A, in the second sentence, after "Section", deleted "10 of the Apprenticeship Assistance Act" and added "21-19A-10 NMSA 1978"; and in Subsection C, after "certified by the", deleted "council" and added "state apprenticeship agency", and after "agency or the", deleted "bureau" and added "office of apprenticeship".

### **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 secretary of workforce solutions shall decide the matter. The secretary's decision shall be final.

**History:** Laws 1992, ch. 93, § 13; 2014, ch. 51, § 9.

## **ANNOTATIONS**

**The 2014 amendment**, effective July 1, 2014, changed the names of governmental entities to move the administration of the Apprenticeship Assistance Act to the workforce solutions department; in Subsection B, in the second sentence, after "made, then the", deleted "superintendent of public instruction" and added "secretary of workforce solutions".

## **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 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.

**History:** 1953 Comp., § 73-45-3, enacted by Laws 1973, ch. 339, § 3; 1977, ch. 245, § 231.

### **ANNOTATIONS**

**Compiler's notes.** — 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**

**Compiler's notes.** — 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.

**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.

For Teacher Loan for Service Act, see 21-22E-1 NMSA 1978 et seq.

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

As used in the Student Loan Act:

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 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 [higher education department]].

**History:** 1953 Comp., § 73-38-2, enacted by Laws 1970, ch. 82, § 2; 1973, ch. 174, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For the federal Higher Education Act of 1965, see 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 [higher education department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 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 § 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 [higher education department]]. 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, 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [higher education department]] 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. 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [higher education department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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, the board of educational finance [commission on higher education [higher education department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [higher education department]] that a need exists under the Student Loan Act, 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 § 59 et seq.; 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, 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

## **21-21-10. Legal investments; tax exemptions.**

All bonds issued under the Student Loan Act 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, 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 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 § 59 et seq.

### **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**

**Cross references.** — For Title IV, Part B, of the federal Higher Education Act of 1965, see 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" ["department"]] means the board of educational finance [commission on higher education [higher education department]];

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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

### **21-21-17. Loan guarantees; powers and duties of board.**

The board [commission [department]] 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 loan [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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For the federal Higher Education Act of 1965, see 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 [higher education department].

C. Disbursements from the student loan guarantee fund shall be made upon vouchers signed by the executive director of the commission on higher education [higher education department].

**History:** 1978 Comp., § 21-21-18, enacted by Laws 1978, ch. 110, § 5; 1989, ch. 324, § 13.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 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, repealed 21-21-19 NMSA 1978, as amended by Laws 1980, ch. 77, § 1, 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 [department]]. 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **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 [department]] 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 [department]] 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 [department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-21-22. Reimbursement of the fiscal agent.**

The fiscal agent shall be reimbursed by the board [commission [department]] for the expenses connected with his duties under the terms of an agreement negotiated annually by the board [commission [department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **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 [department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **21-21-25. Collection of student loans; contracts authorized.**

The board of educational finance [commission on higher education [higher education department]] may contract with one or more attorneys or law firms or with any other private business concern to assist the board [commission [department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **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**

**Compiler's notes.** — 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.**

Chapter 21, Article 21A NMSA 1978 may be cited as the "Educational Assistance Act".

**History:** Laws 1981, ch. 319, § 1; 2005, ch. 201, § 1.

#### **ANNOTATIONS**

**Cross references.** — For Teacher Loan for Service Act, see 21-22E-1 NMSA 1978 et seq.

For the Legislative Endowment Scholarship Act, see 21-21J-1 NMSA 1978 et seq.

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.

#### **21-21A-2. Repealed.**

**History:** Laws 1981, ch. 319, § 2; 2005, ch. 201, § 2; repealed by Laws 2011, ch. 168, § 10.

#### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-2 NMSA 1978, as enacted by Laws 1981, ch. 319, § 2, relating to purpose, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

#### **21-21A-3. Definitions.**

As used in the Educational Assistance Act:



- A. "bond" means any bond, note or other evidence of indebtedness;
- B. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;
- C. "foundation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to provide financial assistance for post-secondary education; and
- D. "institution of higher education" means the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico or other institution of higher education approved by the foundation.
- History:** Laws 1981, ch. 319, § 3; 1989, ch. 19, § 1; 2005, ch. 201, § 3; 2011, ch. 168, § 1.

### ANNOTATIONS

**The 2011 amendment**, effective June 17, 2011, deleted the definition of "corporation", which referred to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, deleted in Subsection E the qualification that another institution of higher education must be a state institution recognized by the commission on higher education.

### 21-21A-4. Repealed.

**History:** Laws 1981, ch. 319, § 4; 1989, ch. 19, § 2; repealed by Laws 2011, ch. 168, § 10.

### ANNOTATIONS

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-4 NMSA 1978, as enacted by Laws 1981, ch. 319, § 4, relating to authorization, members, terms, meetings and bylaws of nonprofit guarantee corporations, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

### 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 [Chapter 53, Article 8 NMSA 1978], a nonprofit foundation, separate and apart from the state. The purpose of the foundation is to improve the educational opportunities of residents of New Mexico by providing financial assistance to qualified persons, including a program of making, financing,

purchasing, holding and selling 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; 2005, ch. 201, § 4.

## **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, deleted the requirement that loans be insured.

**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. After the effective date of this 2011 act, the board sitting prior to the effective date of this 2011 act shall appoint the next successor board and shall establish staggered four-year terms for the members. The board shall consist of the following members:

- (1) the state treasurer or the state treasurer's designee;
- (2) two members representing post-secondary education;
- (3) two members representing lending institutions; and
- (4) other members as provided by the foundation bylaws.

B. A vacancy shall be filled by appointment by the board for the unexpired term.

C. The board shall elect a chair and such other officers as it deems necessary.

D. Members of the board shall receive no compensation for their service, but may 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 [Chapter 10, Article 15 NMSA 1978].

F. The foundation shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act and the federal Higher Education Act of 1965, as amended.

**History:** Laws 1981, ch. 319, § 6; 1989, ch. 19, § 4; 1995, ch. 201, § 1; 2011, ch. 168, § 3.

## **ANNOTATIONS**

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

**The 2011 amendment**, effective June 17, 2011, directed the board of directors sitting prior to June 17, 2011 to appoint the next successor board for staggered terms of four years; restructured the membership of the board of directors by reducing the number of members representing post-secondary education from seven to two members, by eliminating the requirement that members representing post-secondary education be regents and administrators, and by permitting the board to provide for other board members in the foundation's bylaws; and eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

**The 1995 amendment**, effective June 16, 1995, in Subsection A, substituted "eleven" for "ten", made minor stylistic changes in Paragraphs (2) and (3) and added Paragraph (4), and in Subsection B, inserted "and governing board member" and "or governing board member" in the first sentence and inserted "or by the two-year college representative body making the original appointment" in the second sentence.

### **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 or other purpose identified by the foundation, including the following powers:

A. to make or participate in the making of educational loans, to purchase or participate in the purchase of 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 educational loans to the student loan marketing association or to other purchasers, in conformity with the federal 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 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 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 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 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;

G. 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;

H. to authorize a retirement program for salaried officers and employees of the foundation;

I. to authorize reimbursement of expenses of salaried officers and employees of the foundation;

J. to purchase liability insurance for officers and directors and such other insurance as may be reasonable and necessary;

K. to accept loans, public or private grants, devises, gifts, bequests and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;

L. to sue and be sued in its own name and to plead and interplead;

M. to adopt an official seal and alter it at pleasure;

N. to adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

O. 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;

P. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement;

Q. 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

R. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act or other purpose identified by the foundation.

**History:** Laws 1981, ch. 319, § 7; 1989, ch. 19, § 5; 2005, ch. 201, § 5; 2011, ch. 168, § 2.

## **ANNOTATIONS**

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

**The 2011 amendment,** effective June 17, 2011, broadened the power of the foundation by eliminating the limitations on the compensation and reimbursement of expenses paid to officers and employees in Subsections F and I, and by authorizing the foundation to carry out purposes identified by the foundation in addition to the purposes of the Educational Assistance Act in Subsection R; and eliminated the foundation's authority to adopt rules respecting the foundation's educational loan program and its functions and duties.

**The 2005 amendment,** effective June 17, 2005, deleted the requirement that loans be insured in Subsections A through E and G and deleted in Subsection G reference to regulations

**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 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 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 thirty 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 that is mutilated or destroyed.

**History:** Laws 1981, ch. 319, § 8; 1989, ch. 19, § 6; 1996, ch. 76, § 1; 2005, ch. 201, § 6.

## **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, deleted the provision that no bond proceeds may be expended for the making or purchase of any educational loan, unless the loan is an insured educational loan.

**The 1996 amendment**, effective March 5, 1996, deleted "its" preceding "bond counsel" in the second sentence and substituted "thirty years" for "fifteen years" in the fifth sentence.

**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 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 obligation or the interest on the obligation except from the revenues or assets pledged for payment 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 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 under that act beyond the extent to which such money has been provided.

**History:** Laws 1981, ch. 319, § 9; 2011, ch. 168, § 4.

### **ANNOTATIONS**

**The 2011 amendment**, effective June 17, 2011, eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

**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, 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 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. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign all or any part of the revenues or assets of the foundation, including without limitation educational loan receipts, educational loans, federal interest subsidies, special allowance payments and educational 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 educational loans and interest on that money, including the proceeds of insurance thereon; and any other money received or due to be received by the foundation. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of bonds as may be reasonable and proper and not in violation of law, including 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 that may act as depository of the proceeds of bond revenues or other money pursuant to the Educational Assistance Act to furnish such indemnifying bonds or to pledge such securities as may be required by the foundation. The 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 bondholders. The trust agreement or resolution may contain such other provisions as the foundation deems reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of the 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; 2005, ch. 201, § 7.

## ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, changed "insured student loan" to "educational loan".



**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 provisions of the Educational Assistance Act 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 disbursement 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 pursuant to the resolution or trust agreement.

**History:** Laws 1981, ch. 319, § 13; 2011, ch. 168, § 5.

### **ANNOTATIONS**

**The 2011 amendment**, effective June 17, 2011, eliminated the requirement that money of the foundation be invested as provided in the Educational Assistance Act.

### **21-21A-14. Rights of holders of bonds.**

Any holder of bonds issued under the provisions of the Educational Assistance Act 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 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 shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor, the secretary of state, the state auditor and the legislative finance committee. Each report shall set forth a complete operating and financial statement of the foundation during the year. The board of directors of the foundation 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 foundation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its

financial standing, and shall make a determination as to whether the foundation has complied with the provisions of the Educational Assistance Act. The person performing the audit shall furnish copies of the audit report to the governor, the secretary of state, 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. Subject to the provisions of any contract with bondholders or noteholders, the foundation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the foundation.

**History:** Laws 1981, ch. 319, § 16; 2011, ch. 168, § 6; 2013, ch. 75, § 11.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, assigned the functions of the corporations bureau to the secretary of state; in Subsection A, in the first sentence, after "the governor, the", deleted "corporations bureau of the public regulation commission" and added "secretary of state" and in fourth sentence, after "the governor, the", deleted "corporations bureau" and added "secretary of state".

**The 2011 amendment**, effective June 17, 2011, eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978; in Subsection A, eliminated the authority of the director of the financial institutions division of the commerce and industry department to appoint an auditor if the board of directors cannot agree upon an auditor; and eliminated the requirement that the director of the financial institutions division examine the foundation at least once each year to determine if the foundation has complied with the Educational Assistance Act.

### **21-21A-17. Repealed.**

**History:** Laws 1981, ch. 319, § 17; 1988, ch. 124, § 2; 1989, ch. 20, § 1; repealed by Laws 2011, ch. 168, § 10.

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-17 NMSA 1978, as enacted by Laws 1981, ch. 319, § 17, relating to investment of funds, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

### **21-21A-18. Repealed.**

**History:** Laws 1981, ch. 319, § 18; 2005, ch. 201, § 8; repealed by Laws 2011, ch. 168, § 10.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-18 NMSA 1978, as enacted by Laws 1981, ch. 319, § 18, relating to investment of severance tax permanent fund in bonds and educational loan notes, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

### **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 educational loans.

**History:** Laws 1981, ch. 319, § 19; 1983, ch. 213, § 24; 2005, ch. 201, § 9.

## ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, changed "insured educational loans" to "educational loans" in Subsection B.

### **21-21A-20. Repealed.**

**History:** Laws 1981, ch. 319, § 20; repealed by Laws 2011, ch. 168, § 10.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-20 NMSA 1978, as enacted by Laws 1981, ch. 319, § 20, relating to conflicts of interest, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

### **21-21A-21. Dissolution of foundation.**

Upon termination or dissolution, all rights and properties of the 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; 2011, ch. 168, § 7.

## ANNOTATIONS

**The 2011 amendment**, effective June 17, 2011, eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

### **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 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. Repealed.**

**History:** Laws 1981, ch. 319, § 23; repealed by Laws 2011, ch. 168, § 10.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-23 NMSA 1978, as enacted by Laws 1981, ch. 319, § 23, relating to administration of Student Loan Act and Student Loan Guarantee Act, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

### **21-21A-24. Educational assistance; foundation activities not affected by repeal.**

The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance foundation created pursuant to that act or its activities in relation to bonds issued and outstanding or the servicing of student loans outstanding, including any special status of the foundation or dispensation granted to the foundation prior to the effective date of this 2011 act in other provisions of law.

**History:** Laws 2011, ch. 168, § 8.

## ANNOTATIONS

**Effective dates.** — Laws 2011, ch. 168 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## **21-21A-25. Educational assistance; nonprofit corporation status not affected by repeal.**

The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance nonprofit corporation created pursuant to that act or its designation as the single nonprofit corporation authorized to provide a statewide educational loan program for the purposes of the federal Higher Education Act of 1965.

**History:** Laws 2011, ch. 168, § 9.

### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 168 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

## **ARTICLE 21B**

### **Work-Study**

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

Chapter 21, Article 21B NMSA 1978 may be cited as the "Work-Study Act".

**History:** Laws 1982, ch. 88, § 1; 2005, ch. 289, § 27.

### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, added the statutory reference to the act.

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

As used in the Work-Study Act:

A. "board" or "commission" or "department" means the higher education department; 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; 2005, ch. 289, § 28.

#### **ANNOTATIONS**

**The 2005 amendment**, effective April 7, 2005, defined "commission" and "department" in Subsection A to mean the higher education department and deleted the reference to the board of educational finance in the definition in Subsection A.

#### **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. 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 to eligible institutions for their use in employing eligible students.

**History:** Laws 1982, ch. 88, § 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.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

#### **21-21B-5. Disbursement of funds.**

The board shall assure that expenditures from the work-study fund are apportioned equitably among eligible institutions.

**History:** Laws 1982, ch. 88, § 5.

#### **ANNOTATIONS**

### **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 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. 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. The employer must pay at least twenty percent of the salary and benefits of the student.

**History:** Laws 1982, ch. 88, § 6.

#### **ANNOTATIONS**

### **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 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:

A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]];

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 [department]] pursuant to the provisions of the Student Choice Act.

**History:** Laws 1983, ch. 240, § 3.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### 21-21C-4. Fund created.

There is created in the state treasury the "student choice fund" which shall be administered by the board [commission [department]] in accordance with the provisions of the Student Choice Act.

**History:** Laws 1983, ch. 240, § 4.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [higher education department] 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 [higher education department] written authorization, approved by the institution in which the student is enrolled, granting to the commission [department] 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, and further agreeing that any refund of tuition due to a student who withdraws shall be paid directly to the commission [department];

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 [higher education department] 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 [department] 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 [higher education department], 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 [higher education department], 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.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-21C-6. Eligibility.**

Eligibility of students under the provisions of the Student Choice Act 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 shall be used for sectarian purposes.

**History:** Laws 1983, ch. 240, § 7.

## **21-21C-8. Promulgation and distribution of regulations.**

The commission [department] may make reasonable regulations, consistent with the purposes and policies of the Student Choice Act, 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 [Chapter 14, Article 4 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department]] or its agents, which information the board [commission [department]] has requested in order to administer the provisions of the Student Choice Act, 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **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 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.** — For 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:

A. "department" means the higher education department;

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 ten hours per semester; and

D. "senior citizen" means a person age sixty-five or older.

**History:** Laws 1984, ch. 96, § 3; 2019, ch. 124, § 1.

### ANNOTATIONS

**Cross references.** — For establishment of state educational institutions, see N.M. Const., art. XII, § 11.

**The 2019 amendment**, effective June 14, 2019, replaced "board" with "department" as a defined term, and revised the definition of "reduced tuition", as used in the Senior Citizens Reduced Tuition Act; in Subsection A, deleted "'board'" and added "'department'", and after "means the", deleted "board of educational finance" and added "higher education department"; and in Subsection C, after "up to", deleted "six" and added "ten".

### 21-21D-4. Conditions of eligibility.

A. Reduced tuition shall be allowed for any individual who:

- (1) is a resident of New Mexico as determined by the definition of residency for tuition purposes as established by the department;
- (2) is a senior citizen;
- (3) pays any course-specific fees charged for a course;
- (4) enrolls at an eligible institution for credit or noncredit courses; and
- (5) has completed all course prerequisites.

B. The department shall not restrict, as a condition of eligibility for reduced tuition, the number of credit hours per semester for which an individual may enroll. Regardless of the amount of credits for which an individual enrolls during a semester, the department shall provide reduced tuition to any individual who meets the requirements of Subsection A of this section by allowing that individual to receive a maximum of ten credits at the reduced tuition rate of five dollars (\$5.00) for each of those ten credits.

**History:** Laws 1984, ch. 96, § 4; 2019, ch. 124, § 2.

### ANNOTATIONS

**The 2019 amendment**, effective June 14, 2019, provided that the higher education department shall not restrict, as a condition of eligibility to receive reduced tuition, the number of credit hours per semester for which a senior citizen may enroll; added Paragraph A(1), and redesignated former Subsections B through E as Paragraphs A(2)

through A(5); in Subsection A, after "Reduced tuition", deleted "may" and added "shall"; and added a new Subsection B.

## **21-21D-5. Rules.**

The department may adopt rules and procedures as necessary or appropriate to implement the provisions of the Senior Citizens Reduced Tuition Act; provided 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; 2019, ch. 124, § 3.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, deleted "regulations" after each occurrence of "rules".

**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 [department] 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 [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For 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 veterans' services department for a scholarship. The department shall determine the eligibility of an applicant and certify approved applicants to the commission on higher education [higher education department].

B. The commission on higher education [higher education department] 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; 2004, ch. 19, § 24.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, amended this section to change "veterans' service commission" to "veterans' services department".

### **21-21E-3. Military war veteran scholarship fund; purpose; administration; disbursements.**

A. There is created in the state treasury the "military war veteran scholarship fund". The fund shall consist of money appropriated to the fund, any grants, gifts and bequests made to the fund and income from investment of the fund. Any money in the fund from grants, gifts, bequests or investment income shall not revert to the general fund at the end of any fiscal year. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education.

B. The higher education department shall administer the fund and shall make disbursements from the fund to reimburse post-secondary educational institutions under the exclusive control of the state for tuition payments, required student fees and book allowances for military war veteran students, including students who have received a baccalaureate degree and are enrolled in a program of study leading to a master's or doctoral degree, who are attending post-secondary educational institutions pursuant to Article 9, Section 14 of the constitution of New Mexico and who are in compliance with the educational institution's satisfactory academic progress requirements. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or expected family contribution or to modify other factors to make the program responsive to a student's special financial circumstances; provided that documentation exists in the student's file within the parameters authorized for this program.

C. A military war veteran may apply to the veterans' services department for a scholarship. The veterans' services department shall determine the eligibility of an applicant and certify approved applicants to the higher education department. The higher education department shall pay by voucher to the appropriate post-secondary educational institution an amount not exceeding the amount of the scholarship for an

approved military war veteran. Money in the fund shall be allocated in the order that applications are received and approved.

D. The higher education department and the veterans' services department may adopt rules and procedures as necessary or appropriate to implement the provisions of this section.

E. As used in this section, "military war veteran" means a person who has been honorably discharged from the armed forces of the United States; who was a resident of New Mexico at the original time of entry into the armed forces or who has lived in New Mexico for ten years or more; and who has been awarded a southwest Asia service medal, global war on terror service medal, Iraq campaign medal, Afghanistan campaign medal or any other medal issued for service in the armed forces of the United States in support of any United States military campaign or armed conflict as defined by congress or presidential executive order or any other campaign medal issued for service after August 1, 1990 in the armed forces of the United States during periods of armed conflict as defined by congress or by executive order.

**History:** Laws 2013, ch. 34, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 34, § 2 made Laws 2013, ch. 34, § 1 effective July 1, 2013.

## **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:

- A. "board" or "department" means the higher education department;
- B. "cost of attendance" means the price of attendance, the publication of which is required by federal law, and includes tuition and fees, books and supplies, room and board, transportation and any additional costs for a program in which a student is enrolled;
- C. "eligible institution" means any public institution of higher education in any state in the United States;
- D. "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;
- E. "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 corrections department;
- F. "research institution" means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology; and
- G. "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 the fire fighter's or peace officer's death.

**History:** Laws 1986, ch. 50, § 3; 2018, ch. 76, § 1.

#### **ANNOTATIONS**

**The 2018 amendment**, effective July 1, 2018, provided that "board" or "department" means the "higher education department", and defined "cost of attendance" and "research institution" as used in the Fire Fighter and Peace Officer Survivors Scholarship Act; in Subsection A, after "'board'", added "or department", and after "means the", deleted "board of educational finance" and added "higher education department"; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; in Subsection C, after "means any", deleted "state" and added "public", and after "education in", deleted "New Mexico" and added "any state in the United States"; and added a new Subsection F and redesignated former Subsection E as Subsection G.

### **21-21F-4. Eligibility.**

A. A survivor meeting entrance requirements shall be entitled to a scholarship to the eligible institution of the survivor's choice.

B. If the eligible institution is in New Mexico, the amount of the scholarship shall be equal to the amount of tuition, room and board charged by the institution attended. If the eligible institution is not in New Mexico, the amount of the scholarship shall not exceed the average cost of attendance at New Mexico research institutions.

C. 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 six years.

**History:** Laws 1986, ch. 50, § 4; 2018, ch. 76, § 2.

### **ANNOTATIONS**

**The 2018 amendment**, effective July 1, 2018, provided guidelines for determining the amount of the scholarship for an eligible survivor, and increased the maximum number of years a scholarship recipient may receive the scholarship; added new subsection designations "A.", "B.", and "C"; in Subsection B, added "If the eligible institution is in New Mexico", after "tuition", added "room and board", and added the last sentence; and in Subsection C, after "more than", deleted "five" and added "six".

**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 [department] may adopt rules and regulations necessary to implement the provisions of the Fire Fighter and Peace Officer Survivors Scholarship Act. 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 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:

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. "department" means the higher education department;

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, persons with a visual impairment or other physical disability 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; 2007, ch. 46, § 10.

#### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, amended the section to make non-substantive language changes.

**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 [department] shall administer pursuant to the Graduate Scholarship Act.

**History:** Laws 1988, ch. 111, § 4; 1991, ch. 262, § 10.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] for award of the scholarship and the provisions regarding the administration of state graduate scholarships adopted pursuant to the Graduate Scholarship Act; 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 or the rules, regulations or procedures promulgated by the commission [department].

**History:** Laws 1988, ch. 111, § 10; 1991, ch. 262, § 16.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] may adopt rules, regulations and procedures as necessary or appropriate to implement the provisions of the Graduate Scholarship Act.

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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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.**

Chapter 21, Article 21H NMSA 1978 may be cited as the "New Mexico Scholars Act".

**History:** Laws 1989, ch. 212, § 1; 2013, ch. 171, § 1.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, added the NMSA chapter and article for the New Mexico Scholars Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 21, Article 21H NMSA 1978".

#### **21-21H-2. Purpose of act.**

It is the purpose of the New Mexico Scholars Act 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:

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. "department" means the higher education department;

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; 2013, ch. 171, § 2.

#### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, assigned the administration of the act to the higher education department; and in Subsection C, at the beginning of the sentence, deletes "commission" and added "department"; after "means the", deleted "commission on"; and after "education", added "department".

### **21-21H-4. Creation of scholarship.**

There are established "New Mexico Scholars Act scholarships" administered by the department.

**History:** Laws 1989, ch. 212, § 4; 2013, ch. 171, § 3.

#### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, assigned the administration of the act to the higher education department; and after "by the", deleted "commission" and added "department".

### **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 department;

B. will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of the graduate's 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 sixty thousand dollars (\$60,000) per year adjusted annually on January 1 to reflect any change from the previous year's then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor 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 department to be equivalent to a sixty-thousand dollar (\$60,000) total combined family income;

F. has complied with all the rules adopted by the department for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act; 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; 2013, ch. 171, § 4.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, increased the family income for eligibility for the Scholars Act scholarships; in Subsection A, after "by the", deleted "commission" and added "department"; in Subsection E, after "income of no more than", deleted "thirty thousand dollars (\$30,000)" and added "sixty thousand dollars (\$60,000)", after "per year", added "adjusted annually on January 1 to reflect any change from the previous year's then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor", after "by the", deleted "commission" and added "department", and after "equivalent to a", deleted "thirty thousand dollars (\$30,000)" and added "sixty thousand dollars (\$60,000)"; and in

Subsection F, after "rules", deleted "and regulations" and after "by the", deleted "commission" and added "department".

**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 or the rules promulgated by the department pursuant to that act.

**History:** Laws 1989, ch. 212, § 8; 1991, ch. 262, § 20; 2013, ch. 171, § 5.

## **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, eliminated the authority to issue regulations; in the first sentence, after after "rules", deleted "regulations and procedures" and deleted "commission" and added "department".

**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.**

The department may adopt such rules as necessary or appropriate to implement the provisions of the New Mexico Scholars Act. 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; 2013, ch. 171, § 6.

## **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, eliminated the authority to issue regulations; in the title, deleted "and regulations", and in the first sentence, changed "commission" to "department", and after "such rules", deleted "regulations and procedures".

**The 1991 amendment**, effective June 14, 1991, added the second sentence.

## **ARTICLE 21I**

### **Minority Doctoral Loan Repayment Assistance**

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

Chapter 21, Article 21I NMSA 1978 may be cited as the "Minority Doctoral Loan Repayment Assistance Act".

**History:** Laws 1990 (1st S.S.), ch. 8, § 1; 1991, ch. 262, § 22; 1994, ch. 79, § 1; 2017, ch. 83, § 1.

## ANNOTATIONS

**The 2017 amendment**, effective June 16, 2017, changed the Minority Doctoral Assistance Loan for Service Program Act to the Minority Doctoral Loan Repayment Assistance Act; after "Minority Doctoral", added "Loan Repayment", and after "Assistance", deleted "Loan for Service Program".

**The 1994 amendment**, effective May 18, 1994, substituted "Article 21I" for "Article 21I-1" and inserted "Act" following "Program".

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "This act may be cited as the 'Minority Doctoral Assistance Act'".

### 21-21I-2. Purpose.

The purpose of the Minority Doctoral Loan Repayment Assistance Act 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 or women are demonstrably underrepresented in New Mexico colleges and universities. Additionally, the purpose of the Minority Doctoral Loan Repayment Assistance Act 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 residents.

**History:** Laws 1990 (1st S.S.), ch. 8, § 2; 1991, ch. 262, § 23; 2017, ch. 83, § 2.

## ANNOTATIONS

**The 2017 amendment**, effective June 16, 2017, after each occurrence of "Minority Doctoral", added "Loan Repayment", after each occurrence of "Assistance", deleted "Loan for Service Program" and added "Act", and after "New Mexico", deleted "citizens" and added "residents".

**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 Loan Repayment Assistance Act:

A. "department" means the higher education department;

B. "eligible institution" means an accredited 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 or women are demonstrably underrepresented;

C. "loan" means a grant of money pursuant to a contract between a recipient and a lender requiring repayment of principal with interest. A lender may include the federal government, a bank or the state; and

D. "recipient" means an individual who is a member of an ethnic minority or is a woman and who has successfully completed a doctoral degree-granting program at an eligible institution in the field of engineering, physical or life sciences or mathematics or another academic discipline in which ethnic minorities or women are underrepresented.

**History:** Laws 1990 (1st S.S.), ch. 8, § 3; 1991, ch. 262, § 24; 1994, ch. 79, § 2; 2017, ch. 83, § 3.

## **ANNOTATIONS**

**The 2017 amendment**, effective June 16, 2017, defined "loan" and "recipient", removed and revised the definitions of certain terms as used in the Minority Doctoral Loan Repayment Assistance Act; in the introductory clause, after "Minority Doctoral", added "Loan Repayment", and after "Assistance", deleted "Loan for Service Program" and added "Act"; deleted former Subsection A and redesignated former Subsections B and C as Subsections A and B, respectively; in Subsection A, deleted "'commission'" and added "'department'", after "means the", deleted "commission on", and after "higher education", added "department"; in Subsection B, after "means", deleted "a commission approved" and added "an accredited", and after "ethnic minorities", deleted "and" and added "or"; deleted former Subsections D and E, which defined "sponsoring institution" and "student"; and added new Subsections C and D.

**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.

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" in the introductory paragraph.

### **21-21I-4. Conditions for eligibility.**

A. The department may award a minority doctoral loan repayment assistance grant to a recipient who:

(1) has been hired by a public post-secondary educational institution in New Mexico for a full-time, tenure-track faculty position;

(2) has complied with all of the rules adopted by the department pursuant to the Minority Doctoral Loan Repayment Assistance Act; and

(3) is a citizen of the United States.

B. The department shall give preference to a recipient who has completed a post-secondary degree at an institution designated in Article 12, Section 11 of the constitution of New Mexico.

**History:** Laws 1990 (1st S.S.), ch. 8, § 4; 1991, ch. 262, § 25; 2017, ch. 83, § 4.

## **ANNOTATIONS**

**The 2017 amendment**, effective June 16, 2017, revised the conditions for eligibility for repayment of loans through the minority doctoral loan repayment assistance program, including removing the requirements that eligible participants must graduate with a baccalaureate degree from a New Mexico four-year, public postsecondary educational institution and be accepted for enrollment as a full-time doctoral student at an eligible institution, requiring eligible participants to be hired at a public postsecondary educational institution for a full-time, tenure-track faculty position, and giving preference to recipients who have completed a postsecondary degree at an institution designated in Article XII, Section 11 of the Constitution of New Mexico; designated the previously undesignated introductory clause as Subsection A and deleted former Subsections A and B; in Subsection A, added "The department may award", after "minority doctoral", added "loan repayment", after "assistance grant", deleted "may be awarded to a student" and added "to a recipient"; designated former Subsections C through E as Paragraphs A(1) through A(3), respectively; in Paragraph A(1), after "has been", deleted "interviewed and approved by an academic committee from the sponsoring" and added "hired by a public post-secondary educational", after "institution", added "in New Mexico for a full-time, tenure-track faculty position"; in Paragraph A(2), after "complied with all", added "of", after "rules", deleted "and regulations", after "adopted by the", deleted "commission" and added "department", after "Minority Doctoral", added "Loan Repayment", and after "Assistance", deleted "Loan for Service Program" and added "Act"; and added Subsection B.

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" at the end of Subsection D.

## **21-21I-5. Minority doctoral loan repayment contracts and terms.**

A. A minority doctoral loan repayment assistance grant shall be evidenced by a contract between the recipient and the department and shall be signed by the recipient and an authorized representative of the department.

B. The contract shall provide that, in consideration for the department's payment of up to twenty-five thousand dollars (\$25,000) per year for up to four years to a lender on behalf of the recipient, the recipient shall teach in a full-time faculty position at a public post-secondary educational institution in New Mexico for a minimum of one year for each year a minority doctoral loan repayment assistance grant is awarded.

C. Grant funds received by a recipient who fails to complete the contract terms shall be converted to a loan 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 to the department on behalf of the state immediately upon the recipient's termination or breach of the contract.

D. The department is vested with full and complete authority and power to sue in its own name for any balance due it and the state from a recipient violating the terms of a contract under the Minority Doctoral Loan Repayment Assistance Act.

E. The following debts incurred by a recipient are not eligible for payment by the department under the Minority Doctoral Loan Repayment Assistance Act:

- (1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service is to be provided in exchange for financial assistance;
- (2) scholarships that have a service component or obligation;
- (3) personal loans from individuals;
- (4) loans that exceed individual standard school expense levels; and
- (5) loans that are eligible for another state or federal loan repayment program.

**History:** Laws 1990 (1st S.S.), ch. 8, § 5; 2017, ch. 83, § 5.

## **ANNOTATIONS**

**The 2017 amendment**, effective June 16, 2017, revised the required terms of a contract between a recipient of a minority doctoral loan repayment assistance grant and the higher education department; in the catchline, deleted "assistance" and added "loan repayment"; in Subsection A, after "minority doctoral", added "loan repayment", after "between the", deleted "student" and added "recipient", and after "and the", deleted "sponsoring institution" and added "department and shall be signed by the recipient and an authorized representative of the department"; in Subsection B, deleted Paragraphs B(1), B(2), the paragraph designation "(3)", and deleted "require the student to agree to begin to" from former Paragraph B(3) and added "provide that, in consideration for the department's payment of up to twenty-five thousand dollars (\$25,000) per year for up to four years to a lender on behalf of the recipient, the recipient shall", after "teach in a", added "full-time", after "faculty position at", deleted "the sponsoring" and added "a public post-secondary educational", and after "institution", deleted "within five years of completion of the doctoral degree and", deleted the paragraph designation "(4)" and deleted "require the student to teach in a faculty position at the sponsoring institution" the language from former Paragraph B(4) and added "in New Mexico", after "minority doctoral", added "loan repayment", and after "assistance grant", deleted "was" and

added "is"; in Subsection C, deleted "Grants to students" and added "Grant funds received by a recipient", after "who", deleted "fail" and added "fails", after "complete the", added "contract", after "terms", deleted "of their contract", after "shall be", deleted "considered loans" and added "converted to a loan", after "shall become due", deleted "in equal parts", after "to the", deleted "state and the sponsoring institution" and added "department on behalf of the state", after "immediately upon the", deleted "student's" and added "recipient's", after "termination", added "or breach", and after "of the", deleted "contractual agreement" and added "contract"; in Subsection D, deleted "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.", after "The", deleted "sponsoring institution" and added "department", after "the state from", deleted "any student" and added "a recipient", after "violating the terms of", deleted "any such" and added "a", and after "contract", added "under the Minority Doctoral Loan Repayment Assistance Act"; and in Subsection E, deleted "The commission shall approve all minority doctoral assistance contracts entered into between students and sponsoring institutions" and added the remainder of the subsection.

## **21-21I-6. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 8, § 6; repealed by Laws 2017, ch. 83, § 7.

### **ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 83, § 7 repealed 21-21I-6 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 8, § 6, relating to delegation of contract rights, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## **21-21I-7. Rulemaking.**

The department shall adopt rules to implement the provisions of the Minority Doctoral Loan Repayment Assistance Act. The rules:

- A. shall provide procedures for awarding minority doctoral loan repayment assistance grants;
- B. shall provide procedures for determining the amount of each minority doctoral loan repayment assistance grant; and
- C. may provide for the disbursement of funds to a lender on behalf of a recipient in annual or other periodic installments.

**History:** Laws 1990 (1st S.S.), ch. 8, § 7; 1991, ch. 262, § 26; repealed and reenacted by Laws 2017, ch. 83, § 6.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 2017, ch. 83, § 6 repealed former 21-21I-7 NMSA 1978 and enacted a new section, effective June 16, 2017.

**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.

## **21-21I-8. Cancellation.**

The contract entered into between the student and the sponsoring institution may be cancelled upon approval of the commission [department] for any reasonable cause deemed sufficient by the commission [department] in accordance with its rules and regulations.

**History:** Laws 1990 (1st S.S.), ch. 8, § 8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **ARTICLE 21J**

### **Legislative Endowment Scholarship**

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

This act [21-21J-1 to 21-21J-8 NMSA 1978] may be cited as the "Legislative Endowment Scholarship Act".

**History:** Laws 1995, ch. 35, § 1.

### **ANNOTATIONS**

**Cross references.** — For the Educational Assistance Act, see Chapter 21, Article 21A NMSA 1978.

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

#### **21-21J-2. Purpose.**

The purpose of the Legislative Endowment Scholarship Act is to encourage New Mexico students with financial need to obtain a baccalaureate degree at a public post-secondary educational institution in New Mexico.

**History:** Laws 1995, ch. 35, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-21J-3. Definitions.**

As used in the Legislative Endowment Scholarship Act:

A. "commission" ["department"] means the commission on higher education [higher education department]; and

B. "student" means a resident of New Mexico who is enrolled or will be enrolled, at the time the scholarship is awarded, in a public post-secondary educational institution in New Mexico.

**History:** Laws 1995, ch. 35, § 3.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-21J-4. Conditions for eligibility.**

A legislative endowment scholarship may be awarded to any individual who:

A. has complied with all the rules, regulations and policies adopted by the commission [department] pursuant to the Legislative Endowment Scholarship Act;

B. is a resident of New Mexico for the purpose of tuition payment;

C. is a citizen of the United States or has a permanent resident visa;

D. maintains a minimum cumulative grade point average of 2.5 on a scale of 4.0 in the immediately preceding semester;

E. has not earned a baccalaureate degree and is enrolled or will be enrolled, at the time the scholarship is awarded, at least half-time in a public post-secondary educational institution in New Mexico; and

F. has demonstrated financial need in accordance with rules, regulations and policies adopted by the commission [department] pursuant to the Legislative Endowment Scholarship Act.

**History:** Laws 1995, ch. 35, § 4.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-21J-5. Scholarship authorized; administration; preference in scholarship awards.**

A. The commission [department] shall administer the Legislative Endowment Scholarship Act and shall adopt all rules, regulations and policies necessary to administer that act.

B. Scholarships shall be awarded to qualified applicants. Qualifications shall be determined by the commission [department] pursuant to its adopted rules, regulations and policies.

C. Preference in awarding scholarships shall be to qualified applicants who are returning students or transfer students from public two-year post-secondary educational institutions.

**History:** Laws 1995, ch. 35, § 5.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **21-21J-6. Duration of scholarship.**

Each scholarship is for a period of one academic year. A scholarship may be renewed until the award recipient has received four consecutive annual scholarship awards or until the student graduates from an eligible four-year institution, whichever occurs first.

**History:** Laws 1995, ch. 35, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **21-21J-7. Termination of scholarship.**

A scholarship is terminated upon occurrence of one or more of the following:

A. withdrawal of the award recipient from the institution or failure to remain at least a half-time student;

B. failure of the award recipient to achieve satisfactory academic progress; or

C. substantial noncompliance by the award recipient with the Legislative Endowment Scholarship Act or the rules, regulations or policies adopted by the commission [department] pursuant to that act.

**History:** Laws 1995, ch. 35, § 7.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **21-21J-8. Fund created.**

The "legislative endowment scholarship fund" is created in the state treasury. Money in the fund is appropriated to the commission [department] to carry out the purposes of the Legislative Endowment Scholarship Act. Money appropriated to the legislative endowment scholarship fund shall not be expended but shall be invested by the commission [department] in coordination with the state investment council and state treasurer's office. Income earned from investment of the fund shall be expended by the commission [department] for the purpose of providing legislative endowment scholarships to students at two-year public post-secondary educational institutions pursuant to the Legislative Endowment Scholarship Act.

**History:** Laws 1995, ch. 35, § 8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **ARTICLE 21K**

### **Education Trusts**

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

Chapter 21, Article 21K NMSA 1978 may be cited as the "Education Trust Act".

**History:** Laws 1997, ch. 259, § 1; 2014, ch. 76, § 1.

### **ANNOTATIONS**

**The 2014 amendment**, effective May 21, 2014, added the NMSA chapter and article for the Education Trust Act; and at the beginning of the sentence, deleted "Sections 1 through 7 of this act" and added "Chapter 21, Article 21K NMSA 1978".

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

As used in the Education Trust Act:

A. "account" means an individual trust account pursuant to a college investment agreement entered into pursuant to the college savings program;

B. "account owner" means the person who has entered into a college investment agreement with the board and is designated as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the beneficiary;

C. "beneficiary" means the person who is designated at the time the account is opened, or the person who replaces a designated beneficiary, as the person whose education expenses are expected to be paid from the account;

D. "board" means the education trust board;

E. "college investment agreement" means an agreement entered into by the board and an account owner to participate in the college savings program and establish an account to be used for the qualified higher education expenses of a beneficiary at an eligible institution of higher education;

F. "department" means the higher education department;

G. "financial institution" means a bank, broker-dealer, insurance company, mutual fund, savings and loan association or other financial entity;

H. "institution of higher education" means a post-secondary educational institution eligible to participate in student financial aid programs administered by the United States department of education;

I. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended; and

J. "manager" means a financial institution under contract with the board to serve as manager of a college savings plan in the college savings program and receive contributions on behalf of the program.

**History:** Laws 1997, ch. 259, § 2; 1999, ch. 221, § 1; repealed and reenacted by Laws 2014, ch. 76, § 2.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 2014, ch. 76, § 2 repealed former 21-21K-2 NMSA 1978, and enacted a new section, effective May 21, 2014.

**Cross references.** — For the federal Internal Revenue Code, see 26 U.S.C.S. § 1 et seq.

**The 1999 amendment**, effective June 18, 1999, in Subsection G, added "or, if approved by the board, another public or private post-secondary educational institution located in this state or any other state".

**21-21K-3. College savings program created; education trust fund created; purpose; investment of accounts by third parties; board review; program administration fund created; purpose.**

A. The "college savings program" is created to allow interested persons to enter into college investment agreements with the board as a means to save money to pay a beneficiary's eligible expenses for a college education. The college savings program may consist of one or more college savings plans. The board shall administer the college savings program through accounts established in the education trust fund pursuant to college investment agreements. Money in an account may be used by the beneficiary at any eligible institution of higher education in New Mexico or any other state.

B. The board shall develop and administer the college savings program in a manner that allows account owners and beneficiaries to obtain and maintain federal income tax benefits or treatment provided by the Internal Revenue Code for qualified state tuition programs and exemptions under the federal securities laws.

C. The "education trust fund" is created as a nonreverting fund in the state treasury. The fund shall be administered by the board to carry out the college savings program. The fund consists of separate trust accounts held in the name of account owners. Income from investment of the fund shall be credited to the separate accounts.

D. The board may contract with one or more managers to invest the contributions deposited to the education trust fund. The board and the managers shall account for each contribution by an account owner.

E. Amounts may be withdrawn or transferred from trust accounts in the education trust fund only as provided in the related college investment agreements. All money contributed to accounts established in the fund are held in trust by the board and the respective managers for the sole benefit of the respective account owners and beneficiaries.

F. The "program administration fund" is created as a nonreverting fund in the state treasury. The fund consists of all administrative and other fees received by the board pursuant to college investment agreements and contracts with managers and any other

money credited to the fund. The state treasurer shall invest the fund, and the investment income shall be credited to the fund. Money in the fund may be used to pay costs of establishing, marketing and otherwise administering the college savings program in accordance with the Education Trust Act. Disbursements from the fund shall be by warrants of the secretary of finance and administration on vouchers signed by the director of the board or the director's authorized representative.

**History:** Laws 1997, ch. 259, § 3; 1999, ch. 221, § 2; 2001, ch. 270, § 2; repealed and reenacted by Laws 2014, ch. 76, § 3.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 2014, ch. 76, § 3 repealed former 21-21K-3 NMSA 1978, and enacted a new section, effective May 21, 2014.

**Cross references.** — For the federal Internal Revenue Code, see 26 U.S.C.S. § 1 et seq.

**The 2001 amendment,** effective June 15, 2001, added Subsection D.

**The 1999 amendment,** effective June 18, 1999, in Subsection A, inserted "The board shall provide that" and "either", deleted "and regulations" following "state investment officer according to rules", and substituted "or by a private investment advisor, approved by the council, pursuant to a contract between the board and the investment advisor" for "for the investment of funds pursuant to the Education Trust Act" in the seventh sentence; deleted former Subsection C and redesignated former Subsection D as present Subsection C; and, in Subsection C, added the last sentence.

**Sovereign immunity.** — Subsection C of Section 21-21K-3 NMSA 1978 does not include an express or an implied grant of sovereign immunity. *Lu v. Education Trust Bd. of N.M.*, 2013-NMCA-010, 293 P.3d 186.

Where investors, who had entered into contracts with the defendants to participate in the state's qualified higher education tuition programs, sued defendants, including the state, for breach of contract for mismanaging the investors' investments; and the state argued that the provision of Subsection C of Section 21-21K-3 NMSA 1978 which limits the source of recovery to the education trust fund overrides Subsection A of Section 37-1-23 NMSA 1978 which waives governmental immunity for written contracts, the state was not immune from suit because Subsection C of Section 21-21K-3 NMSA 1978 places limits on liability and identifies sources of recovery, but does not expressly or impliedly grant sovereign immunity. *Lu v. Education Trust Bd. of N.M.*, 2013-NMCA-010, 293 P.3d 186.

**21-21K-4. Board created; members; appointment; terms of office.**

A. The "education trust board" is created. The board is administratively attached to the department, and the department shall provide administrative support for the board in carrying out its duties pursuant to the Education Trust Act. The board shall consist of the following voting members:

(1) the secretary of higher education or the secretary's designee, who shall be the ex-officio chair of the board;

(2) two members appointed by the governor;

(3) one member representing institutions of higher education appointed by the speaker of the house of representatives; and

(4) one member representing students at institutions of higher education, appointed by the president pro tempore of the senate.

B. The appointed members must possess knowledge, skill and experience in higher education, business or finance.

C. The appointed members shall serve six-year terms, with the exception of the member representing students, who shall be appointed for a two-year term. Vacancies on the board shall be filled by the respective appointing authority for the remainder of the vacating member's term.

D. Three members of the board constitute a quorum. Action may be taken by the board upon an affirmative vote of the majority of members present at the meeting at which a quorum is present. A vacancy in the membership of the board does not impair the right of a quorum to exercise the powers and duties of the board.

E. Members of the board shall be subject to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance for their service on the board.

**History:** Laws 1997, ch. 259, § 4; 2011, ch. 51, § 2; 2014, ch. 76, § 4.

## **ANNOTATIONS**

**The 2014 amendment**, effective May 21, 2014, changed the membership of the education trust board; specified the number of members to constitute a quorum; removed the authority of the board to adopt rules and regulations; in the catchline, after "office", deleted the "powers and duties"; in Subsection A, in the introductory paragraph, in the first sentence, deleted "There is created", and after "attached to the", added "is created", and in the second sentence, after "attached to the", deleted "higher education"; in Subsection A, Paragraph (2), at the beginning of the sentence, changed "one member" to "two members"; added Subsection D; and deleted former Subsection E, which authorized the board to adopt rules and regulations to carry out the provisions

of the Education Trust Act and to determine the cost of attendance at institutions of higher education.

**The 2011 amendment**, effective July 1, 2011, attached the board to the higher education department and removed the state investment officer as a member of the board.

## **21-21K-4.1. Board; powers and duties.**

A. The board may:

(1) adopt, amend or repeal and promulgate rules necessary to carry out the provisions of the Education Trust Act;

(2) sue and be sued;

(3) enter into contracts;

(4) employ or contract for professional, technical and clerical staff and independent counsel;

(5) contract with one or more financial institutions to manage the education trust fund and the separate trust accounts;

(6) enter into college investment agreements with interested persons to participate in the college savings program;

(7) charge, impose and collect administrative fees as provided in a college investment agreement or other contract relating to the college savings program in amounts not exceeding the reasonable costs of establishing, marketing and otherwise administering the program; and

(8) do those things necessary or convenient in accordance with the Education Trust Act to carry out the provisions of that act.

B. The board shall adopt and promulgate education trust fund investment guidelines and otherwise administer the college savings program in compliance with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

**History:** Laws 2014, ch. 76, § 5.

## **ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 76 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## **21-21K-5. College investment agreements; accounts.**

A. An account owner may enter into a college investment agreement with the board under which an account in the education trust fund is established and contributions may be made to the account from time to time, consistent with the terms of the agreement, to defray the cost of eligible higher education expenses at institutions of higher education. Each account shall be accounted for separately from all other accounts in the education trust fund. An account owner may enter into a college investment agreement on behalf of any beneficiary.

B. Gifts and bequests by persons other than the account owner may be made to an account in the education trust fund for the benefit of the beneficiary in accordance with the terms of the college investment agreement.

C. The board shall set forth procedures relating to the withdrawal of money from an account established in the education trust fund pursuant to a college investment agreement.

D. A college investment agreement may be terminated by the account owner at any time. The board shall specify by rule appropriate provisions for the term and termination of college investment agreements.

E. Contributions made to an account in the education trust fund, together with accrued investment earnings and capital appreciation in such account, shall be excluded from any calculation of the respective beneficiary's student financial aid eligibility in New Mexico.

F. The board shall notify each account owner annually about the status of the account owner's account in the education trust fund.

**History:** Laws 1997, ch. 259, § 5; 1999, ch. 221, § 3; 2000, ch. 39, § 1; 2001, ch. 270, § 3; repealed and reenacted by Laws 2014, ch. 76, § 6.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 2014, ch. 76, § 6 repealed former 21-21K-5 NMSA 1978, and enacted a new section, effective May 21, 2014.

**The 2001 amendment,** effective June 15, 2001, rewrote Subsection F, which formerly read "A college investment agreement terminates on the tenth anniversary of the date the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active duty member of the United States armed services"; and deleted "education trust" preceding "fund" in Subsection I.

**The 2000 amendment,** effective May 17, 2000, deleted the proviso that a beneficiary must be under the age of nineteen for an investor to enter into a college investment

agreement on their behalf in Subsection A, deleted former Subsection B, concerning age and residency restrictions of a beneficiary, deleted former Subsection D, concerning residency restrictions of a beneficiary or an investor, and renumbered the remaining subsections accordingly.

**The 1999 amendment**, effective June 18, 1999, in Subsection D, deleted the former last sentence which read "A beneficiary is considered a resident for purposes of tuition regardless of the beneficiary's residence on the date of enrollment"; in Subsection F, substituted "The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated" for "If the college investment agreement is terminated", deleted "the board shall refund to the investor an amount equal to all the principal contributed or paid in by the investor plus interest not to exceed four percent annually" following "provisions of this section" in the first sentence, and inserted "the amount refunded and" preceding "administrative costs" in the second sentence; and, in Subsection K, substituted "status of the education trust fund" for "balance of his college savings agreement principal, accrued investment earnings and capital appreciation".

## **21-21K-6. Claims of creditors; exemption; liability immunity; state not liable.**

A. Money credited to or expended from any account in the education trust fund by or on behalf of an account owner or beneficiary is exempt from all claims of creditors of the account owner, the beneficiary or the board.

B. If the board carries out its review responsibility of the manager's investment decisions consistent with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978], the board or an employee shall not be liable to anyone for any losses sustained as a result of investment decisions. A member of the board, while acting within the scope of the member's authority or while acting as a trustee of the education trust fund or any separate trust fund or account of the board, shall not be subject to any personal liability for any action taken or omitted within that scope of authority.

C. In no event shall any liability of or contractual obligation incurred by the college savings program obligate or encumber any of the state's funds or treasury, including but not limited to the state's general fund, land grant permanent funds, the severance tax permanent fund or any other permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to fulfill the terms of any college investment agreement or any other obligation or liability out of any source other than the education trust fund or the program administration fund.

**History:** Laws 1997, ch. 259, § 6; 1999, ch. 221, § 4; repealed and reenacted by Laws 2014, ch. 76, § 7.

## **ANNOTATIONS**



**Repeals and reenactments.** — Laws 2014, ch. 76, § 7 repealed former 21-21K-6 NMSA 1978, and enacted a new section, effective May 21, 2014.

## **21-21K-7. Reports.**

A. The board shall annually submit to the governor and to the appropriate interim legislative committee a report including:

- (1) the board's fiscal transactions during the preceding fiscal year;
- (2) the market value of the education trust fund as of the end of the preceding fiscal year;
- (3) the asset allocations of the education trust fund expressed in percentages of stocks, fixed income securities, cash or other financial assets; and
- (4) the rate of return on the investment of the education trust fund's assets during the preceding fiscal year.

B. The board shall make the report described by Subsection A of this section available to account owners.

**History:** Laws 1997, ch. 259, § 7; 1999, ch. 221, § 5; 2014, ch. 76, § 8.

### **ANNOTATIONS**

**The 2014 amendment**, effective May 21, 2014, changed the reporting requirements; in Subsection A, Paragraph (2), after "the market", deleted "and book"; in Subsection A, deleted former Paragraph (5), which required that the annual report include an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded; in Subsection A, deleted former Paragraph (6), which required that the annual report include complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education; and in Subsection B, after "available to", deleted "purchasers of prepaid tuition contracts and investments under college investment agreements" and added "account owners".

**The 1999 amendment**, effective June 18, 1999, in Subsection A, deleted "Not later than November 1 of each year" from the beginning and substituted "The board shall annually submit" for "The board shall submit".

## **ARTICLE 21L**

### **College Affordability**

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

Chapter 21, Article 21L NMSA 1978 may be cited as the "College Affordability Act".

**History:** Laws 2005, ch. 192, § 1; 2007, ch. 70, § 1; 2007, ch. 71, § 1; 2007, ch. 85, § 1.

### **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, changed the statutory reference to the act.

Laws 2007, ch. 70, § 1, Laws 2007, ch. 71, § 1 and Laws 2007, ch. 85, § 1 enacted identical amendments to this section.

### **21-21L-2. Purpose.**

The purpose of the College Affordability Act is to encourage New Mexico students with financial need to attend and complete educational programs at public post-secondary educational institutions in New Mexico.

**History:** Laws 2005, ch. 192, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 192 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **21-21L-3. Definitions.**

As used in the College Affordability Act:

A. "commission" or "department" means the higher education department;

B. "eligible student" means a New Mexico resident who is enrolled or enrolling at least half-time in a public post-secondary educational institution or tribal college at any time later than one hundred twenty days following high school graduation or the award of a high school equivalency credential;

C. "scholarship" means a college affordability scholarship; and

D. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the north central association of colleges and schools.

**History:** Laws 2005, ch. 192, § 3; 2007, ch. 70, § 2; 2007, ch. 71, § 2; 2007, ch. 85, § 2; 2015, ch. 122, § 6.

## **ANNOTATIONS**

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the definition of "eligible student" in the College Affordability Act; and in Subsection B, after "graduation or the award of a", deleted "general educational development certificate" and added "high school equivalency credential".

**The 2007 amendment**, effective July 1, 2007, deleted the definition of "returning adult" and "student" and added the definitions of "eligible student", "scholarship" and "tribal college".

### **21-21L-4. Conditions for eligibility.**

A scholarship may be awarded to an eligible student who:

- A. has not earned a baccalaureate degree at the time the scholarship is awarded;
- B. has demonstrated financial need consistent with the criteria promulgated by the department; and
- C. has complied with other rules promulgated by the department to carry out the provisions of the College Affordability Act.

**History:** Laws 2005, ch. 192, § 4; 2007, ch. 70, § 3; 2007, ch. 71, § 3; 2007, ch. 85, § 3.

## **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, added "eligible student" in place of prior requirements.

Laws 2007, ch. 70, § 3, Laws 2007, ch. 71, § 3 and Laws 2007, ch. 85, § 3 enacted identical amendments to this section.

### **21-21L-5. Scholarship authorized; administration; preference in scholarship awards.**

- A. The department shall administer the College Affordability Act and shall promulgate rules to carry out the provisions of that act.
- B. Scholarships shall be awarded to qualified eligible students. Qualifications shall be determined by rule of the department.
- C. The department shall allocate money to public post-secondary educational institutions and tribal colleges based on a student need formula calculated according to income reported on the free application for federal student aid and on the percentage of

the institution's students classified as returning adults who are otherwise ineligible for state financial aid.

D. Public post-secondary educational institutions and tribal colleges shall make awards to qualifying eligible students based on financial need in an amount not to exceed one thousand five hundred dollars (\$1,500) per semester as determined by rule of the department.

E. Money for the scholarship shall be placed in an account at the public post-secondary educational institution or tribal college in the name of the eligible student, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies.

**History:** Laws 2005, ch. 192, § 5; 2007, ch. 70, § 4; 2007, ch. 71, § 4; 2007, ch. 85, § 4; 2019, ch. 56, § 1.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, increased the per-student per-semester college affordability scholarship maximum amount; and in Subsection D, changed "one thousand dollars (\$1,000)" to "one thousand five hundred dollars (\$1,500)".

**The 2007 amendment**, effective July 1, 2007, required the higher education department to allocate money to public post-secondary educational institutions and tribal colleges and deleted the limitation on scholarship awards to eight consecutive semesters.

### **21-21L-6. Duration of scholarship.**

Each scholarship is for a period of one semester. A scholarship may be renewed, provided the eligible student continues to meet the conditions of eligibility, until the eligible student graduates from a four-year public post-secondary educational institution.

**History:** Laws 2005, ch. 192, § 6; 2007, ch. 70, § 5; 2007, ch. 71, § 5; 2007, ch. 85, § 5.

### **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, permitted a scholarship to be awarded until an eligible student graduates.

Laws 2007, ch. 70, § 5, Laws 2007, ch. 71, § 5 and Laws 2007, ch. 85, § 5 enacted identical amendments to this section.

### **21-21L-7. Termination of scholarship.**

A scholarship is terminated upon occurrence of one or more of the following:

A. withdrawal of the eligible student from the public post-secondary educational institution or tribal college or failure to remain as at least a half-time student;

B. failure of the eligible student to achieve satisfactory academic progress; or

C. substantial noncompliance by the eligible student with the College Affordability Act or the rules promulgated pursuant to that act.

**History:** Laws 2005, ch. 192, § 7; 2007, ch. 70, § 6; 2007, ch. 71, § 6; 2007, ch. 85, § 6.

### **ANNOTATIONS**

**The 2007 amendment**, effective July 1, 2007, changed "award recipient" to "eligible student" and added "tribal college".

Laws 2007, ch. 70, § 6, Laws 2007, ch. 71, § 6 and Laws 2007, ch. 85, § 6 enacted identical amendments to this section.

### **21-21L-8. Funds created.**

A. The "college affordability endowment fund" is created as a nonreverting fund in the state treasury, consisting of appropriations; unspecified gifts, grants and donations to the fund; and income from investment of the fund except as provided in Subsection C of this section.

B. The "college affordability scholarship fund" is created as a nonreverting fund in the state treasury, consisting of income from investment of the fund and any specified distributions, appropriations, gifts, grants and donations to the fund. Money in the scholarship fund is appropriated to the department for scholarship awards as provided in the College Affordability Act. Expenditures from the scholarship fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

C. Until fifty percent of the annual income from investment of the college affordability endowment fund is equal to or exceeds three million dollars (\$3,000,000), an annual distribution of three million dollars (\$3,000,000) shall be made from the college affordability endowment fund to the college affordability scholarship fund. Thereafter, until the corpus of the endowment fund is two hundred fifty million dollars (\$250,000,000), fifty percent of the income from investment of the fund shall be applied to the corpus of the fund and fifty percent shall be distributed annually to the scholarship fund. After the corpus of the endowment fund is two hundred fifty million dollars (\$250,000,000), all of the income from investment of the fund shall be distributed to the college affordability scholarship fund.

**History:** Laws 2005, ch. 192, § 8; 2007, ch. 70, § 7; 2007, ch. 71, § 7; 2007, ch. 85, § 7; 2019, ch. 56, § 2.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, increased the distribution from the college affordability endowment fund to the college affordability scholarship fund; and in Subsection C, changed "two million dollars (\$2,000,000)" to "three million dollars (\$3,000,000)".

**The 2007 amendment**, effective July 1, 2007, provided that the college affordability endowment fund and the college affordability scholarship fund are a nonreverting funds; required that until fifty percent of the annual income of the college affordability endowment fund equals \$2,000,000, an annual distribution of \$2,000,000 shall be made from the college affordability endowment fund to the college affordability scholarship fund; and required that after the corpus of the endowment fund is \$250,000,000, all income shall be distributed to the college affordability scholarship fund.

## **ARTICLE 21M**

### **Students with Disabilities Scholarship Act**

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

This act [21-21M-1 to 21-21M-8 NMSA 1978] may be cited as the "Students with Disabilities Scholarship Act".

**History:** Laws 2007, ch. 75, § 1 and Laws 2007, ch. 76, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 1 and Laws 2007, ch. 76, § 1 enacted identical provisions, effective June 15, 2007.

#### **21-21M-2. Purpose of act.**

The purpose of the Students with Disabilities Scholarship Act is to increase undergraduate enrollment of students with disabilities by establishing a scholarship program for those students in New Mexico's public post-secondary educational institutions.

**History:** Laws 2007, ch. 75, § 2 and Laws 2007, ch. 76, § 2.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 2 and Laws 2007, ch. 76, § 2 enacted identical provisions, effective June 15, 2007.

### **21-21M-3. Definitions.**

As used in the Students with Disabilities Scholarship Act:

- A. "award recipient" means a student with disabilities who receives an undergraduate scholarship;
- B. "department" means the higher education department;
- C. "secretary" means secretary of higher education; and
- D. "student with disabilities" means a student who has a record of a physical or mental condition that substantially limits one or more major life activities, including attention deficit disorder or other specific learning disabilities that the department recognizes as disabilities.

**History:** Laws 2007, ch. 75, § 3 and Laws 2007, ch. 76, § 3.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 3 and Laws 2007, ch. 76, § 3 enacted identical provisions, effective June 15, 2007.

### **21-21M-4. Conditions for eligibility and qualification; awards.**

- A. The department shall administer the Students with Disabilities Act and shall promulgate rules to carry out the provisions of that act.
- B. A student with disabilities may be awarded a scholarship pursuant to the Students with Disabilities Act if the student:
  - (1) is a resident of New Mexico for the purpose of tuition payment;
  - (2) has not earned a baccalaureate degree and is enrolled or will be enrolled at least half time in a degree program in a public post-secondary educational institution in New Mexico at the time the scholarship is awarded; and
  - (3) has complied with other rules promulgated by the department to carry out the provisions of that act.
- C. The department shall allocate money to public post-secondary educational institutions for scholarships for qualified students with disabilities based on the percentage of the institution's students classified as students with disabilities.

D. Public post-secondary educational institutions shall make awards to qualifying students in an amount not to exceed one thousand dollars (\$1,000) per semester as determined by rule of the department; provided that an award shall not exceed the actual cost of educational expenses.

E. Money for an awarded scholarship shall be placed in an account at the public post-secondary educational institution in the name of the student, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies.

**History:** Laws 2007, ch. 75, § 4 and Laws 2007, ch. 76, § 4.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 4 and Laws 2007, ch. 76, § 4 enacted identical provisions, effective June 15, 2007.

### **21-21M-5. Duration of scholarship.**

Each scholarship is for a period of one semester. A scholarship may be renewed, provided the award recipient continues to meet the conditions of eligibility, until the award recipient has graduated from an eligible four-year public post-secondary educational institution.

**History:** Laws 2007, ch. 75, § 5 and Laws 2007, ch. 76, § 5.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 5 and Laws 2007, ch. 76, § 5 enacted identical provisions, effective June 15, 2007.

### **21-21M-6. Termination of scholarship.**

A scholarship is terminated upon occurrence of one or more of the following:

A. withdrawal of the award recipient from the public post-secondary educational institution or failure to remain as at least a half-time student;

B. failure of the award recipient to achieve satisfactory academic progress; or

C. substantial noncompliance by the award recipient with the Students with Disabilities Scholarship Act or the rules promulgated pursuant to that act.

**History:** Laws 2007, ch. 75, § 6 and Laws 2007, ch. 76, § 6.

#### **ANNOTATIONS**



**Compiler's notes.** — Laws 2007, ch. 75, § 6 and Laws 2007, ch. 76, § 6 enacted identical provisions, effective June 15, 2007.

## **21-21M-7. Fund created.**

The "students with disabilities scholarship fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The department shall administer the fund and, subject to appropriation by the legislature, shall provide scholarships to students with disabilities as provided in the Students with Disabilities Scholarship Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

**History:** Laws 2007, ch. 75, § 7 and Laws 2007, ch. 76, § 7.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 7 and Laws 2007, ch. 76, § 7 enacted identical provisions, effective June 15, 2007.

## **21-21M-8. Report.**

A. Each public post-secondary educational institution shall submit an annual students with disabilities scholarship report to the department that includes information required by the department. The department shall submit an annual report to the legislative finance committee and to the legislative education study committee.

B. The department and public post-secondary educational institutions shall cooperate in data collection and data sharing and for other matters necessary to carry out the provisions of the Students with Disabilities Scholarship Act.

**History:** Laws 2007, ch. 75, § 8 and Laws 2007, ch. 76, § 8.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 75, § 8 and Laws 2007, ch. 76, § 8 enacted identical provisions, effective June 15, 2007.

## **ARTICLE 21N**

## **Legislative Lottery Tuition Scholarship**

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

Chapter 21, Article 21N NMSA 1978 may be cited as the "Legislative Lottery Tuition Scholarship Act".

**History:** Laws 2014, ch. 80, § 1; 2015, ch. 84, § 1.

## **ANNOTATIONS**

**The 2015 amendment**, effective June 19, 2015, changed the statutory reference of the Legislative Lottery Tuition Scholarship Act from "Sections 1 through 6 of this act" to "Chapter 21, Article 21N NMSA 1978".

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

As used in the Legislative Lottery Tuition Scholarship Act:

A. "community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively;

B. "comprehensive institution" means eastern New Mexico university, western New Mexico university, New Mexico highlands university or northern New Mexico college;

C. "department" means the higher education department;

D. "full time" means fifteen or more credit hours each semester of the regular academic year in state educational institutions and twelve or more credit hours each semester of the regular academic year in community colleges or for legacy students in any program semester;

E. "fund" means the lottery tuition fund;

F. "legacy student" means a full-time resident student who has received for three or more program semesters by the end of fiscal year 2014 the legislative lottery scholarship awarded pursuant to the former provisions of Sections 21-1-4.3, 21-13-10 and 21-16-10.1 NMSA 1978 prior to the enactment of the Legislative Lottery Tuition Scholarship Act;

G. "program semesters" means those semesters for which a legacy or qualified student may receive a tuition scholarship and excludes the first semester of attendance at a public post-secondary educational institution;

H. "public post-secondary educational institution" means a four-year state educational institution or a community college;

I. "qualified student" means a full-time student who graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who:

(1) either:

(a) within sixteen months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended a public post-secondary educational institution; or

(b) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and within sixteen months of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution; and

(2) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment;

J. "research institution" means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology;

K. "state educational institution" means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico;

L. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the higher learning commission; and

M. "tuition scholarship" means the scholarship that provides tuition assistance per program semester for a qualified student or legacy student attending a public post-secondary educational institution or tribal college.

**History:** Laws 2014, ch. 80, § 2; 2016, ch. 21, § 1; 2017, ch. 97, § 1; 2019, ch. 54, § 1.

## **ANNOTATIONS**

**The 2019 amendment**, effective July 1, 2019, defined "tribal college" as used in the Legislative Lottery Tuition Scholarship Act, and included tribal colleges among the institutions that receive funds from the lottery tuition fund; and added new Subsection L and redesignated former Subsection L as Subsection M, and in Subsection M, after "institution", added "or tribal college".

**The 2017 amendment**, effective June 16, 2017, revised the definition of "qualified student", provided a sixteen-month grace period for students to qualify for a legislative lottery tuition scholarship, and extended the grace period for qualified students who serve in the military between high school and college; in Subsection I, Subparagraph I(1)(a), deleted "immediately upon" and added "within sixteen months of", and after "receipt of a", added "high school equivalency", and in Subparagraph I(1)(b), after the first occurrence of "within", deleted "one hundred twenty days of completion of a high

school curriculum" and added "four months of graduation", and after the second occurrence of "within", deleted "one year" and added "sixteen months".

**The 2016 amendment**, effective May 18, 2016, clarified definitions as used in the Legislative Lottery Tuition Scholarship Act; in Subsection A, after "branch community college of a", added "four-year", and after the comma, added "a two-year state educational institution"; in Subsection H, after "means a", added "four-year state educational institution or a", and after "community college", deleted "comprehensive institution, research institution or state educational institution"; in Subsection K, after "New Mexico", deleted "and excludes a research institution"; and in Subsection L, after "assistance per", added "program".

### **21-21N-3. Tuition scholarships authorized; qualified students.**

A. To the extent that funds are made available by the legislature from the fund, the boards of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award tuition scholarships in department-approved amounts to qualified students and legacy students attending their respective public post-secondary educational institutions.

B. Beginning in fiscal year 2015:

(1) a legacy student is eligible to receive a tuition scholarship until the total number of program semesters for which the legislative lottery scholarship is received pursuant to the former provisions of Sections 21-1-4.3, 21-13-10 and 21-16-10.1 NMSA 1978 or the Legislative Lottery Tuition Scholarship Act reaches eight; provided that the legacy student maintains residency in New Mexico, maintains a grade point average of 2.5 or higher on a 4.0 scale and completes twelve or more credit hours per program semester; and

(2) a qualified student who is not a legacy student is eligible to receive the tuition scholarship for a maximum of seven program semesters and in an amount determined pursuant to the provisions of Section 21-21N-4 NMSA 1978.

C. Except as otherwise provided in this section, a tuition scholarship may be awarded to a qualified student who:

- (1) maintains residency in New Mexico;
- (2) maintains a grade point average of 2.5 or higher on a 4.0 scale; and
- (3) completes:

(a) for a student attending a four-year public post-secondary educational institution or a tribal college, fifteen or more credit hours per program semester; and

(b) for a student attending a two-year public post-secondary educational institution, twelve or more credit hours per program semester.

D. For students with disabilities who may require accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution or the tribal college that serves students with disabilities, shall review both the definition of "full time" and the maximum number of consecutive program semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student's disability needs. In no case, however, shall "full time" mean fewer than six credit hours per semester, and in no case shall eligibility extend beyond fourteen consecutive program semesters. The definition of "qualified student" notwithstanding, a New Mexico resident who had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act shall be eligible for a tuition scholarship if the student graduated from an accredited high school in another state and otherwise meets the qualifications for a tuition scholarship pursuant to the definition of "qualified student" and this section.

**History:** Laws 2014, ch. 80, § 3; 2016, ch. 21, § 2; 2019, ch. 33, § 1; 2019, ch. 54, § 2.

### ANNOTATIONS

**2019 Multiple Amendments.** — Laws 2019, ch. 33, § 1, effective June 14, 2019, and Laws 2019, ch. 54, § 2, effective July 1, 2019, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 54, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 33, § 1 and Laws 2019, ch. 54, § 2 are described below. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 33, § 1, extended scholarship eligibility to New Mexico residents who because of a disability left the state to receive a high school education pursuant to the federal Individuals with Disabilities Education Act, and Laws 2019, ch. 54, § 2, authorized tribal colleges to receive funds from the lottery tuition fund and to award scholarships to eligible students.

**Laws 2019 ch. 33, § 1**, effective June 14, 2019, extended scholarship eligibility to New Mexico residents who because of a disability left the state to receive a high school education pursuant to the federal Individuals with Disabilities Education Act; and in Subsection D, added the last sentence.

**Laws 2019, ch. 54, § 2**, effective July 1, 2019, authorized tribal colleges to receive funds from the lottery tuition fund and to award scholarships to eligible students and added "tribal colleges" in in Subsections A, C and D.

**The 2016 amendment**, effective May 18, 2016, clarified language as used in the Legislative Lottery Tuition Scholarship Act; in Subsection B, in Paragraph (1), after "total

number of", added "program", after "legislative lottery scholarship", deleted "was" and added "is", and after "credit hours per", added "program", in Paragraph (2), after "Section", deleted "4 of the Legislative Lottery Tuition Scholarship Act" and added "21-21N-4 NMSA 1978"; in Subsection C, in Subparagraph C(3)(a) after "credit hours per", added "program", and in Subparagraph C(3)(b), after "credit hours per", added "program"; in Subsection D, after each occurrence of "consecutive", added "program".

## **21-21N-4. Tuition scholarship amount; fund.**

A. Prior to June 1 of each year, based on the amount appropriated by the legislature from the fund and on the projected enrollment at all public post-secondary educational institutions and tribal colleges, the department shall:

- (1) determine the total amount of money available for all tuition scholarships for qualified students;
- (2) determine the award amount for research institutions, comprehensive institutions, tribal colleges and community colleges; and
- (3) notify all public post-secondary educational institutions and tribal colleges of the determinations made pursuant to Paragraphs (1) and (2) of this subsection.

B. In determining distribution and award amounts for the tuition scholarship program, the department shall:

- (1) maintain the minimum fund balance pursuant to Section 21-21N-5 NMSA 1978;
- (2) distribute to all public post-secondary educational institutions and tribal colleges an amount not to exceed the remaining balance in the fund; and
- (3) subject to the provisions of Paragraphs (1) and (2) of this subsection, distribute to each public post-secondary educational institution or tribal college an amount based on:

(a) the projected enrollment at each four-year public post-secondary educational institution and tribal college of qualified students in their first through seventh program semesters, including qualified students in their fourth through seventh program semesters who transferred from community colleges;

(b) the projected enrollment at each community college of qualified students in their first through third program semesters; and

(c) an award for each scholarship recipient distributed in amounts as follows:  
1) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution; 2) one thousand twenty dollars (\$1,020) per

scholarship per program semester for a student enrolled at a comprehensive institution or tribal college; and 3) three hundred eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college.

C. If the total amount available pursuant to Paragraph (1) of Subsection A of this section is less than the amount calculated in Subsection B of this section, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Subparagraph (c) of Paragraph (3) of Subsection B of this section.

D. If the total amount available pursuant to Paragraph (1) of Subsection A of this section is more than the amount calculated in Subsection B of this section, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Subparagraph (c) of Paragraph (3) of Subsection B of this section.

**History:** Laws 2014, ch. 80, § 4; 2016, ch. 21, § 3; 2018, ch. 70, § 1; 2019, ch. 54, § 3.

## **ANNOTATIONS**

**The 2019 amendment**, effective July 1, 2019, provided for tribal colleges to receive lottery tuition scholarship funds, and added "tribal colleges" throughout the section.

**The 2018 amendment**, effective July 1, 2018, amended the Legislative Lottery Tuition Scholarship Act to set flat award amounts for lottery scholarships depending on the sector of institution a student attends, and required the higher education department to reduce or increase scholarship award amounts, depending on available revenues, in a manner that maintains the distribution in the same proportions established in this act; in Paragraph A(2), after "determine the", deleted "uniform percentage by which to calculate tuition scholarships for qualified students attending any public post-secondary educational institution" and added "award amount for research institutions, comprehensive institutions and community colleges"; in Subparagraph B(3)(c), deleted "a uniform percentage of the average of in-state tuition costs charged by: 1) research institutions for each research institution; 2) comprehensive institutions for each comprehensive institution; and 3) community colleges for each community college, except that the uniform percentage for a two-year state educational institution shall be based on the uniform percentage for community colleges" and completely rewrote the subparagraph; and added Subsections C and D.

**The 2016 amendment**, effective May 18, 2016, clarified language as used in the Legislative Lottery Tuition Scholarship Act and specified that the uniform percentage by which scholarships are calculated for a two-year state educational institution is to be based on the uniform percentage for community colleges; in Subsection B, in Paragraph (1), after "Section", deleted "5 of the Legislative Lottery Tuition Scholarship Act" and added "21-21N-5 NMSA 1978", in Subparagraph B(3)(a), after "enrollment at each", deleted "comprehensive institution, research institution and state educational institution"

and added "four-year public post-secondary educational institution, after the first occurrence of "students in their", deleted "second through eighth" and added "first through seventh program", and after the second occurrence of "students in their", deleted "fifth through eighth" and added "fourth through seventh program", in Subparagraph B(3)(b), after "students in their", deleted "second through fourth" and added "first through third program", and in Subparagraph B(3)(c), added "except that the uniform percentage for a two-year state educational institution shall be based on the uniform percentage for community colleges".

## **21-21N-5. Lottery tuition fund created; purpose.**

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the department. Earnings from investment of the fund shall accrue to the credit of the fund. The fund shall maintain an annual average balance of two million dollars (\$2,000,000), and any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.

B. Money in the fund shall be appropriated by the legislature to the department for distribution to New Mexico's public post-secondary educational institutions and tribal colleges to provide tuition assistance for qualified students and legacy students as provided in the Legislative Lottery Tuition Scholarship Act.

**History:** Laws 1995, ch. 155, § 23; 1997, ch. 106, § 1; 2001, ch. 300, § 2; 1978 Comp., § 6-24-23, recompiled and amended as § 21-21N-5 by Laws 2014, ch. 80, § 5; 2019, ch. 54, § 4.

### **ANNOTATIONS**

**Recompilations.** — Laws 2014, ch. 80, § 5 recompiled and amended former 6-24-23 NMSA 1978 as 21-21N-5 NMSA 1978, effective March 12, 2014.

**The 2019 amendment,** effective July 1, 2019, provided for tribal colleges to receive funds from the lottery tuition fund; and in Subsection B, after "educational institutions", added "and tribal colleges".

**The 2014 amendment,** effective March 12, 2014, required that the fund maintain an annual average balance; provided that the fund shall be used to assist qualified students and legacy students; in Subsection A, in the second sentence, after "administered by the", changed "commission on higher education" to "department"; and at the beginning of the fourth sentence, added "The fund shall maintain an annual average balance of two million dollars (\$2,000,000), and"; and in Subsection B, after "Money in the", deleted "lottery tuition", changed "is" to "shall be", after "shall be appropriated", added "by the legislature", after "by the legislature", changed "commission on higher education" to "department", and after "tuition assistance for", deleted the "New Mexico undergraduates as provided by law" and added "qualified



students and legacy students as provided in the Legislative Lottery Tuition Scholarship Act".

**Appropriations.** — Laws 2014, ch. 80, § 9, effective March 12, 2014, appropriated \$11,000,000 from the student financial aid fund of the higher education department to the lottery tuition fund for expenditure in fiscal year 2014 and subsequent fiscal years to supplement the lottery tuition fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

## **21-21N-6. Department rulemaking and reporting.**

A. The department shall promulgate rules setting forth explicit criteria in accordance with the Legislative Lottery Tuition Scholarship Act for:

- (1) student qualification and continuing eligibility; and
- (2) calculating the tuition scholarship award amount pursuant to Section 4 [21-21N-4 NMSA 1978] of the Legislative Lottery Tuition Scholarship Act and guidelines for the administration of the tuition scholarship program.

B. The department shall report by November 1 of each year to the legislative finance committee and the department of finance and administration on:

- (1) the status of the fund;
- (2) tuition scholarship program participation data aggregated for each public post-secondary educational institution to show:
  - (a) the number of qualified students and the number of legacy students who received tuition scholarships in the prior twelve-month period;
  - (b) the total number of students, including qualified students and legacy students, enrolled in the prior twelve-month period;
  - (c) for each semester, the amount of tuition scholarships funded and the amount of tuition costs that were not offset by the tuition scholarship; and
  - (d) the number of qualified students and the number of legacy students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation; and
- (3) any additional information required or requested by the legislative finance committee or the department of finance and administration.

**History:** Laws 2014, ch. 80, § 6.

## ANNOTATIONS

**Emergency clauses.** — Laws 2014, ch. 80, § 11, contained an emergency clause and was approved March 12, 2014.

### **21-21N-7. Lottery student community outreach pilot project; tuition scholarship recipients; additional requirements; mentoring; training.**

A. The "lottery student community outreach pilot project" is created as a six-year study that encourages students who receive a tuition scholarship pursuant to the Legislative Lottery Tuition Scholarship Act at participating public post-secondary educational institutions or tribal colleges to volunteer to provide community outreach, chiefly through mentoring public school students. Tuition scholarship students are not required to participate to maintain their tuition scholarship. The purpose of the pilot project is to demonstrate that:

- (1) both mentors and mentees receive similar benefits, including improved grades and on-time graduation and a renewed sense of confidence, purpose and community and civic engagement;
- (2) this service improves the community in which the student volunteer works and the public school student lives;
- (3) mentoring by young adults can help disadvantaged public school students narrow the achievement gap; improve cognitive, social and behavioral skills; and lead to higher test scores and success in school; and
- (4) mentoring can also help the student volunteer improve the student volunteer's skills, test scores and success in college and inculcate civic and social engagement in community life.

B. The pilot project shall be administered by the department and shall be conducted with at least three public post-secondary educational institutions around the state, ideally with at least one from the research institutions, at least one from the comprehensive universities or tribal colleges and at least one from the branch and independent community colleges and with at least five hundred tuition scholarship students. Preference for the pilot project shall be given to institutions in areas with high poverty rates and in public schools with eighty-five percent or more of the students eligible for free or reduced-fee lunch and high English language learner populations. The department may expand the pilot project during its term to more participants.

C. The department shall certify a list of nonprofit community- and education-oriented organizations that maintain relationships with public schools with which student volunteers may work. The organizations shall identify public schools in their areas that are interested in having mentors and shall develop a mentoring training program for

student volunteers. The organizations shall also identify community-based outreach or specific community-based projects appropriate for students in their first program semester or students unable to mentor during the school year.

D. A participating community- and education-oriented organization shall monitor and evaluate the work of the student volunteers and the time spent mentoring or participating in community-based projects as well as the progress of the public school students being mentored.

E. The department shall determine application requirements and procedures for public post-secondary educational institutions, tribal colleges, nonprofit community- and education-oriented organizations and student volunteers to apply for the pilot project, criteria to evaluate applications and quantitative and qualitative measures of the pilot project's efficacy.

F. In addition to other requirements and qualifications in the Legislative Lottery Tuition Scholarship Act, a tuition scholarship student who participates in the pilot project shall provide at least two hours per week of community outreach with public school students in the area of the public post-secondary educational institution or tribal college the student attends. The community outreach shall consist of:

- (1) partnering with community-based organizations and assisting with community-based projects;
- (2) mentoring public school students; or
- (3) mentoring first-year college students.

G. The following schedule of community outreach for student volunteers is:

- (1) students in their first program semester shall partner with a community-based organization to assist it in community outreach or specific community-based projects;
- (2) students in their sophomore and junior years shall mentor students in grades kindergarten through twelve; and
- (3) students in their senior year shall mentor freshmen college students.

H. If a tuition scholarship student who wants to participate is unable to perform the community outreach service during the school year because of class load, work requirements or other reasons, the student volunteer may volunteer for an approved community outreach project that will be available for the student to participate in during semester breaks or the summer for a total of at least thirty-two hours.

I. Public schools that choose to participate in the pilot project shall identify willing students who would benefit from participation. The student's teacher or school principal shall work with the nonprofit organization and the student volunteer to determine what activities and types of engagement would benefit the mentee student.

J. The department shall establish reporting and evaluation requirements for all participants in the pilot project. The department shall provide interim and final reports annually to the governor and the legislature.

K. The participating public post-secondary educational institutions, tribal colleges, nonprofit community- and education-oriented organizations and public schools shall actively seek public and private grants and donations for any costs of the pilot project. Grants and donations shall be kept and expended as other grants and donations of the institution, tribal college, organization or public school.

**History:** Laws 2015, ch. 84, § 2; 2019, ch. 54, § 5.

### **ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, included tribal colleges in the lottery student community outreach pilot project, and added "tribal colleges" throughout the section.

**Applicability.** — Laws 2015, ch. 84, § 3 provided that the provisions of Laws 2015, ch. 84 apply to the fall 2016 and subsequent semesters of the lottery student community outreach pilot project's term.

## **ARTICLE 21O**

### **Teacher Preparation Affordability**

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

Sections 7 through 14 [13] of this act [21-21O-1 to 21-21O-7 NMSA 1978] may be cited as the "Teacher Preparation Affordability Act".

**History:** Laws 2019, ch. 193, § 7.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-210-2. Definitions.**

As used in the Teacher Preparation Affordability Act:

A. "department" means the higher education department;

B. "eligible student" means a New Mexico resident who is enrolled or enrolling at least half-time in an accredited public education department-approved teacher preparation program at a New Mexico public post-secondary educational institution or tribal college at any time later than one hundred twenty days following high school graduation or the award of a high school equivalency credential and who is pursuing a teaching degree;

C. "scholarship" means a teacher preparation affordability scholarship; and

D. "tribal college" means a tribally, federally or congressionally chartered tribal post-secondary educational institution located in New Mexico that is accredited by the north central association of colleges and schools.

**History:** Laws 2019, ch. 193, § 8.

### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-210-3. Conditions for eligibility.**

A scholarship may be awarded to an eligible student who:

A. has not earned appropriate educational credentials to be licensed as a teacher by the public education department;

B. has demonstrated financial need consistent with the criteria promulgated by the department; and

C. has complied with other rules promulgated by the department to carry out the provisions of the Teacher Preparation Affordability Act.

**History:** Laws 2019, ch. 193, § 9.

### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **21-210-4. Scholarship authorized; administration; preference in scholarship awards.**

A. The department shall administer the Teacher Preparation Affordability Act and shall promulgate rules to carry out the provisions of that act.

B. Scholarships shall be awarded to qualified eligible students. Qualifications shall be determined by rule of the department.

C. The department shall allocate money to public post-secondary educational institutions and tribal colleges based on a student need formula calculated according to income reported on the free application for federal student aid, on the number of students enrolled in each public education department-approved teacher preparation program at a New Mexico public post-secondary educational institution or tribal college and on the percentage of the teacher preparation program's students classified as returning adults who are otherwise ineligible for state financial aid.

D. Public post-secondary educational institutions and tribal colleges shall make awards to qualifying eligible students based on financial need in an amount not to exceed six thousand dollars (\$6,000) per year for not more than five years as determined by rule of the department.

E. Public post-secondary educational institutions and tribal colleges shall make awards first to qualifying eligible students who:

- (1) are English language learners;
- (2) are minority students; or
- (3) have declared intent to teach in a high-need teacher position as defined by the public education department.

F. After scholarships have been awarded to eligible students pursuant to Subsection E of this section, a public post-secondary educational institution or tribal college shall award scholarships to other eligible students as determined by department rule.

G. Money for the scholarship shall be placed in an account at the public post-secondary educational institution or tribal college in the name of the eligible student, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies, and living expenses.

**History:** Laws 2019, ch. 193, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-210-5. Duration of scholarship.**

Each scholarship is for a period of one semester. A scholarship may be renewed as long as the eligible student continues to meet the conditions of eligibility, until the eligible student graduates from a public post-secondary educational institution or tribal college.

**History:** Laws 2019, ch. 193, § 11.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-210-6. Termination of scholarship.**

A scholarship is terminated upon occurrence of one or more of the following:

A. the eligible student withdraws from the public post-secondary educational institution or tribal college or from the teacher preparation program or the eligible student fails to remain at least a half-time student;

B. the eligible student fails to achieve satisfactory academic progress; or

C. the eligible student is in substantial noncompliance with the Teacher Preparation Affordability Act or the rules promulgated pursuant to that act.

**History:** Laws 2019, ch. 193, § 12.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-210-7. Fund created.**

The "teacher preparation affordability scholarship fund" is created as a nonreverting fund in the state treasury that consists of income from investment of the fund; specified distributions; appropriations; and unspecified gifts, grants and donations to the fund. Money in the fund is subject to appropriation by the legislature to the department for scholarship awards as provided in the Teacher Preparation Affordability Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2019, ch. 193, § 13.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

# **ARTICLE 21P**

## **Grow Your Own Teachers**

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

Sections 1 through 8 [21-21P-1 to 21-21P-8 NMSA 1978] of this act may be cited as the "Grow Your Own Teachers Act".

**History:** Laws 2019, ch. 230, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Temporary provisions.** — Laws 2019, ch. 230, § 9 provided:

A. At any time before releasing proposed initial rules for the Grow Your Own Teachers Act, the higher education department shall consult with the public education department, and the two departments shall convene or survey a geographically representative sample of educational assistants who want to pursue higher education and teachers who began their education careers as educational assistants to hear problems and concerns based on their experiences, challenges and expectations in pursuing higher education in general and teacher licensure in particular. The higher education department shall take those problems and concerns into account when issuing proposed rules.



B. The public education department shall report the findings from the consultation or survey of educational assistants and teachers who began their career as educational assistants to all educational assistants in school districts, charter schools, constitutional special schools, state institutions and state agencies that employ educational assistants and shall include copies of the Grow Your Own Teachers Act and the proposed rules.

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

As used in the Grow Your Own Teachers Act:

A. "department" means the higher education department;

B. "educational assistant" means a United States citizen and resident of New Mexico who has worked as an educational assistant in a public school for at least two years and is in good standing with the school district and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico;

C. "public school" includes constitutional special schools and state institutions and state agencies that educate children and employ educational assistants; and

D. "teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**History:** Laws 2019, ch. 230, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-21P-3. Fund created; method of payment.**

The "grow your own teachers fund" is created in the state treasury. The fund consists of money appropriated for scholarships pursuant to the Grow Your Own Teachers Act, earnings from investment of the fund, gifts, grants and donations to the fund. Money in the fund shall not revert at the end of a fiscal year. The fund shall be administered by the department. All payments of money for loans shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designated representative.

**History:** Laws 2019, ch. 230, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-21P-4. Educational assistants; teacher preparation; professional leave.**

A. An educational assistant who wants to become a teacher may petition the public school in which the educational assistant is employed to grant professional leave for college classes, examinations and practice teaching, as needed. The public school shall grant professional leave if the educational assistant is a recipient of a scholarship pursuant to the Grow Your Own Teachers Act.

B. If an educational assistant who is accepted into or enrolled in a teacher preparation program offered by a regionally accredited public post-secondary educational institution in New Mexico does not live within a reasonable distance of the public post-secondary educational institution's campus, the public school shall allow the educational assistant to use the distance education resources of the school district to take classes.

**History:** Laws 2019, ch. 230, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-21P-5. Conditions for eligibility.**

A scholarship may be awarded to an educational assistant who:

A. has not earned appropriate educational credentials to be licensed as a teacher by the public education department;

B. has demonstrated financial need consistent with the criteria promulgated by the department; and

C. has complied with other rules promulgated by the department to carry out the provisions of the Grow Your Own Teachers Act.

**History:** Laws 2019, ch. 230, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-21P-6. Scholarship authorized; administration; preference in scholarship awards.**

A. The department shall administer the Grow Your Own Teachers Act and shall promulgate rules to carry out the provisions of that act.

B. Scholarships shall be awarded to qualified educational assistants. Qualifications shall be determined by rule of the department.

C. The department shall allocate money to public post-secondary educational institutions based on a student need formula calculated according to income reported on the free application for federal student aid and on the number of students enrolled in each public education department-approved teacher preparation program at a New Mexico public post-secondary educational institution.

D. Public post-secondary educational institutions shall make awards to qualifying eligible students based on financial need in an amount not to exceed six thousand dollars (\$6,000) per year for not more than five years as determined by rule of the department.

E. Money for the scholarship shall be placed in an account at the public post-secondary educational institution in the name of the educational assistant, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies.

**History:** Laws 2019, ch. 230, § 6.

## ANNOTATIONS

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Temporary provisions.** — Laws 2019, ch. 230, § 9 provided:

A. At any time before releasing proposed initial rules for the Grow Your Own Teachers Act, the higher education department shall consult with the public education department, and the two departments shall convene or survey a geographically representative sample of educational assistants who want to pursue higher education and teachers who began their education careers as educational assistants to hear

problems and concerns based on their experiences, challenges and expectations in pursuing higher education in general and teacher licensure in particular. The higher education department shall take those problems and concerns into account when issuing proposed rules.

B. The public education department shall report the findings from the consultation or survey of educational assistants and teachers who began their career as educational assistants to all educational assistants in school districts, charter schools, constitutional special schools, state institutions and state agencies that employ educational assistants and shall include copies of the Grow Your Own Teachers Act and the proposed rules.

### **21-21P-7. Duration of scholarship.**

Each scholarship is for a period of one semester. A scholarship may be renewed, as long as the educational assistant continues to meet the conditions of eligibility, until the educational assistant graduates from a public post-secondary educational institution.

**History:** Laws 2019, ch. 230, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **21-21P-8. Termination of scholarship.**

A scholarship is terminated upon occurrence of one or more of the following:

A. the educational assistant withdraws from the public post-secondary educational institution or from the teacher preparation program, or the educational assistant fails to remain at least a half-time student;

B. the educational assistant fails to achieve satisfactory academic progress; or

C. the educational assistant is in substantial noncompliance with the Grow Your Own Teachers Act or the rules promulgated pursuant to that act.

**History:** Laws 2019, ch. 230, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

# **ARTICLE 21Q**

## **Community Governance Attorney**

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

This act [21-21Q-1 to 21-21Q-5 NMSA 1978] may be cited as the "Community Governance Attorney Act".

**History:** Laws 2019, ch. 43, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43 effective July 1, 2019.

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

As used in the Community Governance Attorney Act:

A. "acequia" means a political subdivision organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978;

B. "colonia" means a community as defined in the Colonias Infrastructure Act [Chapter 6, Article 30 NMSA 1978];

C. "commission" means the community governance attorney commission;

D. "community governance attorney" means an attorney with a legal practice that is focused on the requirements and challenges faced by small political subdivisions and unincorporated communities, including the promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees;

E. "course of study" means a law student's legal education, including clinical and internship programs and preparation courses for the state bar examination;

F. "department" means the higher education department;

G. "fund" means the community governance attorney and conditional tuition waiver fund;

H. "land grant-merced" means a political subdivision organized pursuant to Chapter 49, Article 1 or 4 NMSA 1978;

I. "participant" means an individual who has applied to participate in, has been accepted into and has signed a contract agreeing to the terms of the program;

J. "program" means the community governance attorney and conditional tuition waiver program;

K. "secretary" means the secretary of higher education;

L. "university" means the university of New Mexico school of law; and

M. "waiver" means a loan to cover tuition, fees and a reasonable living stipend that is forgiven in whole or in part if the participant renders service as a community governance attorney.

**History:** Laws 2019, ch. 43, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43 effective July 1, 2019.

### **21-21Q-3. Community governance attorney and conditional tuition waiver program created; administration; rulemaking selection process; repayment.**

A. The "community governance attorney and conditional tuition waiver program" is created and shall be administered by the department. The department shall:

(1) promulgate rules for implementing the program and for a reasonable living stipend in consultation with the university; provided that the maximum living stipend shall be based upon the availability of funds and information provided by the university regarding the current cost of attendance at the university;

(2) publicize the program to law students and to prospective law students;

(3) collect and manage repayment from students who do not meet their obligations under the program; and

(4) solicit and accept funds for the program, including grants and donations.

B. Participants shall enter the program in their final year of law school. The department shall select participants according to rules it promulgates and, in consultation with the commission, shall create a standard process for law students to apply to participate in the program.

C. The department shall award no more than two new waivers a year, in addition to renewing existing waivers for eligible participants, subject to the availability of funding.

D. Participation in the program shall be evidenced by a contract between the participant and the department. The contract shall provide for the payment of a participant's waiver and shall be conditioned upon the participant fulfilling the program obligations and meeting the university's standards for satisfactory academic progress. An applicant to the program shall sign the contract prior to being accepted into the program.

E. The contract shall include the following terms for repayment of the waiver:

(1) interest shall accrue upon termination of the participant's course of study at the following interest rates:

(a) eighteen percent per year if the participant completes a course of study and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(b) seven percent per year in all other cases; and

(2) the maximum period for repayment shall be ten years, commencing six months from the date the participant completes or discontinues the course of study.

F. The contract shall provide that the department forgive fifty percent of a waiver for each year that a participant is employed full time as a community governance attorney with a salary of not more than fifty thousand dollars (\$50,000) per year.

**History:** Laws 2019, ch. 43, § 3.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43 effective July 1, 2019.

### **21-21Q-4. Commission; duties.**

A. The "community governance attorney commission" is created. The commission shall be composed of five members as follows:

(1) the secretary or the secretary's designee;

(2) the dean of the university or the dean's designee; and

(3) three members appointed by the governor; provided that one member shall be a member of an acequia, one member shall be a current or past member of the land grant council and one member shall be a current or past member of the colonias infrastructure board and a resident of a colonia.

B. Staff and meeting space for the commission shall be provided by the university. The commission shall elect a chair and such other officers as it deems appropriate and shall meet at the call of the chair. Members of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation.

C. The commission shall:

- (1) make recommendations to the department on applicants for the program;
- (2) advise the department on the adoption of rules to implement the provisions of the Community Governance Attorney Act;
- (3) pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], solicit proposals for disbursement from the fund for legal services;
- (4) enter into contracts for expenditure of the fund for the purpose of providing community governance attorney services for acequias, land grants-mercedes and low-income residents of colonias on issues regarding the governance of colonias. The contracts shall be entered into with the university or with nonprofit organizations whose mission is to provide a range of free legal services to low-income New Mexicans. No contract shall provide funding in excess of one-half of a full-time community governance attorney position, and each contract shall be executed only with service providers that have secured sufficient matching nonstate funding to provide a full-time position; and
- (5) adopt such rules as are necessary to carry out the provisions of this section.

D. The department, pursuant to rules of the commission, shall administer the contracts and programs provided for in this section.

**History:** Laws 2019, ch. 43, § 4.

## **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43 effective July 1, 2019.

### **21-21Q-5. Fund created; disbursement.**

A. The "community governance attorney and conditional tuition waiver fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accruing to the fund. All payments for repayment of waivers and penalties shall be credited to the fund. Balances in the fund shall not revert to any other fund at the end of a fiscal year.



B. Expenditures from the fund shall only be used to make waivers to participants in the program, to pay contracts for community governance attorney services and to pay the administrative expenses associated with the program and collection activity on its behalf; provided that no more than five percent of the annual expenditures from the fund shall be for administrative costs. The department shall require an annual accounting from each organization receiving funds pursuant to this section.

C. All waiver loan payments shall be by warrant drawn by the secretary upon vouchers signed by the designated representative of the department. All disbursements from the fund for community governance attorney services shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designee. Money in the fund is subject to appropriation by the legislature to the department for the purposes of carrying out the provisions of the Community Governance Attorney Act.

D. Money disbursed pursuant to this section shall not be used by a recipient to:

(1) support lobbying, as defined in the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978]; or

(2) bring suit against the state.

**History:** Laws 2019, ch. 43, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43 effective July 1, 2019.

## **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 the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

For authorization for program of loans to students of healing arts, see N.M. Const., art. IX, § 14.

**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.**

The purpose of the Medical Student Loan for Service Act 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 commission [department].

**History:** 1953 Comp., § 73-38A-2, enacted by Laws 1975, ch. 244, § 2; 1991, ch. 262, § 28; 1995, ch. 144, § 2; 2005, ch. 321, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For provisions on the health profession advisory committee, see 21-1-26.8 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changed "health profession advisory committee" to "commission".

**The 1995 amendment**, effective July 1, 1995, deleted Subsection B and, in the former Subsection A, deleted the subsection designation, substituted "health profession

advisory committee" for "medical shortage area committee" in the second sentence, and made a minor stylistic change at the end.

**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:

A. "commission" ["department"] means the commission on higher education [higher education department];

B. "loan" means a grant of funds to defray the costs incidental to a medical education under a contract between the commission [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 repealed 21-22-3.1 NMSA 1978, as enacted by Laws 1982, ch. 34, § 5, defining "students for the healing arts", effective June 19, 1987.

### **21-22-4. Medical student loans; higher education department authorized; qualifications.**

A. The higher education department is authorized to grant a loan to defray the expenses of the medical education of a student deemed qualified by the department to receive the medical education, upon such terms and conditions as may be imposed by regulations of the department.

B. The department 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 and who declare their intent to practice as physicians within designated areas of the state.

C. The department shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine the applicant's 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 medical education. The department shall give preference to qualified applicants who:

(1) are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining a medical education; and

(2) are attending an accredited New Mexico medical school.

D. The department 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; 2017, ch. 138, § 1.

## ANNOTATIONS

**Compiler's notes.** — House Bill 126, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, House Bill 126 was chaptered into law by the Secretary of State.

**The 2017 amendment**, effective March 15, 2017, required the department of higher education to give preference for financial assistance to qualified applicants who are attending an accredited New Mexico medical school, and changed "commission" to "department" throughout the section; in Subsection A, at the beginning of the sentence, changed "commission" to "higher education department"; and in Subsection C, replaced

"his" with "the applicant's" throughout the subsection, added the paragraph designation "(1)", and added Paragraph C(2).

**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 [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] may be granted a loan, in such amounts and for such periods as determined by the commission [department], with which to defray 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 [department] 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 F of this section; and

- (2) seven percent per year in all other cases.

C. Loans made pursuant to the Medical Student Loan for Service Act shall not accrue interest until:

- (1) the commission [department] determines the loan recipient has terminated the recipient's medical education prior to completion;

- (2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to serve in a health professional shortage area; or

- (3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] 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 over a period established by the commission [department] in consultation with the student after completion of medical school and any period of internship or residency required to complete the student's education.

E. Loans made to students who fail to complete their medical education shall become due immediately upon termination of their medical education. The commission [department], in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that a loan recipient practices his profession as a licensed physician or physician assistant in areas approved by the commission [department] as not being adequately served by medical practitioners. The loan shall be forgiven as follows:

- (1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

- (2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

- (3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second

year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. 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 [department].

H. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances for why the student cannot serve. If the commission [department] does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission [department] 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; 1995, ch. 144, § 3; 2005, ch. 321, § 2; 2005, ch 323, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**2005 Multiple Amendments.** — Laws 2005, ch. 321, § 2 and Laws 2005, ch. 323, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 323, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 321, § 2 and Laws 2005, ch. 323, § 1 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 323, § 1, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; in Subsection D, deleted the former provision which provided that the contract shall provide that immediately upon completion or termination of the student's medical education, all interest then accrued shall be capitalized; changed "principal plus accrued interest" to "loan"; and in Subsection H, provided that if the commission does not find acceptable circumstances for a student's failure to serve in a

health professional shortage area, the commission shall require repayment of the loan plus the amount of any interest.

Laws 2005, ch. 321, § 2, effective June 17, 2005, in Subsection E, changed "health professional advisory committee" to "commission".

**The 1995 amendment**, effective July 1, 1995, in Subsection E, substituted "health profession advisory committee" for "New Mexico medical shortage area committee", substituted Paragraphs (1) to (3) for a formula forgiving forty percent of the principal in the first year and thirty percent in the second and third years, regardless of the loan term, and made a stylistic change; redesignated the last two sentences of Subsection E as Subsection F; redesignated former Subsections F and G as Subsections G and H; and substituted "health professional shortage" for "medical shortage" in two places in Subsection G.

**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.

**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.

**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 [department] on behalf of the state. The commission [department] 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

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 shall be credited to the fund. All payments of principal and interest on loans made pursuant to that act received by the commission [department] 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 [department].

**History:** 1953 Comp., § 73-38A-8, enacted by Laws 1975, ch. 244, § 8; 1989, ch. 324, § 14; 1991, ch. 262, § 34.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission [department].

**History:** 1953 Comp., § 73-38A-9, enacted by Laws 1975, ch. 244, § 9; 1991, ch. 262, § 35.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "commission" for "board".

## **21-22-10. Reports.**

The commission [department] 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.

**History:** 1953 Comp., § 73-38A-10, enacted by Laws 1975, ch. 244, § 10; 1991, ch. 262, § 36.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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**

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

**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. Repealed**

**History:** 1978 Comp., § 21-22A-2, enacted by Laws 1978, ch. 109, § 2; 1991, ch. 262, § 38; 1995, ch. 144, § 4; 2005, ch. 321, § 3; repealed by Laws 2016, ch. 42, § 9.

#### **ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 42, § 9 repealed 21-22A-2 NMSA 1978, as enacted by Laws 1978, ch. 109, § 2, relating to purpose, effective May 18, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMOneSource.com*.

## 21-22A-3. Definitions.

As used in the Osteopathic Medical Student Loan for Service Act:

- A. "department" means the higher education department;
- B. "health professional shortage area" means an area in the state of New Mexico designated as having a shortage of primary care medical care, dental or mental health providers by the health resources and services administration of the United States department of health and human services;
- C. "loan" means a grant of funds to defray the costs incidental to an osteopathic medical education, under a contract between the department and an osteopathic medical student, requiring either repayment with interest or repayment in services;
- D. "osteopathic medical education" means the education required to be an osteopathic physician or osteopathic physician's assistant; and
- E. "student" means a person enrolled in a school of osteopathic medicine or an osteopathic physician's assistant program in New Mexico.

**History:** 1978 Comp., § 21-22A-3, enacted by Laws 1978, ch. 109, § 3; 1991, ch. 262, § 39; 1995, ch. 144, § 5; 2016, ch. 42, § 1.

### ANNOTATIONS

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department, and added definitions as used in the Osteopathic Medical Student Loan for Service Act; in Subsection A, after the subsection designation, deleted "'commission'" and added "department", and after "means the", deleted "commission on", and after "higher education", added "department"; added new Subsection B and redesignated the succeeding subsections accordingly; in Subsection C, after "contract between the", deleted "commission" and added "department"; in Subsection E, after "means", deleted "a resident of New Mexico who is a student" and added "a person", and after "assistant program", added "in New Mexico".

**The 1995 amendment**, effective July 1, 1995, rewrote Subsection C and added "or an osteopathic physician's assistant program" at the end of Subsection D.

**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; department authorized; qualifications.**

A. The department is authorized to grant a loan to defray the expenses of the osteopathic medical education of a student deemed qualified by the department to receive the osteopathic medical education, upon such terms and conditions as may be imposed by regulations of the department.

B. The department shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled in or accepted by a New Mexico college of osteopathic medicine or osteopathic physician's assistant program who declare their intent to practice as osteopathic physicians or osteopathic physician's assistants within designated areas of the state.

C. The department shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine the applicant's 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 an osteopathic medical education. The department 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 department shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of a practice as an osteopathic physician or osteopathic physician's assistant in a health professional shortage area.

**History:** 1978 Comp., § 21-22A-4, enacted by Laws 1978, ch. 109, § 4; 1991, ch. 262, § 40; 1995, ch. 144, § 6; 2016, ch. 42, § 2.

### **ANNOTATIONS**

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department; in the heading, deleted "commission" and added "department", throughout the section, deleted "commission" and added "department"; in Subsection B, after "accepted by", deleted "colleges" and added "a New Mexico college", and after "physician's assistant", deleted "programs who are bona fide citizens and residents of New Mexico and" and added "program"; in Subsection C, after "applicant and determine", deleted "his" and added "the applicant's", and after "ability of the applicant and", deleted "his" and added "the applicant"; and in Subsection D, after "osteopathic physician's assistant in", deleted "designated underserved areas" and added "a health professional shortage area".

**The 1995 amendment**, effective July 1, 1995, in Subsection B, deleted "on higher education" following "commission" in the section heading, inserted "or osteopathic

physician's assistant programs" in two places and made a stylistic change and, in Subsection D, substituted "a practice as an osteopathic physician or osteopathic physician's assistant" for "an osteopathic medical practice".

**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 department 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; 2016, ch. 42, § 3.

### **ANNOTATIONS**

**The 2016 amendment**, effective May 18, 2016, changed the reference to commission on higher education to the higher education department, and after "The", deleted "commission" and added "department".

**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 department may be granted a loan, in such amounts and for such periods as determined by the department, with which to defray expenses incurred in obtaining an osteopathic medical education at an accredited osteopathic medical school in New Mexico if the applicant files with the department a declaration of intent to practice as a licensed osteopathic physician or osteopathic physician's assistant in a health professional shortage area.

B. The loan shall not exceed the necessary expenses incurred while attending a New Mexico osteopathic medical school or college or osteopathic physician's assistant program and shall bear interest at the rate of:

(1) eighteen percent per year if the loan recipient completes an osteopathic medical education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Osteopathic Medical Student Loan for Service Act shall not accrue interest until the department:

(1) determines the loan recipient has terminated the recipient's osteopathic medical education prior to completion;

(2) determines the loan recipient has failed to fulfill the recipient's obligation to serve in a health professional shortage area; or

(3) cancels a contract between a loan recipient and the department pursuant to Section 21-22A-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the loan recipient and the department 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 over a period established by the department in consultation with the loan recipient after the completion of osteopathic medical school or an osteopathic physician's assistant program and any period of internship or residency required to complete the loan recipient's education.

E. Loans made to loan recipients who fail to complete their osteopathic medical education shall become due immediately upon termination of their osteopathic medical education. The department, in consultation with the loan recipient, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the department shall forgive a portion of the loan for each year that a loan recipient practices as a licensed osteopathic physician or osteopathic physician's assistant in a health professional shortage area and shall require a period of four years of service in exchange for the loan. Ten percent of the loan shall be forgiven upon completion of the first year of service, twenty percent of the loan shall be forgiven upon completion of the second year of service, thirty percent of the loan shall be forgiven upon completion of the third year of service and the remainder of the loan shall be forgiven upon completion of the fourth year of service.

G. Loan 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 department.

H. If a loan recipient completes a professional education and does not meet all requirements of this section, the department shall assess a penalty of up to three times

the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the requirements should be waived. If the department does not find acceptable extenuating circumstances for the loan recipient's failure to meet the requirements of this section, the department shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this section.

I. The department shall adopt rules to implement the provisions of this section. The rules 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; 1995, ch. 144, § 7; 2005, ch. 321, § 4; 2005, ch 323, § 2; 2016, ch. 42, § 4.

## ANNOTATIONS

**Cross references.** — For the health profession advisory committee, see 21-1-26.8 NMSA 1978.

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department, and provided for osteopathic medical student loans to students of a New Mexico college or osteopathic medicine or osteopathic physician's assistant program in exchange for service in a health professional shortage area; throughout the section, changed "commission" to "department", and changed "student" to "loan recipient"; in Subsection A, after "medical education at", deleted "any reputable and" and added "an", after "medical school in", deleted "in United States" and added "New Mexico", after "declaration of", deleted "his", after "intent to practice", deleted "his profession", and after "physician's assistant in", deleted "areas of New Mexico designated as not being adequately served by osteopathic medical practitioners" and added "a health professional shortage area"; in Subsection B, in the introductory sentence, after "while attending", deleted "an" and added "a New Mexico", and in Paragraph (1), after "completes", deleted "his" and added "an"; in Subsection C, in the introductory sentence, after "accrue interest until", added "the department", in Paragraph (1), after the paragraph designation, deleted "the commission", in Paragraph (2), after the paragraph designation, deleted "the commission", and after "obligation to serve in", deleted "an area of New Mexico designated as not being adequately served by osteopathic medical practitioners" and added "a health professional shortage area", in Paragraph (3), after the paragraph designation, deleted "the commission"; in Subsection F, after "recipient practices", deleted "his profession", and after "osteopathic physician's assistant in", deleted "areas approved by the commission as not being adequately served by osteopathic medical practitioners. The loan shall be forgiven as follows:", deleted Paragraphs (1) and (2) of Subsection F, deleted the subparagraph designation for Paragraph (3) and deleted "for loan terms of three years or more, forty", and added "a health professional shortage area and shall require a period of four years of service in exchange for the loan. Ten",



after "first year of service", deleted "in a designated health professional shortage area, thirty", after the comma, added "twenty", after "second year of service", added "thirty percent of the loan shall be forgiven upon completion of the third year of service", and after "remainder of the loan shall be forgiven upon completion of the", deleted "third" and added "fourth"; in Subsection G, after the subsection designation, added "Loan"; in Subsection H, after "recipient completes", deleted "his" and added "a", after "does not", deleted "serve in a health professional shortage area" and added "meet all requirements of this section", after the first occurrence of "extenuating circumstances for why the", deleted "student cannot serve" and added "requirements should be waived", and after "failure to", deleted "carry out his declared intent to serve in a health professional shortage area in the state", and added "meet the requirements of this section"; and in Subsection I, after "shall adopt", deleted "regulations" and added "rules", and after the second occurrence of "The", deleted "regulations" and added "rules".

**The 2005 amendment**, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's osteopathic medical education, all interest then accrued shall be capitalized; changed "health professional advisory committee" to "commission" in Subsection F; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve in a health professional shortage area, the commission shall require repayment of the loan plus the amount of any interest.

**The 1995 amendment**, effective July 1, 1995, substituted "health profession advisory committee" for "medical shortage area committee" throughout the section; inserted "or osteopathic physician's assistant" following "osteopathic physician" in Subsections A and E; inserted "or osteopathic physician's assistant program" following "medical school" in Subsections B and C; inserted "osteopathic" preceding "medical education" in Paragraph (1) of Subsection B, in the last sentence of Subsection C, and in Subsection D; in Subsection E, substituted Paragraphs (1) to (3) for a previous loan forgiveness formula; redesignated the last two sentences of Subsection E as Subsection F; and redesignated the remaining subsections accordingly.

**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.

**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.

**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.

## **21-22A-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 loan recipient and a designee of the department on behalf of the state. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from any loan recipient on any such contract.

**History:** 1978 Comp., § 21-22A-7, enacted by Laws 1978, ch. 109, § 7; 1991, ch. 262, § 43; 2016, ch. 42, § 5.

### **ANNOTATIONS**

**The 2016 amendment**, effective May 18, 2016, changed references to commission on higher education to the higher education department; after "signed by the", deleted "student" and added "loan recipient", after "designee of the", deleted "commission" and added "department", after "behalf of the state. The", deleted "commission" and added "department", and after "the state from any", deleted "student" and added "loan recipient".

**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 shall be credited to the fund. All payments of principal and interest on loans made pursuant to that act received by the department shall be deposited with the state treasurer to the credit of the fund or shall be deposited with the department's administrative agent. All payments of funds for loans shall be made upon vouchers signed by designated representatives of the department.

**History:** 1978 Comp., § 21-22A-8, enacted by Laws 1978, ch. 109, § 8; 1989, ch. 324, § 15; 1991, ch. 262, § 44; 2016, ch. 42, § 6.

### **ANNOTATIONS**

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department; after "received by the", deleted "commission" and added "department", after "deposited with the", deleted "commission's" and added "department's", and after "representatives of the", deleted "commission" and added "department".

**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 department is authorized to cancel any contract made between it and any loan recipient for any reasonable cause deemed sufficient by the department.

**History:** 1978 Comp., § 21-22A-9, enacted by Laws 1978, ch. 109, § 9; 1991, ch. 262, § 45; 2016, ch. 42, § 7.

### **ANNOTATIONS**

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department; after "The", deleted

"commission" and added "department", and after "between it and any", deleted "student" and added "loan recipient", after "sufficient by the", deleted "commission" and added "department".

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board".

## **21-22A-10. Reports.**

The department shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted and the names and addresses of persons to whom loans were granted and the osteopathic medical schools or colleges or osteopathic physician's assistant programs attended by those receiving the loans, together with a list of the names and locations of practice of those loan recipients who have completed their education and have become licensed osteopathic physicians or osteopathic physician's assistants in New Mexico as a result of a student loan pursuant to the Osteopathic Medical Student Loan for Service Act.

**History:** 1978 Comp., § 21-22A-10, enacted by Laws 1978, ch. 109, § 10; 1991, ch. 262, § 46; 1995, ch. 144, § 8; 2016, ch. 42, § 8.

### **ANNOTATIONS**

**The 2016 amendment**, effective May 18, 2016, changed the reference to "commission on higher education" to the higher education department; after "The", deleted "commission" and added "department", and after "locations of practice of those", deleted "students" and added "loan recipients".

**The 1995 amendment**, effective July 1, 1995, inserted "or osteopathic physician's assistant programs" following "colleges", inserted "or osteopathic physician's assistants" following "osteopathic physicians", and made a minor stylistic change.

**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

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, inserted "for Service".

### **21-22B-2. Purpose.**

The purpose of the Nursing Student Loan for Service Act 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 commission [department].

**History:** 1978 Comp., § 21-22B-2, enacted by Laws 1987, ch. 299, § 2; 1991, ch. 262, § 48; 1995, ch. 144, § 9; 2005, ch. 321, § 5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changed "health professional advisory committee" to "commission".

**The 1995 amendment**, effective July 1, 1995, substituted "health profession advisory committee" for "medical shortage area committee" at the end of the section.

**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:

A. "commission" ["department"] means the commission on higher education [higher education department];

B. "loan" means a grant of funds to defray the costs incidental to a nursing education, under a contract between the commission [department] and a nursing student, requiring repayment with services or repayment with interest;

C. "student" means a resident of New Mexico who is a student enrolled in a program of nursing; and

D. "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; 1995, ch. 144, § 10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, deleted Subsection C which defined "medical shortage area committee" and redesignated former Subsections D and E as Subsections C and D.

**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 [department] authorized; qualification.**

A. The commission [department] is authorized to grant a loan to defray the expenses of the nursing education of a student deemed qualified by the commission [department] to receive the same, upon such terms and conditions as may be imposed by regulations of the commission [department].

B. The commission [department] 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 [department] 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 [department] 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 [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 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 §§ 7, 31, 33.

#### **21-22B-5. Delegation of duties to other agencies.**

The commission [department] 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.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **21-22B-6. Nursing student loans; contract terms; repayment.**

A. Each applicant who is approved for a loan by the commission [department] may be granted a loan, in such amounts for such periods as determined by the commission [department], with which to defray expenses incurred in obtaining a nursing education; provided that the applicant files with the commission [department] 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 F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Nursing Student Loan for Service Act shall not accrue interest until:

(1) the commission [department] determines the loan recipient has terminated the recipient's nursing education prior to completion;

(2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice nursing in areas approved by the health profession advisory committee; or

(3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22B-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] 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 over a period negotiated between the student and the commission [department] after completion of a nursing program.

E. Loans made to students who fail to complete their nursing education shall become due immediately upon termination of nursing education. The commission [department], in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms with the commission [department].

F. The contract shall provide that the commission [department] may forgive a portion of the loan for each year that a loan recipient practices nursing in areas approved by the commission [department]. The loan shall be forgiven as follows:



(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. 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 [department].

H. The commission [department] 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; 1995, ch. 144, § 11; 2005, ch. 321, § 6; 2005, ch. 323, § 3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**2005 Multiple Amendments.** — Laws 2005, ch. 321, § 6 and Laws 2005, ch. 323, § 3 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 323, § 3, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 321, § 6 and Laws 2005, ch. 323, § 3 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 323, § 3, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's nursing education, all interest then accrued shall be capitalized; changed

"health professional advisory committee" to "commission" in Subsection F; and changed "principal plus accrued interest" to "loan".

Laws 2005, ch. 321, § 6, effective June 17, 2005, changed "health professional advisory committee" to "commission" in Subsection E.

**The 1995 amendment**, effective July 1, 1995, made a minor stylistic change in Subsection A, rewrote Subsection E, redesignated the last two sentences of Subsection E as Subsection F, and redesignated former Subsection F as Subsection G.

**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 [department] on behalf of the state. The commission [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 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 § 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 shall be credited to the fund and all payments of principal and interest on loans made pursuant to that act received by the commission [department] shall be deposited with the state treasurer for credit to the fund or shall be deposited with the commission's [department's] administrative agent. All payments for loans shall be made upon vouchers signed by the designated representatives of the commission [department].

**History:** 1978 Comp., § 21-22B-8, enacted by Laws 1987, ch. 299, § 8; 1989, ch. 324, § 16; 1991, ch. 262, § 51.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission [department].

**History:** 1978 Comp., § 21-22B-9, enacted by Laws 1987, ch. 299, § 9.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### 21-22B-10. Reports.

The commission [department] 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.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **ARTICLE 22C**

### **Allied Health Student Loan for Service**

#### **21-22C-1. Short title.**

Chapter 21, Article 22C NMSA 1978 may be cited as the "Allied Health Student Loan for Service Act".

**History:** Laws 1994, ch. 57, § 3; 2005, ch. 321, § 7.

### **ANNOTATIONS**

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added the statutory reference to the act.

#### **21-22C-2. Purpose.**

The purpose of the Allied Health Student Loan for Service Act 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 commission [department].

**History:** Laws 1994, ch. 57, § 4; 1995, ch. 144, § 12; 2005, ch. 321, § 8.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, changed "health professional advisory committee" to "commission".

**The 1995 amendment,** effective July 1, 1995, substituted "health profession advisory committee" for "medical shortage area committee" at the end of the section.

## **21-22C-3. Definitions.**

As used in the Allied Health Student Loan for Service Act:

A. "allied health profession" means physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care, laboratory technology, radiologic technology, dental hygiene, mental health services, emergency medical services or a licensed or certified health profession as defined by the department;

B. "department" means the higher education department;

C. "loan" means a grant of money to defray the costs incidental to an allied health profession education, under a contract between the department 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; 1995, ch. 144, § 13; 2007, ch. 77, § 1.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, included dental hygiene in "allied health profession".

**The 1995 amendment**, effective July 1, 1995, in Subsection A, deleted "practice" preceding "laboratory technology", inserted "or a licensed or certified health profession as defined by the commission", and made a minor stylistic change.

#### **21-22C-4. Allied health loans; qualifications.**

A. The commission [department] 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 and regulations adopted pursuant to that act.

B. The commission [department] 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 [department] 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 [department] shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the educational expenses.

D. The commission [department] shall arrange for loan recipients to receive assistance in locating appropriate practice positions in designated underserved areas.

**History:** Laws 1994, ch. 57, § 6.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### **21-22C-5. Delegation of duties.**

The commission [department] may arrange with other agencies for the performance of services required by the provisions of the Allied Health Student Loan for Service Act.

**History:** Laws 1994, ch. 57, § 7.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-22C-6. Allied health student loans; contract terms; repayment.**

A. Prior to receiving a loan, each applicant approved for a loan shall file with the commission [department] 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 F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Allied Health Student Loan for Service Act shall not accrue interest until:

(1) the commission [department] determines the loan recipient has terminated the recipient's allied health profession education prior to completion;

(2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice as a licensed allied health professional in areas of New Mexico designated as underserved; or

(3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22C-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] 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 over a period negotiated between the student and the commission [department] after completion of an allied health profession education.

E. Loans made to students who fail to complete their allied health profession education shall become due immediately upon termination of that education. The commission [department], in consultation with the student, shall establish repayment terms, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that a loan recipient practices an allied health profession in areas approved by the commission [department]. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. 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 [department].

H. If a loan recipient completes his professional education and does not serve the required number of years in a health professional shortage area, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances for why the student cannot serve. If the commission [department] does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission [department] 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; 1995, ch. 144, § 14; 2005, ch. 321, § 9; 2005, ch. 323, § 4.

## ANNOTATIONS



**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**2005 Multiple Amendments.** — Laws 2005, ch. 321, § 9 and Laws 2005, ch. 323, § 4 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 323, § 4, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 321, § 9 and Laws 2005, ch. 323, § 4 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 323, § 4, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's allied health profession education, all interest then accrued shall be capitalized; changed "health professional advisory committee" to "commission" in Subsection F; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve in a health professional shortage area, the commission shall require repayment of the loan plus the amount of any interest.

Laws 2005, ch. 321, § 9, effective June 17, 2005, changed "health professional advisory committee" to "commission" in Subsection E.

**The 1995 amendment**, effective July 1, 1995, substituted "receiving" for "granting" following "Prior to" in Subsection A; inserted "profession" following "allied health" in Subsections C and D; rewrote Subsection E; redesignated the last two sentences of Subsection E as Subsection F and redesignated the remaining subsections accordingly; and, in Subsection G, substituted "the required number of years" for "three years" and substituted "health profession shortage" for "medical shortage".

## **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 [department] on behalf of the state. The commission [department] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **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 shall be credited to the fund and all payments of principal and interest on loans made pursuant to that act received by the commission [department] shall be credited to the fund or shall be deposited with the commission's [department's] administrative agent. All payments for loans shall be made upon vouchers signed by the designated representative of the commission [department].

**History:** Laws 1994, ch. 57, § 10.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-22C-9. Cancellation.**

The commission [department] may cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 1994, ch. 57, § 11.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-22C-10. Reports.**

The commission [department] 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 health professionals who have completed their education and are serving in a health professional shortage area of the state and the name of each loan recipient who has completed his education and is not serving in a health professional shortage area, the reason the person is not serving and the amount owed and paid on the loan.

**History:** Laws 1994, ch. 57, § 12; 1995, ch. 144, § 15.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, substituted "health profession shortage" for "medical shortage" in two places.

## **ARTICLE 22D**

### **Health Professional Loan Repayment**

#### **21-22D-1. Short title.**

Chapter 21, Article 22D NMSA 1978 may be cited as the "Health Professional Loan Repayment Act".

**History:** Laws 1995, ch. 144, § 16; 2005, ch. 321, § 10.

### **ANNOTATIONS**

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added the statutory reference to the act.

## **21-22D-2. Purpose.**

The purpose of the Health Professional Loan Repayment Act is to increase the number of health professionals in underserved areas of the state through an educational loan repayment program. The act provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government or a commercial lender for health education purposes.

**History:** Laws 1995, ch. 144, § 17.

### **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## **21-22D-3. Definitions.**

As used in the Health Professional Loan Repayment Act:

A. "department" means the higher education department;

B. "health professional" means a primary care physician, optometrist, podiatrist, physician's assistant, dentist, nurse, member of an allied health profession as defined in the Allied Health Student Loan for Service Act [Chapter 21, Article 22C NMSA 1978] or a licensed or certified health professional as determined by the department;

C. "loan" means a grant of money to defray the costs incidental to a health education, under a contract between the federal government or a commercial lender and a health professional, requiring either repayment of principal and interest or repayment in services;

D. "nurse in advanced practice" means a registered nurse, including a:

(1) certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, authorized pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978] to function beyond the scope of practice of professional registered nursing; or

(2) certified nurse-midwife licensed by the department of health; and

E. "osteopathic primary care physician" means an osteopathic physician licensed pursuant to the Osteopathic Medicine Act with specialty training in family medicine, general internal medicine, obstetrics, gynecology or general pediatrics.

**History:** Laws 1995, ch. 144, § 18; 2017, ch. 91, § 1; 2019, ch. 68, §1.

## ANNOTATIONS

**The 2019 amendment**, effective June 14, 2019, defined "osteopathic primary care physician" as used in the Health Professional Loan Repayment Act; and added Subsection E.

**The 2017 amendment**, effective July 1, 2017, defined "nurse in advanced practice" as the term is used in the Health Professional Loan Repayment Act, and made technical changes; in Subsection A, deleted "'commission'" and added "'department'", after "means the", deleted "commission on", and after "higher education", added "department"; in Subsection B, after "as determined by the", deleted "commission" and added "department"; and added Subsection D.

### **21-22D-4. Commission [department] powers and duties; participant eligibility; qualifications.**

A. The commission [department] may grant an award to repay loans obtained for health educational expenses of a health professional upon such terms and conditions as may be imposed by regulations of the commission [department].

B. Applicants shall be licensed or certified to practice in New Mexico as health professionals and shall be bona fide citizens and residents of the United States and of New Mexico. Applicants shall declare their intent to practice as health professionals within designated health professional shortage areas of the state.

C. The commission [department] shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a health professional in the health professional loan repayment program.

D. The commission [department] shall assist selected health professionals in locating practice positions in designated health professional shortage areas.

**History:** Laws 1995, ch. 144, § 19.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

### **21-22D-5. Delegation of duties.**

The commission [department] may delegate to other agencies or contract for the performance of services required by the provisions of the Health Professional Loan Repayment Act.

**History:** Laws 1995, ch. 144, § 20.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

### **21-22D-6. Award criteria; contract terms; payment.**

A. Prior to receiving an award, the health professional shall file with the higher education department a declaration of intent to practice as a health professional in areas of New Mexico designated as underserved by the department.

B. Award criteria shall provide that:

(1) amounts shall be dependent upon the location of the practice, the applicant's total health professional education indebtedness and characteristics of the practice;

(2) preference in making awards shall be to individuals who have graduated from a New Mexico post-secondary educational institution;

(3) recruitment awards shall be made to eligible participants who agree to relocate to an approved designated area;

(4) highest priority shall be given to participants in practices in which health profession vacancies are difficult to fill, practices that require after hours call at least every other night and practices that have heavy obstetrical responsibilities;

(5) award amounts may be modified based upon available funding or other special circumstances; and

(6) an award shall not exceed the total medical education indebtedness of any participant.

C. The following education debts are not eligible for repayment pursuant to the Health Professional Loan Repayment Act:

- (1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;
- (2) scholarships that have a service component or obligation;
- (3) personal loans from friends or relatives; and
- (4) loans that exceed individual standard school expense levels.

D. The loan repayment award shall be evidenced by a contract between the health professional and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the health professional's debtors and shall state the obligations of the health professional under the program, including a minimum two-year period of service, quarterly reporting requirements and other policies established by the department.

E. 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 department.

F. If a health professional does not comply with the terms of the contract, the department shall assess a penalty of up to three times the amount of award disbursed plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the health professional cannot serve or comply with the terms of the contract. If the department does not find acceptable extenuating circumstances for the health professional's failure to comply with the contract, the department shall require immediate repayment plus the amount of the penalty.

G. The department shall adopt regulations to implement the provisions of this section. The regulations may provide for the disbursement of loan repayment awards to the lenders of health professionals in annual or other periodic installments.

**History:** Laws 1995, ch. 144, § 21; 2005, ch. 321, § 11; 2017, ch. 138, § 2.

### **ANNOTATIONS**

**Compiler's notes.** — House Bill 126, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections

must accompany a returned bill, House Bill 126 was chaptered into law by the Secretary of State.

**The 2017 amendment**, effective March 15, 2017, in Subsection A, after "shall file with the", deleted "commission" and added "higher education department", and replaced "commission" with "department" throughout the section.

**The 2005 amendment**, effective June 17, 2005, changed "health professional advisory committee" to "commission" in Subsection A.

## **21-22D-7. Contracts; enforcement.**

The general form of the contract required shall be prepared and approved by the attorney general and signed by the health professional and the designated representative of the commission [department] on behalf of the state. The commission [department] 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 1995, ch. 144, § 22.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## **21-22D-8. Fund created; method of payment.**

The "health professional loan repayment fund" is created in the state treasury. All money appropriated for the health professional loan repayment program shall be credited to the fund, and all payments for penalties or repayment of awards received by the commission [department] shall be credited to the fund or shall be deposited with the commission's [department's] administrative agent. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the commission [department] and upon warrant issued by the secretary of finance and administration.

**History:** Laws 1995, ch. 144, § 23.

### **ANNOTATIONS**



**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## **21-22D-9. Cancellation.**

The commission [department] may cancel any contract made between it and any health professional for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 1995, ch. 144, § 24.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## **21-22D-10. Reports.**

The commission [department] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loan repayment awards granted, the names and addresses of loan repayment award recipients, the names and locations of the practices of those health professionals who are serving in a designated health professional shortage area of the state pursuant to the Health Professional Loan Repayment Act and the name of each loan repayment award recipient who is not serving in a designated health professional shortage area, the reason the person is not serving and the amount owed and paid on the loan and loan repayment award.

**History:** Laws 1995, ch. 144, § 25.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

### **21-22D-11. Nurses in advanced practice; nursing excellence program; license renewal surcharge; eligibility for loan repayment assistance funded by other sources.**

A. The department shall apply funds appropriated to the department from the nursing excellence program license renewal surcharge established pursuant to Subsection B of Section 61-3-10.5 NMSA 1978 exclusively for health professional loan repayment assistance for nurses in advanced practice who practice in areas that the department has designated as underserved.

B. Eligibility for loan repayment assistance pursuant to the provisions of Subsection A of this section shall not render nurses in advanced practice ineligible for loan repayment assistance pursuant to the Health Professional Loan Repayment Act that derives from any other source of funding.

**History:** Laws 2017, ch. 91, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 91, § 4 made Laws 2017, ch. 91, § 2 effective July 1, 2017.

### **21-22D-12. Osteopathic physician excellence fund.**

The department shall apply funds appropriated to the department from the osteopathic physician excellence fund established pursuant to Section 3 [21-22D-13 NMSA 1978] of this 2019 act exclusively for health professional loan repayment assistance for osteopathic primary care physicians who are licensed pursuant to the Osteopathic Medicine Act [Chapter 61, Article 10 NMSA 1978] and who practice in areas of New Mexico that the department has designated as underserved.

**History:** Laws 2019, ch. 68, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-22D-13. Osteopathic physician excellence fund; creation; administration; appropriation.**

The "osteopathic physician excellence fund" is created in the state treasury to support awards established through the Health Professional Loan Repayment Act to osteopathic primary care physicians who practice in areas of New Mexico that the department has designated as underserved. The fund consists of license application and renewal surcharges pursuant to Section 61-10-6.1 NMSA 1978, appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to make awards established through the Health Professional Loan Repayment Act to osteopathic primary care physicians who practice in areas of New Mexico that the department has designated as underserved. Disbursements from the fund shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2019, ch. 68, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **ARTICLE 22E**

### **Teacher Loan for Service**

#### **21-22E-1. Short title.**

Chapter 21, Article 22E NMSA 1978 may be cited as the "Teacher Loan for Service Act".

**History:** Laws 2001, ch. 288, § 1; 2005, ch. 202, § 1.

### **ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.

#### **21-22E-2. Purpose.**

The purpose of the Teacher Loan for Service Act is to proactively address New Mexico's looming teacher shortage by providing students with the financial means to complete or enhance their post-secondary teacher preparation education.

**History:** Laws 2001, ch. 288, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

### **21-22E-3. Definitions.**

As used in the Teacher Loan for Service Act:

A. "commission" [department] means the commission on higher education [higher education department];

B. "loan" means a payment of money under contract between the commission [department] and a student that defrays the costs incidental to a teacher preparation program offered in a regionally accredited post-secondary educational institution in New Mexico and that requires repayment in services;

C. "student" means a United States citizen who is enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico; and

D. "teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to initial licensure or to additional licensure endorsements, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**History:** Laws 2001, ch. 288, § 3; 2005, ch. 202, § 2.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection D that a teacher preparation program includes a program in a two-year post-secondary

educational institution that meets the requirements for a teacher education transfer module established pursuant to Section 21-1B-4C NMSA 1978.

#### **21-22E-4. Teacher student loans authorized; qualifications.**

A. The commission [department] may grant a loan to a student deemed qualified by the commission [department] upon such terms and conditions as may be imposed by rule of the commission [department].

B. The commission [department] shall only receive, pass upon and allow or disallow an application for a loan made by a student who declares his intent to serve as a public school teacher in a designated teacher shortage area of New Mexico. Teacher shortage areas may be either geographic or discipline specific.

C. The commission [department] shall make a full and careful investigation of the ability and qualifications of each applicant to become a recipient of a loan. The commission [department] shall give preference to qualified applicants who demonstrate financial need.

D. The commission [department] and the state department of public education shall arrange for loan recipients to receive assistance in locating employment with public schools in New Mexico.

**History:** Laws 2001, ch. 288, § 4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

#### **21-22E-5. Delegation of duties to other state agencies.**

The commission [department] may arrange with other agencies for the performance of services required by the provisions of Section 4 [21-22E-4 NMSA 1978] of the Teacher Loan for Service Act.

**History:** Laws 2001, ch. 288, § 5.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

## **21-22E-6. Teacher loans; contract terms; repayment.**

A. Each applicant who is approved for a loan by the commission [department] may be granted a loan in such amounts and for such periods as the commission [department] determines. The loan shall not exceed the necessary expenses incurred while attending a teacher preparation program.

B. A loan shall bear interest at the rate of:

(1) eighteen percent per year if the loan recipient completes his teacher preparation program and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; or

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Teacher Loan for Service Act shall not accrue interest until:

(1) the commission [department] determines the loan recipient has terminated the recipient's teacher preparation program prior to completion;

(2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice as a licensed teacher in New Mexico; or

(3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22E-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the loan recipient and the commission [department] 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 teacher preparation program and shall be conditioned on the repayment of the loan to the state over a period established by the commission [department] after the completion of the teacher preparation program and any postgraduate study or internship required to complete the loan recipient's education.

E. A loan made to a recipient who fails to complete his teacher preparation program shall become due immediately upon termination of his teacher preparation program.

The commission [department], in consultation with the loan recipient, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that the loan recipient practices his profession as a licensed teacher in New Mexico. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. A loan recipient shall serve a complete contract year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department].

H. If a loan recipient completes his teacher preparation program and does not serve in a New Mexico public school, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances that prevent the loan recipient from serving. If the commission [department] does not find acceptable extenuating circumstances for the loan recipient's failure to carry out his declared intent to serve, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this section.

I. The commission [department] shall adopt and promulgate rules to implement the provisions of this section. The rules may provide for the repayment of loans in annual or other periodic installments.

**History:** Laws 2001, ch. 288, § 6; 2005, ch. 323, § 5.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added Subsections C(1) through (3) to provide that loans shall not accrue interest until the recipient has terminated the recipient's teacher preparation program prior to completion, the recipient has failed to fulfill the recipient's obligation to practice as a licensed teacher in New Mexico or the commission cancels a contract between a student and the commission; deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's education, all interest then accrued shall be capitalized; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve, the commission shall require repayment of the loan plus the amount of any interest.

## **21-22E-7. Contracts; legal assistance; enforcement.**

The general form of the contract shall be prepared and approved by the attorney general and signed by the loan recipient and a designee of the commission [department] on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from a loan recipient on a contract.

**History:** Laws 2001, ch. 288, § 7.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

## **21-22E-8. Fund created; method of payment.**

The "teacher loan for service fund" is created in the state treasury. Money appropriated for loans pursuant to the Teacher Loan for Service Act; earnings from investment of the fund; gifts, grants and donations to the fund; and all payments of principal and interest on loans made pursuant to that act shall be deposited in the fund. Money in the fund shall not revert at the end of a fiscal year. The fund shall be administered by the commission [department]. All payments of money for loans shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the commission's [department's] designated representative.

**History:** Laws 2001, ch. 288, § 8.



## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

### 21-22E-9. Cancellation.

The commission [department] may cancel a contract between it and a loan recipient for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 2001, ch. 288, § 9.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

### 21-22E-10. Reports.

The commission [department] shall report annually by January 1 to the governor and the legislature on its activities pursuant to the Teacher Loan for Service Act, including the loans granted, the names and addresses of loan recipients, the teacher preparation programs loan recipients are attending and the names and locations of practice of loan recipients who have completed their teacher preparation education and are teaching.

**History:** Laws 2001, ch. 288, § 10.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

## **ARTICLE 22F**

### **Public Service Law Loan Repayment Act**

#### **21-22F-1. Short title.**

Chapter 21, Article 22F NMSA 1978 may be cited as the "Public Service Law Loan Repayment Act".

**History:** Laws 2005, ch. 83, § 1; 2008, ch. 61, § 1.

#### **ANNOTATIONS**

**The 2008 amendment,** effective May 14, 2008, added the statutory reference to the act.

#### **21-22F-2. Purpose.**

The purpose of the Public Service Law Loan Repayment Act is to improve access to the justice system in New Mexico by increasing the number of attorneys in public service employment through a legal education loan repayment program.

**History:** Laws 2005, ch. 83, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### **21-22F-3. Definitions.**

As used in the Public Service Law Loan Repayment Act:

- A. "committee" means the public service law advisory committee;
- B. "department" means the higher education department;
- C. "legal education" means education at an accredited law school and any bar review preparation courses for the state bar examination;
- D. "loan" means money allocated to defray the costs incidental to a legal education under a contract between the federal government or a commercial lender and a law

school student, requiring either repayment of principal and interest or repayment in services;

E. "participating attorney" means an attorney who receives a loan repayment award from the department pursuant to the provisions of the Public Service Law Loan Repayment Act; and

F. "public service employment" means employment with:

(1) an organization that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services;

(2) the public defender department; or

(3) a New Mexico district attorney's office.

**History:** Laws 2005, ch. 83, § 3; 2008, ch. 61, § 2.

#### **ANNOTATIONS**

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1986, see 26 U.S.C.S. § 501(c)(3).

**The 2008 amendment,** effective May 14, 2008, deleted the definition of commission and added Subsection B.

#### **21-22F-4. Commission [department]; powers and duties.**

A. The commission [department] may:

(1) grant an award to repay loans obtained for legal education expenses of a participating attorney as consideration and inducement to the attorney to engage in public service employment; and

(2) delegate to other agencies or contract for the performance of services required by the provisions of the Public Service Law Loan Repayment Act.

B. The commission [department] shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a participating attorney in the public service law loan repayment program.

**History:** Laws 2005, ch. 83, § 4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-22F-5. Loan repayment program; participant eligibility; award criteria.**

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare an intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. Prior to receiving a loan repayment award, the applicant shall file with the department:

- (1) a declaration of intent to practice as an attorney in public service employment;
- (2) proof of prior application to all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and
- (3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration; provided that the applicant shall not be required to disclose amounts of income from military service.

D. Award criteria shall provide that:

- (1) preference in making awards shall be to applicants who:
  - (a) have graduated from the university of New Mexico law school;
  - (b) have the greatest financial need based on legal education indebtedness and salary;
  - (c) work in public service employment that has the lowest salaries; and

(d) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment;

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;

(3) award amounts are dependent upon the applicant's total legal education debt, salary and sources of income other than income from military service deemed by the department as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant;

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayment programs; and

(7) an award determination may be appealed to the secretary of higher education.

E. The following legal education debts are not eligible for repayment pursuant to the Public Service Law Loan Repayment Act:

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels.

**History:** Laws 2005, ch. 83, § 5; 2008, ch. 61, § 3; 2013, ch. 147, § 1; 2018, ch. 32, § 1.

## **ANNOTATIONS**

**The 2018 amendment**, effective July 1 2018, deleted the provision that attorneys who intend to practice in a public service employment position who earn more than \$55,000 are not eligible to participate in the public service law loan repayment program; deleted former Subsection C and redesignated former Subsections D through F as Subsections C through E, respectively.

**The 2013 amendment**, effective June 14, 2013, raised the cap for public service loan repayments; and in Subsection C, after "employment position that earns more than", deleted "forty-five thousand dollars (\$45,000)" and added "fifty-five thousand dollars (\$55,000)".

**The 2008 amendment**, effective May 14, 2008, in Paragraph (3) of Subsection D, provided that the applicant shall not be required to disclose amounts of income from military service; in Paragraph (3) of Subsection E, provided that award criteria shall not include income from military service; and added Paragraph (7) of Subsection E.

## **21-22F-6. Loan repayment contract terms; payment.**

A. The loan repayment award shall be evidenced by a contract between the participating attorney and the commission [department] acting on behalf of the state. The contract shall state the amount of the award and the obligations of the participating attorney under the public service law loan repayment program, including a minimum three-year period of service, quarterly reporting requirements and other policies established by the commission [department].

B. A participating attorney 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 [department]. The maximum credit for a year shall not exceed seven thousand two hundred dollars (\$7,200).

C. If a participating attorney does not comply with the terms of the contract, the commission [department] shall require immediate repayment of the award plus eighteen percent interest and may assess a penalty of up to three times the amount of award disbursed, unless the commission [department] finds acceptable extenuating circumstances for why the participating attorney cannot serve or comply with the terms of the contract. If the commission [department] does not find acceptable extenuating circumstances for the participating attorney's failure to comply with the contract, the commission [department] shall require immediate repayment of the award plus the amount of the penalty.

D. The commission [department], in consultation with the committee, shall adopt rules to implement the provisions of this section. The rules may provide for the disbursement of loan repayment awards in annual or other periodic installments.

**History:** Laws 2005, ch. 83, § 6.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-22F-7. Contracts; enforcement.**

The general form of the contract required shall be prepared and approved by the attorney general and the department of finance and administration and signed by the participating attorney and by the executive director of the commission [department] or the executive director's designated representative on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from any attorney on any such contract.

**History:** Laws 2005, ch. 83, § 7.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-22F-8. Public service law advisory committee; created; duties.**

A. The "public service law advisory committee" is created to advise the commission [department] on matters relating to the administration of the Public Service Law Loan Repayment Act.

B. The committee is composed of:

(1) the dean of the university of New Mexico law school or the dean's designee;

(2) the executive director of New Mexico legal aid or the director's designee who shall be an attorney employed with an organization that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code and that provides civil legal services to indigent persons in New Mexico;

- (3) the chief public defender or the chief's designee;
- (4) a district attorney appointed by the New Mexico district attorneys association; and
- (5) a financial aid or career services officer of the university of New Mexico law school designated by the dean.

C. The committee shall:

- (1) make recommendations to the commission [department] on applicants for the public service law loan repayment program;
- (2) advise the commission [department] on the adoption of rules to implement the provisions of the Public Service Law Loan Repayment Act; and
- (3) give advice or other assistance to the commission [department] as requested.

**History:** Laws 2005, ch. 83, § 8.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### 21-22F-9. Fund created; method of payment.

The "public service law loan repayment fund" is created in the state treasury. All money appropriated for the public service law loan repayment program shall be credited to the fund and all payments for repayment of awards or penalties received by the commission [department] shall be credited to the fund. All payments for loan repayment awards shall be by warrant of the secretary of finance and administration upon vouchers signed by the designated representative of the commission [department]. Any unexpended or unencumbered balance remaining in the public service law loan repayment fund at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2005, ch. 83, § 9.



## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **21-22F-10. Cancellation.**

The commission [department] may cancel any contract made between it and any participating attorney for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 2005, ch. 83, § 10.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **21-22F-11. Reports.**

The commission [department] shall make an annual report to the governor and the legislature, prior to each regular session, of its activities, including the loan repayment awards granted, the names and addresses of participating attorneys and their employers who are in public service employment pursuant to the Public Service Law Loan Repayment Act and the names of participating attorneys who are not employed in public service employment, the reason they are not employed in public service employment and the amounts owed and paid on loans and loan repayment awards.

**History:** Laws 2005, ch. 83, § 11.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **ARTICLE 22G**

### **Conditional Tuition Waiver for Primary Care Medical Students (Repealed.)**

#### **21-22G-1. Repealed.**

**History:** Laws 2009, ch. 225, § 1; repealed by Laws 2009, ch. 225, § 6.

#### **ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-1 MSA 1978, as enacted by Laws 2009, ch. 225, § 1, relating to the short title, effective January 1, 2020. For provisions of the former section, see the 2019 NMSA 1978 on *NMOneSource.com*.

#### **21-22G-2. Repealed.**

**History:** Laws 2009, ch. 225, § 2; repealed by Laws 2009, ch. 225, § 6.

#### **ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-2 NMSA 1978, as enacted by Laws 2009, ch. 225, § 2, relating to definitions, effective January 1, 2020. For provisions of former section, see the 2019 NMSA 1978 on *NMOneSource.com*.

#### **21-22G-3. Repealed.**

**History:** Laws 2009, ch. 225, § 3; repealed by Laws 2009, ch. 225, § 6.

#### **ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-3 NMSA 1978, as enacted by Laws 2009, ch. 225, § 3, relating to primary care physician conditional tuition waiver program created, administration, rulemaking, selection process, repayment, effective

January 1, 2020. For provisions of former section, see the 2019 NMSA 1978 on *NMOneSource.com*.

## **21-22G-4. Repealed.**

**History:** Laws 2009, ch. 225, § 4; repealed by Laws 2009, ch. 225, § 6.

### **ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-4 NMSA 1978, as enacted by Laws 2009, ch. 225, § 4, relating to creation of primary care physician conditional tuition waiver fund, effective January 1, 2020. For provisions of former section, see the 2019 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 22H**

### **Teacher Loan Repayment**

#### **21-22H-1. Short title.**

Chapter 21, Article 22H NMSA 1978 may be cited as the "Teacher Loan Repayment Act"

**History:** Laws 2013, ch. 177, § 1; 2019, ch. 193, §1.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, provided the statutory citation for the Teacher Loan Repayment Act; changed "This act" to "Chapter 21, Article 22H NMSA 1978".

#### **21-22H-2. Purpose.**

The purpose of the Teacher Loan Repayment Act is to increase the number of teachers in designated high-risk teacher positions in public schools through an educational loan repayment program. The act provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government for teacher education purposes.

**History:** Laws 2013, ch. 177, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### **21-22H-3. Definitions.**

As used in the Teacher Loan Repayment Act:

A. "department" means the higher education department;

B. "designated high-need teacher positions" means teacher positions in specific public schools that are:

(1) for teachers who are endorsed and teach bilingual education;

(2) for teachers who are endorsed and teach early childhood education or special education;

(3) for teachers who are endorsed and teach science, technology, engineering, mathematics or career technical education courses; or

(4) for teachers who are minorities; and

(5) in a public school that is low-performing or serves a high percentage of economically disadvantaged students; and

C. "loan" means a grant of money to defray the costs incidental to a teacher education, under a contract between the federal government and a teacher, requiring repayment of principal and interest.

**History:** Laws 2013, ch. 177, § 3; 2019, ch. 193, § 2.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, defined "designated high-need teacher" as used in the Teacher Loan Repayment Act; and in Subsection B, after "designated", deleted "high-risk" and added "high-need", after "that", added "are", and deleted former Paragraphs B(1) and B(2) and added new Paragraphs B(1) through B(5).

### **21-22H-4. Department powers and duties; teacher eligibility; qualifications.**

A. The department may grant a loan repayment award to repay loans obtained for the teacher educational expenses of a teacher upon such terms and conditions as may be imposed by rules of the department.

B. Applicants shall be licensed New Mexico teachers who are bona fide citizens and residents of the United States and of New Mexico and have taught at least three years

in New Mexico. High priority shall be given to applicants who are teaching in designated high-need teacher positions in the state.

C. The department and the public education department shall jointly make a full and careful investigation of the ability and qualifications of each applicant and determine the fitness of a teacher to participate in the teacher loan repayment program.

**History:** Laws 2013, ch. 177, § 4; 2019, ch. 193, § 3.

## **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, revised the qualifications for receiving a loan repayment award to repay loans obtained for the teacher educational expenses of a teacher; and in Subsection B, added "and have taught at least three years in New Mexico. High priority shall be given to", after "applicants", deleted "shall declare their intent to practice as teachers" and added "who are teaching", and after "designated", deleted "high-risk" and added "high-need".

### **21-22H-5. Loan repayment award criteria; contract terms; payment.**

A. Loan repayment award criteria shall provide that:

(1) for high-priority applicants, award amounts shall be dependent upon a specific public school's need for the designated high-need teacher position, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(2) award amounts for other teachers shall be based on the need for a teacher position that can be filled by the applicant, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(3) preference in making awards shall be to teachers who have graduated from a New Mexico public post-secondary educational institution;

(4) award amounts shall not exceed six thousand dollars (\$6,000) per year and may be modified based upon funding availability or other special circumstances; and

(5) the total amount of awards made to any one teacher shall not exceed the total teacher education indebtedness remaining for that teacher.

B. The following teacher education debts are not eligible for repayment pursuant to the Teacher Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) loans from a commercial lender;

(4) personal loans from friends or relatives; and

(5) loans that exceed individual standard school expense levels.

C. Every loan repayment award shall be evidenced by a contract between the teacher and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum each year to the teacher's federal government lender not to exceed six thousand dollars (\$6,000) per year and shall state the obligations of the teacher under the program, including a minimum two-school-year period of service, quarterly reporting requirements and other obligations established by the department. Execution of contracts shall occur prior to the start of a school year and the two-school-year period of service starts at the execution of the contract.

D. The department shall make annual payments pursuant to contracts only after satisfactory completion of a full year of teaching as certified by the public education department. The contract of any teacher who does not complete a full year of teaching shall be voided, and the teacher shall forfeit any right to that year's payment pursuant to the contract.

E. Each contract shall be for an initial two-year period and may be extended for three additional two-year contracts. The department shall not enter into any contracts with a single teacher for more than eight years of repayment.

F. Loan repayment awards shall be in the form of payments from the teacher loan repayment fund directly to the federal government lender of a teacher who has received the award and shall be considered a payment on behalf of the teacher pursuant to the contract between the department and the teacher. A loan repayment award shall not obligate the state or the department to the teacher's federal government lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

G. The department, after consulting with the public education department, shall adopt rules to implement the provisions of the Teacher Loan Repayment Act. The rules shall provide:

(1) a procedure for determining the amount of a loan that will be repaid for each year of service; and

(2) for the disbursement of loan repayment awards to a teacher's federal government lender in annual installments after completion of each qualifying full year of teaching.

**History:** Laws 2013, ch. 177, § 5; 2019, ch. 193, §4.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, revised the loan repayment award criteria, placed a maximum limit on the amount of a loan repayment award, and revised provisions related to contracts between a teacher and the higher education department; in Subsection A, Paragraph A(1), added "for high-priority applicants", and after "designated", deleted "high-risk" and added "high-need", added new Paragraph A(2) and redesignated former Paragraph A(2) as Paragraph A(3), deleted former Paragraph A(3), in Paragraph A(4), after "amounts", added "shall not exceed six thousand dollars (\$6,000) per year and", and in Paragraph A(5), after indebtedness", deleted "of" and added "remaining"; in Subsection C, after "stated sum", added "each year", after "federal government lender", added "not to exceed six thousand dollars (\$6,000)", after "period of service", deleted "in a designated high-risk teacher position", and after "established by the department.", added "Execution of contracts shall occur prior to the start of a school year and the two-school-year period of service starts at the execution of the contract."; deleted former Subsections D and E and added new Subsections D and E; in Subsection G, after "rules", added "shall provide", in Paragraph G(1), deleted "shall provide", after "year of service", deleted "in a designated high-risk teacher position", and in Paragraph G(2), deleted "may provide", after "annual", deleted "or other periodic", and after "installments", added "after completion of each qualifying full year of teaching".

### **21-22H-6. Contracts; enforcement.**

The general form of a contract required pursuant to the Teacher Loan Repayment Act shall be prepared and approved by the attorney general, and each contract shall be signed by the teacher and the designated representative of the department on behalf of the state. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a teacher under any such contract.

**History:** Laws 2013, ch. 177, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### **21-22H-7. Teacher loan repayment fund created; method of payment.**

The "teacher loan repayment fund" is created in the state treasury. All money appropriated for the teacher loan repayment program shall be credited to the fund, and any repayment of awards and interest received by the department shall be credited to the fund. Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is subject to appropriation by the legislature to the department for making loan repayment awards pursuant to the Teacher Loan Repayment Act. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

**History:** Laws 2013, ch. 177, § 7; 2019, ch. 193, § 5.

### **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, provided that money in the teacher loan repayment fund is subject to appropriation by the legislature; and after "Money in the fund", deleted "appropriated" and added "subject to appropriation by the legislature".

### **21-22H-8. Cancellation.**

The department may cancel any contract made between it and a teacher pursuant to the Teacher Loan Repayment Act for any reasonable cause deemed sufficient by the department.

**History:** Laws 2013, ch. 177, § 8.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### **21-22H-9. Reports.**

Prior to each regular session of the legislature, the department shall make annual reports to the governor and the legislature of the department's activities pertaining to the Teacher Loan Repayment Act; the loan repayment awards granted; the names and addresses of teachers who received loan repayment awards; the names and locations of the positions filled by those teachers; the name of each teacher who received a loan repayment award who is not serving in a designated high-need teacher position, the amount owed on each teacher's loan and the amount paid on each teacher's loan by loan repayment awards; and the number of teachers whose contracts were voided because they did not complete a full year of teaching.

**History:** Laws 2013, ch. 177, § 9; 2019, ch. 193, § 6.



## **ANNOTATIONS**

**The 2019 amendment**, effective June 14, 2019, revised requirements for the content of reports made by the higher education department to the legislature regarding the department's activities pertaining to the Teacher Loan Repayment Act; after "designated", deleted "high-risk" and added "high-need", after "teacher position", deleted "the reason the teacher is not serving in a designated high-risk teacher position", and after "repayment awards", added "and the number of teachers whose contracts were voided because they did not complete a full year of teaching".

## **ARTICLE 22I**

### **Children, Youth and Families Worker Loan Repayment**

#### **21-22I-1. Short title.**

This act [21-22I-1 to 21-22I-8 NMSA 1978] may be cited as the "Children, Youth and Families Worker Loan Repayment Act".

**History:** Laws 2015, ch. 16, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 1 effective July 1, 2015.

#### **21-22I-2. Purpose.**

The purpose of the Children, Youth and Families Worker Loan Repayment Act is to increase the number of public service workers employed with the children, youth and families department who are direct service providers in the protective services division or juvenile justice division of the children, youth and families department. That act provides for repayment of the principal and reasonable interest accrued on higher education loans obtained from the federal government or a commercial lender.

**History:** Laws 2015, ch. 16, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 2 effective July 1, 2015.

#### **21-22I-3. Definitions.**

As used in the Children, Youth and Families Worker Loan Repayment Act:

A. "applicant" means a person applying for an award;

B. "award" means the grant of money to repay loans;

C. "critical field" means social work or other academic field of study that leads to a bachelor's or master's degree and that the children, youth and families department has determined to be critical to the work of the protective services division or juvenile justice division of the children, youth and families department;

D. "department" means the higher education department;

E. "fund" means the children, youth and families worker loan repayment fund;

F. "loan" means a grant of money under contract between the student and the federal government or a commercial lender to defray the costs incidental to an undergraduate or master's level education in a critical field and that requires either repayment of principal and interest or repayment in services;

G. "program" means the children, youth and families public service worker loan repayment program, which provides money to repay student loans in a critical field; and

H. "public service worker" means an employee of the children, youth and families department with a completed bachelor's or master's degree in a critical field who works directly with children and families in either the protective services division or juvenile justice division of the children, youth and families department. The children, youth and families department shall provide an annual list to the department of job classifications that qualify as "public service workers" for the purposes of the Children, Youth and Families Worker Loan Repayment Act.

**History:** Laws 2015, ch. 16, § 3.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 3 effective July 1, 2015.

### **21-22I-4. Powers and duties.**

A. The department may:

(1) grant an award to repay loans obtained for a public service worker upon such terms and conditions as may be imposed by rule of the department; and

(2) delegate to other agencies or contract for the performance of services required by the program.

B. An applicant must be a public service worker before applying for the program.

**History:** Laws 2015, ch. 16, § 4.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 4 effective July 1, 2015.

### **21-22I-5. Awards; criteria; contract terms.**

A. Prior to receiving an award, the public service worker shall file an application with the department that meets the criteria established by rule of the department.

B. The following debts are not eligible for repayment pursuant to the Children, Youth and Families Worker Loan Repayment Act:

- (1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;
- (2) scholarships that have a service component or obligation;
- (3) personal loans from friends or relatives;
- (4) loans that exceed individual standard school expense levels; and
- (5) loans that are eligible for another state or federal loan repayment program.

C. Award criteria shall provide that:

- (1) the applicant has satisfactorily completed at least one year of service with the children, youth and families department as a public service worker;
- (2) the percentage of repayment directly relates to years of service completed as a public service worker;
- (3) the highest priority shall be given to public service workers who work in geographic areas or division positions where vacancies are difficult to fill as determined by the secretary of children, youth and families;
- (4) award amounts may be modified based on available funding or other special circumstances; and
- (5) an award for each public service worker shall not exceed twenty-five thousand dollars (\$25,000) or the loan indebtedness of the worker, whichever is less.

D. Every loan repayment award shall be evidenced by a contract between the public service worker and the department working on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the public service worker's federal government or commercial lender and shall state the obligations of the public service worker under the program as established by the department.

E. The contract between a public service worker and the department shall provide that, if the public service worker does not comply with the terms of the contract, the public service worker shall reimburse the department for all loan payments made on the public service worker's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the public service worker cannot serve or comply with the terms of the contract.

F. Loan repayment awards shall be in the form of payments from the fund directly to the federal government or commercial lender of a public service worker who has received the award and shall be considered a payment on behalf of the public service worker pursuant to the contract between the department and the public service worker. A loan repayment award shall not obligate the state or the department to a public service worker's lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

G. The department, after consulting with the children, youth and families department, shall adopt rules to implement the provisions of the Children, Youth and Families Worker Loan Repayment Act. The rules:

(1) shall provide a procedure for determining the amount of a loan that will be repaid; and

(2) may provide for the disbursement of loan repayment awards to the lender in annual or other periodic installments.

**History:** Laws 2015, ch. 16, § 5.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 5 effective July 1, 2015.

### **21-22I-6. Contracts; enforcement; cancellation.**

A. The general form of a contract required pursuant to the Children, Youth and Families Worker Loan Repayment Act shall be prepared and approved by the department's general counsel; and each contract shall be signed by the public service worker and the secretary of higher education or the secretary's authorized representative on behalf of the state. The department is vested with full and complete

authority and power to sue in its own name for any balance due the state from a public service worker under a loan repayment contract.

B. The department may cancel a contract made between it and a public service worker pursuant to the Children, Youth and Families Worker Loan Repayment Act for any reasonable cause deemed sufficient by the department.

**History:** Laws 2015, ch. 16, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 6 effective July 1, 2015.

### **21-22I-7. Loan repayment fund created.**

The "children, youth and families worker loan repayment fund" is created in the state treasury. The fund consists of appropriations, repayment of awards and interest received by the department, income from investment of the fund, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the department to make loan repayment awards pursuant to the Children, Youth and Families Worker Loan Repayment Act. Money in the fund at the end of a fiscal year shall not revert to any other fund. All payments for loan repayment awards shall be made on warrants of the secretary of finance and administration on vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2015, ch. 16, § 7.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 7 effective July 1, 2015.

### **21-22I-8. Reports.**

The department shall make annual reports to the governor and the legislature prior to each regular session of its activities, the loan repayment awards granted and the title and job duties of each loan recipient. The report shall also include any contract cancellations and any enforcement actions the department has taken.

**History:** Laws 2015, ch. 16, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 8 effective July 1, 2015.

## **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 Chapter 21, Article 2 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 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 department.

**History:** 1953 Comp., § 73-40-2, enacted by Laws 1971, ch. 303, § 2; 1975, ch. 148, § 2; 1994, ch. 108, § 3; 2013, ch. 59, § 1.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, assigned administration of the Post-Secondary Educational Institution Act to the higher education department; and after "established by the", deleted "commission" and added "department".

**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:

A. "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;

B. "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;

C. "department" means the higher education department;

D. "enrollment agreement" means an agreement, instrument or note executed before a person begins coursework that creates a binding obligation between the person and the post-secondary educational institution;

E. "license" means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department for offering a formal educational curriculum within New Mexico;

F. "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 from a physical site in New Mexico, through distance education, correspondence or in person;

G. "private post-secondary educational institution" means a nonpublicly funded post-secondary educational institution that offers post-secondary education for a fee to members of the general public;

H. "prospective student" means a person who demonstrates interest in signing an enrollment agreement with a post-secondary educational institution; and

I. "registration" means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate a private post-secondary educational institution.

**History:** 1953 Comp., § 73-40-3, enacted by Laws 1971, ch. 303, § 3; 1975, ch. 148, § 3; 1994, ch. 108, § 4; 2005, ch. 223, § 1; 2013, ch. 59, § 2; 2020, ch. 55, § 1.

## ANNOTATIONS

**The 2020 amendment**, effective January 1, 2021, defined "enrollment agreement", "private post-secondary educational institution" and "prospective student" as used in the Post-Secondary Educational Institution Act; added a new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively; and added new Subsections G and H and redesignated former Subsection F as Subsection I.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; deleted former Subsection A, which defined "commission"; added Subsection C; in Subsections D and F, deleted "commission" and added "department"; in Subsection F, after "acknowledgment by the" deleted "commission" and added "department" and after "as required by the", deleted "commission" and added "department, and is authorized to operate a private post-secondary educational institution".

**The 2005 amendment**, effective June 17, 2005, defined "license" in Subsection D to include a written acknowledgment that a non-regionally accredited college or university has met the requirement of the commission; defined "post-secondary educational institution" in Subsection E to mean an institution that offers courses, instruction, training or education, which may include distance education, from a physical site in New Mexico; and defined "registration" in Subsection F to mean an acknowledgment that a regionally accredited college or university has filed the information required by the commission.

**The 1994 amendment**, effective July 1, 1994, rewrote the section to the extent that a detailed comparison is impracticable.

## **21-23-4. Exceptions.**

A. The Post-Secondary Educational Institution Act does not apply to or affect:

(1) a post-secondary educational institution that is established by name as an educational institution by the state through a charter, constitutional provision or other action and is supported in whole or in part by state or local taxation;

(2) an occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

(3) a course of instruction provided by an employer to its own employees for training purposes;

(4) institutions that exclusively offer education that is solely avocational or recreational in nature;



(5) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(6) 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;

(7) institutions that exclusively offer instruction at any level from preschool through the twelfth grade;

(8) an institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico; and

(9) an organization that provides only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be a program of training in employment.

B. An institution, school or program described in this section shall not be entitled to an exemption unless it presents satisfactory evidence to the department that it qualifies.

**History:** 1953 Comp., § 73-40-4, enacted by Laws 1971, ch. 303, § 4; 1975, ch. 148, § 4; 1994, ch. 108, § 5; 2005, ch. 223, § 2; 2013, ch. 59, § 3.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, exempts post-secondary educational institutions established by the state; in Paragraph (1) of Subsection A, after "post-secondary educational institution", added "that is established by name as an educational institution by the state through charter, constitutional provision or other action and is"; deleted former Paragraph (6) of Subsection A, which exempted regionally accredited private colleges or universities; deleted former Paragraph (7) of Subsection A, which exempted proprietary schools; and in Subsection B, after "satisfactory evidence to the", deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, added Subsection A(11) to provide that the Post-Secondary Education Institution Act does not apply to an organization that provides only brief courses designed to teach specific skills.

**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 department.**

A. The department is charged with oversight of all private post-secondary educational institutions operating within the state.

B. The department shall provide for the registration of all regionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act.

C. The department shall provide for the licensure of all career schools and all nonregionally 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; 2005, ch. 223, § 3; 2013, ch. 59, § 4.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1994, ch. 108, § 6 repealed § 21-23-5, as amended by Laws 1975, ch. 148, § 5, relating to the requirement of certification, and enacted a new section, effective July 1, 1994.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; in the title of the section, deleted "commission" and added "department"; in Subsections A through C, deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection C that the commission shall provide for licensure of all non-regionally accredited colleges and universities.

**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 regionally accredited or seeking regional accreditation by an accrediting agency approved by the department shall register with the department.

B. A college or university registering with the department pursuant to this section shall provide curriculum and enrollment information, financial information and all publication materials requested by the department.

C. A college or university registering with the department shall adopt a procedure for the resolution of student complaints.

D. A college's or university's registration is valid for the same period as its grant of regional accreditation from its accrediting agency.

**History:** 1978 Comp., § 21-23-6, enacted by Laws 1994, ch. 108, § 7; 2005, ch. 223, § 4; 2013, ch. 59, § 5.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1994, ch. 108, § 7 repealed 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 enacted a new section, effective July 1, 1994.

**The 2013 amendment**, effective June 14, 2013, required registered colleges and universities to adopt procedures to handle student complaints; provided that a college's university's registration is valid for the same period as the term of its regional accreditation; in Subsections A and B, deleted "commission" and added "department"; and added Subsections C and D.

**The 2005 amendment**, effective June 17, 2005, changed "accredited" to "regionally accredited" and changes "accreditation" to "regional accreditation".

**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. A career school or nonregionally accredited college or university operating in New Mexico shall be licensed by the department. It is unlawful to operate a career school or nonregionally accredited college or university without first obtaining a license from the department.

B. A college or university operating in New Mexico that is not regionally accredited or is not seeking regional accreditation by an accrediting agency approved by the department shall be licensed by the department in the manner provided for career schools or other nonregionally accredited colleges or universities. It is unlawful to

operate a college or university that is not accredited or seeking accreditation by an accrediting agency approved by the department without first obtaining a license from the department.

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; 2005, ch. 223, § 5; 2013, ch. 59, § 6.

## **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Subsections A and B, deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that a non-regionally accredited college or university operating in New Mexico shall be licensed by the commission; changed "accredited" to "regionally accredited" and changed "accreditation" to "regional accreditation" in Subsection B; and provided in Subsection B that a college or university that is operating in New Mexico but that is not regionally accredited or seeking regional accreditation shall be licensed in the manner provided for non-regionally accredited colleges or universities.

### **21-23-6.2. Licensure standards; requirements; fee authorization.**

A. Every career school and nonregionally accredited college and university operating in the state shall annually apply to the department for licensure. The career school and nonregionally accredited college or university shall apply on forms approved by the department, shall supply all information requested by the department and shall pay an annual licensure fee set by the department.

B. The department or its designee shall consider information submitted by the career school and nonregionally accredited college or university, information from independent accreditation bodies and information gathered during visits to the career school and nonregionally accredited college or university in determining eligibility for licensure.

C. The department shall promulgate and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules that:

(1) require each career school and nonregionally accredited college and university 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 and nonregionally accredited colleges and universities;

(3) provide for a tuition refund policy;

(4) require maintenance of adequate records by each career school and nonregionally accredited college and university 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 or nonregionally accredited college or university licensed pursuant to the Post-Secondary Educational Institution Act has entered into a teach-out agreement with at least one other private or public institution operating in the state unless the department determines that such an agreement is not feasible;

(7) provide standards for the award of associate, baccalaureate, master's and doctoral degrees;

(8) require all degree-granting schools to seek appropriate external accreditation by an agency recognized by the federal department of education as a means of assuring quality instruction;

(9) name an advisory committee of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities;

(10) provide for the maintenance of records for career schools and nonregionally accredited colleges and universities no longer in operation;

(11) provide standards for the evaluation of the financial stability and ability to meet the commitments of career schools and nonregionally accredited colleges and universities;

(12) require each career school and nonregionally accredited college and university 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 department may solicit information pertaining to the financial history and stability of a career school or nonregionally accredited college or university and its owners, including information pertaining to actions of bankruptcy filed within the

immediately preceding five years. The department may consider such information in determining eligibility for licensure.

**History:** 1978 Comp., § 21-23-6.2, enacted by Laws 1994, ch. 108, § 9; 2005, ch. 223, § 6; 2013, ch. 59, § 7.

## **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Subsections A through D, deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that every non-regionally accredited college or university operating in New Mexico shall annually apply for a license; provided in Subsection B that the commission shall consider information submitted by the non-regionally accredited college or university and information gathered during visits to the non-regionally accredited college or university in determining eligibility for licensure; provided in Subsections C (1), (2), (4), (6), (9), (10), (11) and (12) that rules promulgated by the commission shall apply to non-regionally accredited college or university; provided in Subsection C(8) that the rules promulgated by the commission shall require all degree granting schools to seek accreditation by an agency recognized by the federal department of education; and provided in Subsection D that the commission shall solicit information about the financial history and stability of non-regionally accredited college or university and their owners.

### **21-23-6.3. Fee authorization.**

A. The department may 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 department shall consider the projected revenue of the institution and the projected cost of performing the review.

B. The department may establish an annual licensing fee for all career schools or nonregionally accredited colleges or universities licensed by the department. 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. The department may charge a reasonable administrative fee not to exceed the actual cost of providing the administrative service.

D. All fees imposed and collected by the department shall be deposited in the post-secondary educational institution fund.

**History:** 1978 Comp., § 21-23-6.3, enacted by Laws 1994, ch. 108, § 10; 2005, ch. 223, § 7; 2013, ch. 59, § 8.

## **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Subsections A through D, deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection B that the commission may establish an annual license fee for non-regionally accredited colleges and universities license by the commission and added Subsection C to provide that the commission may charge a reasonable administrative fee not to exceed the actual cost of providing administrative services.

### **21-23-7. Claims; limitations; appeals.**

A. Any person having a claim against a college, university or career school registered or licensed by the department or that college's, university's or career school's agents, instructors or other personnel shall first seek resolution of the claim with the college, university or career school; thereafter, a person may file a verified complaint with the department, setting forth the basis of the claim and the name and address of the college, university or 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 college, university or career school or its agents or employees.

B. Upon the receipt of a verified complaint, the department or its authorized employee shall attempt to resolve the claim outlined in the complaint. The department or its authorized employee may convene a hearing and shall give written notice to the college, university or 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 department to be correct, the department shall invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

D. Any person aggrieved by a department 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; 2013, ch. 59, § 9.

## ANNOTATIONS

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 1995-NMSC-072, 120 N.M. 778, 907 P.2d 182.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; provided for resolution of claims against registered colleges and universities; in Subsections A through D, deleted "commission" and added "department"; in Subsection A, in the first sentence, after "having a claim against a", added "college, university or", after "university or career school" added "registered or", after "licensed by the department or that", added "college's, university's or", after "the claim with the", added "college, university or", and after "and address of the", added "college, university or", and in the second sentence, after "fee received by the", added "college, university or"; and in Subsection B, in the second sentence, after "written notice to the", added "college, university or".

**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 college, university or career school registered or licensed by the department shall post with the department and maintain in effect a surety bond. The bond shall be payable to the department and shall be sufficient in amount to indemnify any student damaged as a result of fraud or misrepresentation by a registered or licensed college, university or career school or as a result of the college, university or career school ceasing operation prior to its students having completed the programs for which they have contracted.

B. The department is authorized to establish the amount of bond required on an individual basis, taking into consideration factors such as the college's, university's or career school's size, number of students and total income and assets of the college, university or 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 college's, university's or career school's gross annual tuition revenue in New Mexico.

C. Surety bonds may be canceled only following delivery of written notice to the department no less than ninety days prior to the date of cancellation. In case of cancellation, the college, university or career school shall provide the department with a like surety or acceptable alternative in order to maintain licensure.

D. As an alternative to a surety bond, a college, university or career school may elect to and the department may require that a college, university or career school establish and maintain a cash deposit escrow account, irrevocable letter of credit or alternative payable to the department in an amount set by the department and subject to rules promulgated by the department. In no case shall the deposit or account required exceed twenty percent of the college's, university's or career school's gross tuition annual revenue in New Mexico.

**History:** 1978 Comp., § 21-23-7.1, enacted by Laws 1994, ch. 108, § 12; 2013, ch. 59, § 10.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; provided for surety bonds by registered colleges and universities; in Subsections A through D, deleted "commission" and added "department"; in Subsection A, at the beginning of the first sentence, added "college, university or", in the second sentence, after "misrepresentation by a", added "registered or", after "registered or licensed", added "college, university or", and after "as a result of the", added "college, university or"; in Subsection B, in the first sentence, after "factors such as the", added "college's, university's or" and after "assets of the", added "college, university or", and in the second sentence, after "twenty percent of a", added "college's or university's or"; in Subsection C, in the second sentence, after "cancellation, the", added "college, university or"; and in Subsection D, after "surety bond, a", added "college, university or", after "require that a", added "college, university or", and after "and subject to", deleted

"regulations" and added "rules", and in the second sentence, after "twenty percent of the", added "college's, university's or".

## **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 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 secretary of higher education or the secretary's authorized representative.

**History:** 1953 Comp., § 73-40-8, enacted by Laws 1975, ch. 148, § 8; 1977, ch. 247, § 193; 1989, ch. 324, § 17; 2013, ch. 59, § 11.

### **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.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in the fourth sentence, after "vouchers signed by the", deleted "executive director" and added "secretary", after "secretary of" deleted "the commission on", and after "higher education", added "or the secretary's authorized representative".

**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 repealed 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 the 1993 NMSA 1978 on *NMOneSource.com*.

## **21-23-10. Disciplinary actions; civil penalties.**

A. A person shall not:

(1) operate a career school or nonregionally accredited college or university within the state until that school has been licensed by the department;

(2) operate a regionally accredited college or university within the state until that college or university has registered with the department;

(3) deny enrollment to or make any distinction or classification of students in the program or practices of any post-secondary educational institution under the jurisdiction of the department on account of race, color, culture, ancestry, national origin, sex, age, religion or disability; or

(4) 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.

B. Whoever violates any provision of this section may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation. Civil penalties shall be credited to the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

C. After an investigation, the department may take any one or a combination of the following disciplinary actions against a post-secondary educational institution registered or licensed in accordance with the Post-Secondary Educational Institution Act:

(1) revoke a license;

(2) revoke the registration, if the institution has had its regional accreditation revoked by its accrediting agency;

(3) assess a civil penalty as provided in Subsection B of this section; or

(4) impose probation requirements.

**History:** 1953 Comp., § 73-40-9, enacted by Laws 1971, ch. 303, § 9; 1975, ch. 148, § 10; 1994, ch. 108, § 13; 2005, ch. 223, § 8; 2013, ch. 59, § 12.

## **ANNOTATIONS**

**Cross references.** — For misrepresenting permit or certificate as approval or accreditation, see 21-23-14 NMSA 1978.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; authorized the higher education department to revoke an institution's registration if its regional accreditation is revoked; in Subsections A and C, deleted "commission" and added "department"; in Subsection C, in the introductory sentence,

after "educational institution", added "registered or"; and added Paragraph (2) of Subsection C.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A(1) that a person shall not operate a non-regionally accredited college or university without a license from the commission; provided in Subsection A(2) that a person shall not operate a regionally accredited college or university without registration with the commission; provided in Subsection B that civil penalties shall be credited to the current school fund; and added Subsection C to provide the disciplinary action the commission may take against post-secondary educational institutions.

**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).

**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 department or any state or local prosecuting officer may, by request or on the officer's own motion, bring an appropriate action in any court of competent jurisdiction to enforce the provisions of the Post-Secondary Educational Institution Act.

**History:** Laws 1994, ch. 108, § 14; 2013, ch. 59, § 13.

## **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and at the beginning of the sentence, deleted "commission" and added "department".

## **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.

**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.

**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 higher education department shall cooperate with federal and other state agencies in administering the provisions of the Post-Secondary Educational Institution Act. The secretary of state shall cooperate with the higher education department by identifying post-secondary educational institutions that apply for corporate charters. The public education department shall cooperate with the higher education department 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; 2013, ch. 59, § 14; 2013, ch. 75, § 12.

## ANNOTATIONS

**2013 Multiple Amendments.** — Laws 2013, ch. 59, § 14, effective June 14, 2013, and Laws 2013, ch. 75, § 12, effective July 1, 2013, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 75, § 12, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 59, § 14 and Laws 2013, ch. 75, § 12 are described below. To view the session laws in their entirety, see the 2013 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2013, ch. 59, § 14 replaced "commission" with "department" and Laws 2013, ch. 75, § 12 replaced "commission" with "higher education department".

Laws 2013, ch. 75, § 12, effective July 1, 2013, assigned administration of the Post-Secondary Educational Institution Act to the department of higher education and required the secretary of state to assist the department identify post-secondary educational institutions that apply for charters; deleted "commission" and added "higher

education department" throughout the section, and in the second sentence, deleted "state corporation commission" and added "secretary of state".

Laws 2013, ch. 59, § 14, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the department of higher education; required the secretary of state to assist the department identify post-secondary educational institutions that apply for charters; deleted "commission" and added "department" throughout the section, and in the second sentence, at the beginning of the sentence, deleted "state corporation commission" and added "secretary of state".

**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 department 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. 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; 2013, ch. 59, § 15.

## **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in the first sentence, at the beginning of the sentence, deleted "commission" and added "department".

**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 department 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; 2013, ch. 59, § 16.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in the first sentence, after "license by the", deleted "commission" and added "department".

**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 rules of the department 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 department 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; 2013, ch. 59, § 17.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Paragraph (3) of Subsection A and in Subsection B, deleted "commission" and added "department".

**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.

## **21-23-16. Disclosure agreements.**

A. Every private post-secondary educational institution shall disclose to every prospective student prior to enrollment the total estimated cost of attendance for the prospective student's program, including:

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the private post-secondary educational institution, including costs for rental or purchase of any equipment, materials or supplies required of all students in the same program;

(2) an allowance for books, supplies, transportation and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the private post-secondary educational institution on at least a half-time basis, as determined by the institution;

(3) an allowance, as determined by the private post-secondary educational institution, for room and board costs incurred by the student that, for:

(a) a student without dependents residing in that institution's owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(b) a student who lives in housing located on a military base or for which a basic allowance is provided under federal law, shall be an allowance based on the expenses reasonably incurred by such students for board but not for room;

(4) for a less than half-time student, as determined by the private post-secondary educational institution, tuition and fees and an allowance for only:

(a) books, supplies and transportation, as determined by the institution; and

(b) room and board costs, as determined in accordance with Paragraph (3) of this subsection;

(5) for a New Mexico student engaged in a program by correspondence within New Mexico, only tuition and fees and, if required, books and supplies, travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) for an incarcerated student, only tuition and fees and, if required, books and supplies;



(7) for a student enrolled in an academic program in a program of study abroad approved for credit by the student's home private post-secondary educational institution, reasonable costs associated with such study, as determined by the private post-secondary educational institution at which the student is enrolled;

(8) for a student with a disability, an allowance, as determined by the private post-secondary educational institution, for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment and supplies that are reasonably incurred and not provided for by other assisting agencies;

(9) for a New Mexico student receiving all or part of the student's instruction by means of telecommunications technology within New Mexico, no distinction shall be made with respect to the mode of instruction in determining costs; and

(10) at the option of the private post-secondary educational institution, for a student in a program requiring professional licensure or certification, the one-time cost of obtaining the first professional credentials, as determined by the institution.

B. Every private post-secondary educational institution shall disclose to every prospective student prior to enrollment:

(1) the length in semesters of the prospective student's program;

(2) the number of credit hours, or the equivalent information, required to complete the prospective student's program;

(3) the private post-secondary educational institution's cancellation and refund policy;

(4) the completion rates for both full-time and part-time students of the prospective student's program;

(5) the withdrawal rates of students pursuing the prospective student's program;

(6) the average combined loan debt for federal loans, institutional loans and private loans certified by the private post-secondary educational institution, for all students who completed the prospective student's program during the most recently completed award year;

(7) the placement rate for the prospective student's program, if the private post-secondary educational institution is required by its accrediting agency to calculate a placement rate for the prospective student's program or institution, or both, using the required methodology of the accrediting agency;

(8) whether the prospective student's program satisfies the applicable educational prerequisites for professional licensure or certification in the state; and

(9) the average earnings at ten years after entering the private post-secondary educational institution of former students of the institution who received federal financial aid, if available.

C. The disclosure information required pursuant to Subsections A and B of this section shall be transmitted to the department and prominently displayed:

(1) in a letter or an email message to the prospective student that does not contain:

(a) information about a program other than a program in which the prospective student has expressed interest; or

(b) any other substantive information; and

(2) on the publicly available website of each private post-secondary educational institution, if any.

D. The private post-secondary educational institution shall maintain records of the institution's efforts to provide the information described in Subsections A and B of this section to a prospective student for at least five years after the student enrolls at the institution.

**History:** Laws 2020, ch. 55, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2020, ch. 55, § 3 made Laws 2020, ch. 55, § 2 effective January 1, 2021.

## **ARTICLE 23A**

### **American Indian Post-Secondary Education**

#### **21-23A-1. Short title.**

Sections 2 through 7 [21-23A-1 to 21-23A-6 NMSA 1978] of this act may be cited as the "American Indian Post-Secondary Education Act".

**History:** Laws 2009, ch. 60, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **21-23A-2. Definitions.**

As used in the American Indian Post-Secondary Education Act:

A. "bureau of Indian education school" means a school located in New Mexico that is under the control of the bureau of Indian education of the United States department of the interior;

B. "department" means the higher education department;

C. "division" means the American Indian post-secondary education division of the department;

D. "fund" means the American Indian post-secondary education fund;

E. "public post-secondary educational institution" means an institution of higher education delineated in Article 12, Section 11 of the constitution of New Mexico or a community college, branch community college or technical and vocational institute organized pursuant to Chapter 21, Article 13, 14 or 16 NMSA 1978;

F. "secretary" means the secretary of higher education;

G. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located within New Mexico that is accredited by the north central association of colleges and schools; and

H. "tribe" means an Indian nation, tribe or pueblo located within New Mexico.

**History:** Laws 2009, ch. 60, § 3.

## **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **21-23A-3. Department rules; memoranda of understanding.**

A. The department shall consult with tribes, bureau of Indian education schools and tribal colleges when adopting rules to carry out the provisions of the American Indian Post-Secondary Education Act.

B. The secretary may enter into memoranda of understanding with tribal colleges, bureau of Indian education schools and tribes for data collection and data sharing and for other matters related to implementation of the American Indian Post-Secondary Education Act.

**History:** Laws 2009, ch. 60, § 4.

## **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### **21-23A-4. American Indian post-secondary education division duties.**

A. The division shall:

(1) develop and implement policies that positively affect the post-secondary educational success of American Indian students;

(2) provide assistance to public post-secondary educational institutions and tribal colleges in the planning, development, implementation and evaluation of recruitment and retention strategies designed for American Indian college students;

(3) seek funding to assist public educational institutions and tribal colleges as needed to develop support services to increase the enrollment, retention and graduation rates of American Indians at public post-secondary educational institutions and tribal colleges, including:

(a) academic support and transition programs; and

(b) institutional efforts to increase academic financial support;

(4) develop a system for consistent data collection and sharing on the enrollment, retention and graduation rates of American Indian students at public post-secondary educational institutions and tribal colleges; and

(5) conduct outreach to tribes concerning financial aid opportunities for American Indian students.

B. The director of the division shall serve as a liaison with the Indian education advisory council.

**History:** Laws 2009, ch. 60, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### **21-23A-5. Reports.**

A. Each public post-secondary educational institution shall submit an annual American Indian post-secondary education status report to the division. The department may enter into agreements with tribal colleges to provide the same annual status reports. The status reports shall be submitted in a form prescribed by the division and shall include the following information through which American Indian post-secondary educational performance is measured and aligned with the higher education strategic priorities:

- (1) student recruitment;
- (2) student retention;
- (3) student attrition;
- (4) remediation needs, by course type;
- (5) graduation rate and types and fields of degrees;
- (6) student financial aid data, including student demographic data; and
- (7) annual goals and objectives of American Indian education programs, including graduate-level participation by American Indians.

B. The division shall compile the data collected pursuant to Subsection A of this section and publish an annual state American Indian post-secondary education status report.

**History:** Laws 2009, ch. 60, § 6.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### **21-23A-6. American Indian post-secondary education fund created; grants; applications.**

A. The "American Indian post-secondary education fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the American Indian Post-Secondary Education Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

B. Grants may be awarded for special projects related to recruitment, retention and graduation of American Indian students, including student conferences, cultural awareness training for faculty and staff at public post-secondary educational institutions and tribal colleges, academic support and transition programs and other projects approved by the division.

C. Applications for grants shall be in the form prescribed by the division. The division, with the secretary's approval, shall promulgate rules on the grant application and award process, including:

- (1) who may apply for grants;
- (2) information required in the application process;
- (3) how applications will be evaluated and awarded;
- (4) accounting and financial reporting requirements for grantees;
- (5) reporting requirements on the use of a grant and the outcomes of the special project funded by the grant; and
- (6) any other information deemed necessary by the division.

**History:** Laws 2009, ch. 60, § 7.

## **ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **ARTICLE 23B**

### **Interstate Distance Education**

#### **21-23B-1. Short title.**

Sections 1 through 6 [21-23B-1 to 21-23B-6 NMSA 1978] of this act may be cited as the "Interstate Distance Education Act".

**History:** Laws 2015, ch. 23, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### **21-23B-2. Definitions.**

As used in the Interstate Distance Education Act:

A. "accreditation" means the status of public recognition that an accrediting agency recognized by the United States department of education pursuant to Title 4 of the federal Higher Education Act of 1965 grants to an institution or educational program that meets the department's established requirements;

B. "complaint" means a formal written assertion that a provision of an agreement pursuant to Subsection B of Section 3 [21-23B-3 NMSA 1978] of the Interstate Distance Education Act is being or has been violated;

C. "department" means the higher education department;

D. "distance education" means instruction offered online or through correspondence or interactive video or other means enabling a student in one state to receive instruction from a higher education provider in another state;

E. "higher education" means education or training beyond secondary education;

F. "operate" means providing instruction, marketing, recruiting, tutoring, field experiences and other services for students in support of offering distance education;

G. "physical presence" means the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction;

H. "post-secondary educational institution" includes public post-secondary educational institutions and private post-secondary educational institutions;

I. "private post-secondary educational institution" means an educational institution that:

(1) operates in the state under the provisions of the Post-Secondary Educational Institution Act [Chapter 21, Article 23 NMSA 1978];

(2) has a physical presence in the state; and

(3) is not a public post-secondary educational institution;

J. "public post-secondary educational institution" means:

(1) a branch community college of a state educational institution established pursuant to Chapter 21, Article 13 NMSA 1978;

(2) a community college or technical and vocational institute established pursuant to Chapter 21, Article 16 NMSA 1978; and

(3) eastern New Mexico university, western New Mexico university, New Mexico highlands university, northern New Mexico college, the university of New Mexico, New Mexico state university or the New Mexico institute of mining and technology, New Mexico Military Institute; and

K. "state authorization reciprocity agreement" means an agreement, developed by the national council for state authorization reciprocity agreements, that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.

**History:** Laws 2015, ch. 23, § 2.

## **ANNOTATIONS**

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### **21-23B-3. Interstate distance education program; agreement.**

A. The department shall establish a program for facilitating:

(1) the receipt of distance education by students in the state; and

(2) the provision of distance education by participating post-secondary educational institutions to students in other states.



B. In furtherance of the provisions of Subsection A of this section, the department may enter into:

(1) an agreement for the western interstate commission for higher education to administer and the state to participate in a state authorization reciprocity agreement; or

(2) a reciprocal agreement with another state for the:

(a) receipt by students in the state of distance education from the other state's institutions that provide higher education instruction and are approved for participation in the reciprocal agreement by the appropriate agency of the other state; and

(b) provision of distance education by participating post-secondary educational institutions to students in the other state.

C. The department may terminate an agreement entered into pursuant to Subsection B of this section pursuant to the provisions of that agreement or department rule.

**History:** Laws 2015, ch. 23, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

#### **21-23B-4. Program participation by post-secondary educational institutions; qualifications.**

A. The department shall provide an application form to allow post-secondary educational institutions to apply to participate in the interstate distance education program.

B. The department shall establish qualifications that an applicant shall demonstrate for acceptance as a participating post-secondary educational institution. At a minimum, the department shall require an applicant to provide documentation showing:

(1) compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commissions;

(2) current accreditation; and

(3) for private post-secondary educational institutions, a financial responsibility composite score of one and five-tenths or greater as assigned by the United States department of education in its most recent fiscal year report.

C. An applicant accepted for participation in the interstate distance education program shall enter into a participation agreement with the department.

**History:** Laws 2015, ch. 23, § 4.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### **21-23B-5. Monitoring; complaint resolution; sanctions.**

A. The department shall regularly monitor the compliance of participating post-secondary educational institutions with the Interstate Distance Education Act.

B. Upon the receipt of a complaint about a participating post-secondary educational institution, the department shall timely:

(1) monitor the resolution process and resolution by the post-secondary educational institution and document the resolution; or

(2) investigate the complaint, conduct or coordinate a resolution process appropriate for responding to the complaint and document the resolution.

C. The department may sanction a participating post-secondary educational institution that:

(1) fails to resolve a complaint or comply with the department's efforts to respond to a complaint pursuant to Subsection B of this section; or

(2) violates a provision of the Interstate Distance Education Act or an agreement pursuant to Section 3 [21-23B-3 NMSA 1978] of that act.

D. Sanctions the department may impose include:

(1) requiring the payment of fees, fine or other monetary remedies; or

(2) the termination or nonrenewal of the participation agreement entered into pursuant to Subsection C of Section 4 [21-23B-4 NMSA 1978] of the Interstate Distance Education Act.

**History:** Laws 2015, ch. 23, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### **21-23B-6. Rules; reporting.**

A. The department shall publish rules for conducting the interstate distance education program.

B. By July 31, 2016 and each subsequent year, the department shall report to the legislative finance committee and the legislative education study committee on the interstate distance education program.

**History:** Laws 2015, ch. 23, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## **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:

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" [department] means the commission on higher education [higher education department].

**History:** 1953 Comp., § 73-41-2, enacted by Laws 1971, ch. 304, § 2; 1994, ch. 108, § 21.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 does not apply to:

A. courses recognized by the public education department for the purpose of complying with the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978];

B. courses offered by an employer solely for the employer's employees;

C. courses offered by a nonprofit religious institution relating primarily to religion; and

D. courses offered under a participation agreement pursuant to the provisions of Subsection C of Section 4 [21-23B-4 NMSA 1978] of the Interstate Distance Education Act [21-23B-1 to 21-23B-6 NMSA 1978].

**History:** 1953 Comp., § 73-41-3, enacted by Laws 1971, ch. 304, § 3; 1994, ch. 108, § 22; 2015, ch. 23, § 8.

## **ANNOTATIONS**

**The 2015 amendment**, effective June 19, 2015, exempted provisions of the Interstate Distance Education Act from the Out-of-State Proprietary School Act; in Subsection A, after "by the", deleted "state board of" and added "public", and after "education", added "department"; in Subsection B, after "for", deleted "his" and added "the employer's"; and added Subsection D.

**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 21-24-5 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 [department]. The commission [department] 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 [department] and accompanied by the annual registration fee.

C. The registration shall include a surety bond acceptable to the commission [department] 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 [department] 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 [department] rules and regulations that provide for a tuition refund policy.

E. Upon ten days' notice, any registration may be suspended by the commission [department] pending a hearing by the commission [department] 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 [department] for the administration of the Out-of-State Proprietary School Act.

**History:** 1953 Comp., § 73-41-5, enacted by Laws 1971, ch. 304, § 5; 1975, ch. 107, § 1; 1994, ch. 108, § 24.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For post-secondary educational institution fund, see 21-23-8 NMSA 1978.

**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 [department] shall adopt rules and regulations for the administration and enforcement of the Out-of-State Proprietary School Act.

**History:** 1953 Comp., § 73-41-6, enacted by Laws 1971, ch. 304, § 6; 1975, ch. 107, § 2; 1994, ch. 108, § 25.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] 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.

**History:** 1953 Comp., § 73-41-7, enacted by Laws 1971, ch. 304, § 7; 1975, ch. 107, § 3; 1994, ch. 108, § 26.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [department] respecting the issuance, denial or revocation of a registration may be appealed to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 73-41-8, enacted by Laws 1971, ch. 304, § 8; 1975, ch. 107, § 4; 1994, ch. 108, § 27; 1998, ch. 55, § 30; 1999, ch. 265, § 31.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, inserted "pursuant to the provisions of Section 12-8A-1 NMSA 1978" near the end of the section.

**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 [higher education department] approval.

The board of educational finance [commission on higher education [higher education department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### 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 notes.** — 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 [higher education department]] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 [higher education department]] 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 [higher education department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**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 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:

A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]];

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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **21-26-4. Intern program; board contract; regulations.**

The board [commission [department]] shall:

A. in cooperation with the hospitals and the board of osteopathic medical examiners [board of osteopathic medicine], 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, 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 [department]] shall be filed in accordance with the State Rules Act [Chapter 14, Article 1 NMSA 1978].

**History:** Laws 1983, ch. 195, § 4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

Laws 2016, ch. 90, § 28, provided that on July 1, 2016, all references in law to the board of osteopathic medical examiners shall be construed to be references to the board of osteopathic medicine.

**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 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:

A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]] 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**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### **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 [department]] has approved the distribution of a specific amount. The board [commission [department]] may reduce the amount of any distribution to any qualifying institution. In taking such action, the board [commission [department]] 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.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **ARTICLE 28**

# **University Research Park and Economic Development**

### **21-28-1. Short title.**

Chapter 21, Article 28 NMSA 1978 may be cited as the "University Research Park and Economic Development Act".

**History:** Laws 1989, ch. 264, § 1; 2007, ch. 247, § 1.



## ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, changed the statutory reference to the act and the title of the act to add "Economic Development".

### **21-28-2. Research park; purpose.**

The purpose of the University Research Park and Economic Development Act is to:

- A. promote the public welfare and prosperity of the people of New Mexico;
- B. foster economic development within New Mexico;
- C. forge links between New Mexico's educational institutions, business and industrial communities and government through the development of research parks on university real property; or
- D. engage in other cooperative ventures of innovative technological significance that will advance education, science, research, conservation, health care or economic development within New Mexico.

**History:** Laws 1989, ch. 264, § 2; 1998, ch. 54, § 1; 2007, ch. 247, § 2.

## ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, changed the title of the act.

**The 1998 amendment**, effective May 20, 1998, added the Subsection designations; in Subsection B, substituted "New Mexico" for "the state by forging"; in Subsection C, inserted "forge", substituted "New Mexico's" for "the state's", and deleted "through" at the end; in Subsection D, inserted "engage in", substituted "that" for "which", inserted "science", "conservation, health care" and substituted "New Mexico" for "the state".

### **21-28-3. Definitions.**

As used in the University Research Park and Economic Development Act:

- A. "bond" or "bonds" means any bond, note or other evidence of indebtedness;
- B. "regents" means:
  - (1) in the case of an educational institution named in Article 12, Section 11 of the constitution of New Mexico, the board of regents of the institution;
  - (2) in the case of a community college, the community college board; or

(3) in the case of a technical and vocational institute, the governing board of the technical and vocational institute district;

C. "research park" means research and development facilities, research institutes, testing laboratories, buildings, offices, light manufacturing, utility facilities, health care facilities, related businesses, government installations and similar facilities, including land and projects for the development of real property; all necessary appurtenances; and rights and franchises acquired, constructed, managed and developed by a university or under its authority that are suitable or necessary to promote the social welfare of New Mexico through the advancement of education, science, research, conservation, health care, economic development and related purposes regardless of whether the activities conducted in those facilities are directly related to research;

D. "research park corporation" means any corporation formed pursuant to the provisions of the University Research Park and Economic Development 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:

(1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a community college organized pursuant to the Community College Act [Chapter 21, Article 13 NMSA 1978]; or

(3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978].

**History:** Laws 1989, ch. 264, § 3; 1997, ch. 185, § 1; 1998, ch. 54, § 2; 2007, ch. 247, § 3.

## ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, changed the title of the act, includes buildings and projects for the development of real property in the definition of "research park"; provided that activities conducted in research parks need not be directly related to research; and eliminated area vocational schools in the definition of "university".

**The 1998 amendment**, effective May 20, 1998, in Subsection C, inserted "utility facilities, health care facilities", substituted "including" for "together with", deleted "including" following "land", deleted "of the state", inserted "conservation, health care";

in Paragraph F(4), substituted "Chapter 21, Article 17 NMSA 1978" for "the Area Vocational School Act" and made minor stylistic changes.

**The 1997 amendment**, effective June 17, 1997, in Subsection B, deleted "the board of regents of a university" following "means" and added Paragraphs (1) through (4); and in Subsection F, added the Paragraph (1) designation, substituted "named in" for "established pursuant to the provisions of" in Paragraph (1), and added Paragraphs (2) through (4).

#### **21-28-4. Research park corporations; authorization; members; terms; meetings; bylaws.**

A. Any university may form, pursuant to the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] or the Business Corporation Act [Chapter 53, Articles 11 to 18 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 or economic development initiatives that support the teaching, research or service mission of the university.

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 chair and 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 and Economic Development Act.

**History:** Laws 1989, ch. 264, § 4; 2007, ch. 247, § 4.

#### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, permitted universities to form nonprofit corporations for economic development initiatives that support the teaching, research or service mission of the university.

#### **21-28-5. Powers of university as related to research parks.**

A. The regents of each university shall have the power to implement and further the purposes of the University Research Park and Economic Development Act, including the power:

(1) 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;

(2) to form research park corporations to aid and assist the university to acquire, construct, finance, operate and manage research parks;

(3) to form research park corporations to engage in economic development activities that support the teaching, research and service mission of the university, including creating learning opportunities for the students of the university;

(4) 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 that 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;

(5) 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;

(6) 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 shall revert to and become the property of the university on termination of the lease or any renewal or extension;

(7) 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;

(8) 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;

(9) to conduct, sponsor, finance and contract in connection with technological innovations of all kinds; and

(10) to do anything else that the regents deem appropriate to further the purposes of the University Research Park and Economic Development Act either directly or indirectly.

B. 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; 2007, ch. 247, § 5.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, added Paragraph (3) of Subsection A.

### **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 and Economic Development Act, including the power to:

A. approve or disapprove proposals;

B. sue and be sued in its corporate name;

C. purchase, take, receive or otherwise acquire; own, hold, manage, develop, dispose of or use; and otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;

D. sell, convey, pledge, exchange, transfer, lease or otherwise dispose of its assets and properties for consideration upon terms and conditions that the corporation shall determine; provided that any sale, conveyance, pledge, exchange, transfer, lease or disposal of a real property interest by a research park corporation shall be made in accordance with the provisions of Section 13-6-2 NMSA 1978;

E. make contracts, incur liabilities or borrow money at rates of interest that the research park corporation may determine;

F. make and execute all contracts, agreements or instruments necessary or convenient in the exercise of the powers and functions of the corporation granted by the University Research Park and Economic Development Act;

G. receive and administer grants, contracts and private gifts;

H. invest and reinvest its funds;

I. conduct its activities, carry on its operations, have offices and exercise the powers granted by the University Research Park and Economic Development Act;

J. make and alter bylaws that may contain provisions indemnifying any person who is or was a director, officer, employee or agent of the corporation and that are consistent with the University Research Park and Economic Development Act, for the administration and regulation of the affairs of research park corporations;

K. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;

L. enter into agreements with insurance carriers to insure against any loss in connection with its operations;

M. authorize retirement programs and other benefits for salaried officers and employees of the research park corporation;

N. employ fiscal consultants, attorneys and other consultants that may be required and to fix and pay their compensation; and

O. enter into license agreements and contracts, including those involving intellectual property and technological innovations such as patents, copyrights, franchises and trademarks.

**History:** Laws 1989, ch. 264, § 6; 1998, ch. 54, § 3; 2007, ch. 247, § 6.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, permitted a research park corporation to lease, manage and develop property.

**The 1998 amendment**, effective May 20, 1998, in the introductory language, deleted "research" following "disapprove"; in Subsection C, inserted "dispose of or", deleted "real property or personal" preceding "property" inserted "an interest in or ownership", and deleted "or any interest therein" at the end of the Subsection; in Subsection D, deleted "all or any part of any of"; in Subsection F, substituted "the University Research Park Act" for "this"; rewrote Subsection J; in Subsection N, substituted "and employees as" for "that", and deleted "in its judgment" following "required"; in Subsection O, deleted "to acquire, hold and dispose of intellectual property and technological innovations and", inserted "including those", inserted "and", and deleted "and matters related thereto; and" following "trademarks"; deleted Subsection P; and made minor stylistic changes.

## **21-28-7. Limitations on application of laws.**

A. A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, 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 property, capital outlays, per diem and mileage and inspection of records.

B. 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 furnishing of goods and services to the university that operates it and the risk management fund.

C. 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 [41-4-1 to 41-4-27 NMSA 1978]. A research park corporation may enter into agreements with insurance carriers to insure against a loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of New Mexico.

**History:** Laws 1989, ch. 264, § 7; 1991, ch. 220, § 1; 1998, ch. 54, § 4.

### **ANNOTATIONS**

**The 1998 amendment**, effective May 20, 1998, deleted the introductory language; added the Subsection designations; in Subsection A, substituted "New Mexico" for "the state", and deleted "real or personal"; in Subsection B, inserted "furnishing of goods and services to the university that operates it and the"; in Subsection C, deleted "also" following "may", and substituted "a" for "any"; and made minor stylistic changes.

**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 issue negotiable revenue bonds or notes or both. The proceeds of the sale of bonds issued pursuant to the University Research Park and Economic Development Act 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 bond counsel and fiscal adviser 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 and Economic Development 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 that may be mutilated or destroyed.

**History:** Laws 1989, ch. 264, § 8; 2007, ch. 247, § 7.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

### **21-28-9. Status of bonds.**

Bonds and other obligations issued under the provisions of the University Research Park and Economic Development Act 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 that payment. Each obligation issued on behalf of the research park corporation under the University Research Park and Economic Development 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; 2007, ch. 247, § 8.



## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

### **21-28-10. Refunding bonds.**

The board of directors of a research park corporation may by resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the University Research Park and Economic Development Act, 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 and Economic Development 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 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 refunding bonds and any expenses incurred in connection with refunding, the proceeds may be placed in escrow and invested in securities that are unconditionally guaranteed by the United States and that shall mature or 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; 2007, ch. 247, § 9.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

### **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 and Economic Development Act 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. The trust agreement or the resolution providing for the issuance of bonds may pledge or assign all or any part of the revenues or assets of the research park corporation. The trust agreement or resolution may contain provisions for protecting and enforcing the rights and remedies of the holders of any 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 is lawful for any bank or trust company incorporated under the laws of the state that may act as depository of the proceeds of bond revenues or other money hereunder to

furnish indemnifying bonds or to pledge securities that may be required by the research park corporation. Any 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 holders. In addition, any trust agreement or resolution may contain 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 a 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; 2007, ch. 247, § 10.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

#### **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 and Economic Development Act 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 and Economic Development Act, subject to provisions that rules under that act and the resolution or trust agreement may specify.

Any such money described in this section received by a research park corporation may be invested as provided in the University Research Park and Economic Development Act.

**History:** Laws 1989, ch. 264, § 13; 1991, ch. 220, § 2; 2007, ch. 247, § 11.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

**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 and Economic Development Act or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of those bonds, except as the rights given pursuant to that act may be restricted by a 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 the 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 the trust agreement or resolution to be performed by the research park corporation or by any officer thereof.

**History:** Laws 1989, ch. 264, § 15; 2007, ch. 247, § 12.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

### **21-28-16. Legal investments; tax exemption.**

All bonds issued by a research park corporation under the University Research Park and Economic Development Act 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 those 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; 2007, ch. 247, § 13.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

**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 [Chapter 53, Article 8 NMSA 1978] or the Business Corporation Act [Chapter 53, Articles 11 to 18 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 and Economic Development Act. The person performing the audit shall furnish copies of the audit report to the regents of the university and the secretary of state, 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; 2007, ch. 247, § 14; 2013, ch. 75, § 13.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, required that the auditor furnish a copy of the audit of a research park corporation to the secretary of state; and in Subsection A, in the third sentence, after "university and the" deleted "public regulation commission" and added "secretary of state".

**The 2007 amendment**, effective June 15, 2007, changed the name of the act and changed state corporation commission to public regulation commission.

### **21-28-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 220, § 6 repealed 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 the 1990 NMSA 1978 on *NMOneSource.com*.

### **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 a research park corporation is interested either directly or indirectly or is an officer or employee of or has 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 that interest shall not participate on behalf of the research park corporation in the authorization of the contract.

B. No director, officer or employee of a research park corporation or state officer shall accept any gratuities in connection with the issuance of bonds under the University Research Park and Economic Development Act, nor shall that 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 a 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 and Economic Development 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; 2007, ch. 247, § 15.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

### **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 and Economic Development Act 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 those holders until the 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 those holders, are fully met and discharged. A research park corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

**History:** Laws 1989, ch. 264, § 22; 2007, ch. 247, § 16.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

## **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 and Economic Development Act, the work of the research park shall conform to the requirements imposed as the conditions for those federal appropriations in order that the work of the research park may be aided and extended by means of those federal appropriations for scientific, engineering and industrial research.

**History:** Laws 1989, ch. 264, § 23; 2007, ch. 247, § 17.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

## **21-28-24. Contracts involving officers or employees of educational institutions and state agencies or political subdivisions.**

A 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 21-28-25 NMSA 1978 if the employee has a controlling interest, unless the president of the university or the president's 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 that are less expensive or of higher quality than is otherwise available.

**History:** Laws 1989, ch. 264, § 24; 2007, ch. 247, § 18.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, changed the statutory reference to Section 25 of the act.

#### **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.

## **ARTICLE 29**

### **Western Interstate Commission on Higher Education Loans for Service**

#### **21-29-1. Short title.**

This act [21-29-1 to 21-29-6 NMSA 1978] may be cited as the "WICHE Loan for Service Act".

**History:** Laws 1997, ch. 126, § 1.

#### **ANNOTATIONS**

**Cross references.** — For Teacher Loan for Service Act, see 21-22E-1 NMSA 1978 et seq.

For the Western Regional Cooperation in Higher Education Compact, see Chapter 11, Article 10 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

**Applicability.** — Laws 1997, ch. 126, § 8 makes the WICHE Loans for Service Act applicable to contracts entered into with students on or after the effective date of the act.

## **21-29-2. Definitions.**

As used in the WICHE Loan for Service Act:

A. "commission" [department] means the commission on higher education [higher education department]; and

B. "student" means a New Mexico resident who is a graduate of a New Mexico high school or has resided in New Mexico for three consecutive years immediately preceding application to the program and who attends or is about to attend a graduate or professional program of education through the auspices of the Compact for Western Regional Cooperation in Higher Education [11-10-1 NMSA 1978].

**History:** Laws 1997, ch. 126, § 2; 1998, ch. 110, § 1.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1998 amendment,** effective May 20, 1998, in Subsection B, inserted "or has resided in New Mexico for three consecutive years immediately preceding application to the program" near the middle of the subsection.

## **21-29-3. Student exchange program; terms of student loans; payback requirements.**

A. Financial assistance by the state for the student exchange program of the western interstate commission for higher education shall be through a loan program established pursuant to this section.

B. A student may receive a loan of tuition assistance on the following terms:

(1) the loan shall not exceed an amount equivalent to the negotiated support fee for the graduate or professional program; and

(2) the loan shall bear interest at the rate of:

(a) eighteen percent per year if the student completes his education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(b) seven percent per year in all other cases.

C. Loans made pursuant to the WICHE Loan for Service Act shall not accrue interest until:

(1) the commission [department] determines the loan recipient has terminated the recipient's professional education program prior to completion;

(2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice the recipient's profession in New Mexico; or

(3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-29-6 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the cost of tuition assistance and shall be conditioned on the repayment of the loan to the state over a period established by the commission [department].

E. Loans made to a student who fails to complete his education shall become due immediately upon termination of his education. The commission [department] shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that a loan recipient practices his profession in New Mexico. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice for each year of the loan. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven; upon completion of the second year of service, the remainder of the loan shall be forgiven;

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service; and

(4) the commission [department] may establish other forgiveness terms for professionals providing service in serious shortage areas.

G. Loan 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 [department].

H. If a student completes his professional education and does not return to New Mexico to practice his profession, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances for why the student cannot serve. If the commission [department] does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to practice his profession in New Mexico, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission [department] may provide by regulation for the repayment of student exchange program loans in annual or other periodic installments.

**History:** Laws 1997, ch. 126, § 3; 2005, ch. 323, § 6.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added Subsections C(1) through (3) to provide that loans shall not accrue interest until the recipient has terminated the recipient's professional education prior to completion, the recipient has failed to fulfill the recipient's obligation to practice the recipient's profession in New Mexico or the commission cancels a contract between a student and the commission; deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's education, all interest then accrued shall be capitalized; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find

acceptable circumstances for a student's failure to serve, the commission shall require repayment of the loan plus the amount of any interest.

#### **21-29-4. Commission [department] powers and duties; contracts.**

A. The commission [department] may:

- (1) arrange with other agencies for the performance of services required by the provisions of Section 3 [21-29-3 NMSA 1978] of the WICHE Loan for Service Act;
- (2) sue in its own name for any balance due the state from a student on a contract;
- (3) cancel a contract made between it and a student for a reasonable cause deemed sufficient by the commission [department]; and
- (4) adopt regulations to implement the provisions of the WICHE Loan for Service Act.

B. The commission [department] shall make an annual report to the governor and the legislature prior to the regular session of its activities pursuant to the WICHE Loan for Service Act, including loans granted and paid back or fulfilled through the practice of a profession in New Mexico; a list of the schools or colleges attended by those receiving loans; and any other information the commission [department] deems pertinent.

C. The general form of the contract provided for in Section 3 of the WICHE Loan for Service Act shall be prepared and approved by the attorney general and signed by the student and a designee of the commission [department] on behalf of the state.

**History:** Laws 1997, ch. 126, § 4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

#### **21-29-5. Fund created; method of payment.**

The "WICHE loan for service fund" is created in the state treasury. All money appropriated for loans to students participating in the student exchange program of the

western interstate commission on higher education [higher education department] shall be credited to the fund. All payments of principal and interest on loans made pursuant to the WICHE Loan for Service Act shall be credited to the fund. All payments of money for loans shall be made upon vouchers signed by the designated representative of the commission [department] and warrants drawn by the secretary of finance and administration.

For the 1997-98 fiscal year, seventy thousand dollars (\$70,000) is appropriated from the nursing-loan-for-service fund to the commission on higher education [higher education department] from collections generated in excess of the amount received and budgeted for the 1997-98 fiscal year. This appropriation shall be used to support the operation and administration of the program, including paying support fees for students currently enrolled in the WICHE program.

**History:** Laws 1997, ch. 126, § 5.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

#### **21-29-6. Cancellation.**

The commission [department] may cancel a contract with a student for reasonable cause deemed sufficient by the commission [department].

**History:** Laws 1997, ch. 126, § 6.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

# **ARTICLE 30**

## **University Athletic Facility Funding Act**

### **21-30-1. Short title.**

Sections 2 through 11 [21-30-1 to 21-30-10 NMSA 1978] of this act may be cited as the "University Athletic Facility Funding Act".

**History:** Laws 2007, ch. 117, § 2.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### **21-30-2. Definitions.**

As used in the University Athletic Facility Funding Act:

A. "athletic facility revenues" means rentals, receipts, fees or other charges imposed by and paid to a university for the rights to use, operate or manage a university athletic facility by any person;

B. "athletic facility surcharge" means a surcharge to be included in each vendor contract on tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a university athletic facility or related to activities occurring at a university athletic facility;

C. "board" means the board of regents of a university;

D. "bonds" means athletic facility revenue bonds issued by a university to pay for some or all of the costs of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a university athletic facility;

E. "president" means the president of a university or a person designated by the president of a university;

F. "university" means a four-year post-secondary educational institution confirmed by Article 12, Section 11 of the constitution of New Mexico and the main campus of which is located in a class A county;

G. "university athletic facility" means an indoor or outdoor athletic facility, including buildings and related improvements, primarily designed and intended for university

sporting events, but also available for non-university sporting events and university and community cultural, educational and entertainment events;

H. "vendor" means every person, corporation, partnership or other entity, including a division or department of a university, providing products or services sold at or related to a university athletic facility; and

I. "vendor contract" means a written arrangement between a university and a vendor pursuant to which the vendor provides products or services sold at or related to the university athletic facility.

**History:** Laws 2007, ch. 117, § 3.

## **ANNOTATIONS**

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### **21-30-3. Issuance of bonds.**

A. With the approval of the higher education department and the state board of finance, pursuant to a resolution of the board of regents, a university that has imposed an athletic facility surcharge may issue athletic facility revenue bonds to pay for some or all of the costs of designing, purchasing, constructing, remodeling, renovating, rehabilitating, improving, equipping or furnishing a university athletic facility that has a seating capacity of twelve thousand or more.

B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

C. The bonds shall be secured by athletic facility revenues and athletic facility surcharge receipts.

D. The university shall establish an "athletic facility bonding fund" for deposit of all athletic facility revenues and athletic facility surcharge proceeds. Money in the fund may be used to pay:

(1) payments of principal, interest or prior redemption premiums due in connection with, and any other charges pertaining to, the bonds, including payments into any sinking fund or reserve fund required by the bond resolution;

(2) costs of operating a university athletic facility during the life of the bonds, provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (1) of this subsection;



(3) costs of constructing, renovating, equipping, maintaining or improving a university athletic facility, provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (1) of this subsection; or

(4) costs of collecting or administering the athletic facility surcharge, provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (1) of this subsection.

E. Bonds issued pursuant to the University Athletic Facility Funding Act shall be payable solely from the athletic facility bonding fund and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. A breach of any contractual obligation incurred pursuant to that act shall not impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the athletic facility bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds. The state further pledges that any law authorizing the imposition of the athletic facility surcharge and the dedication of revenues to the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the fund is dedicated as provided in this section. The university shall not repeal, amend or otherwise modify the bond resolution or the resolution imposing the athletic facility surcharge in such a manner that adversely affects or impairs the athletic facility surcharge or any bonds secured by a pledge of the athletic facility revenues and athletic facility surcharge receipts unless the bonds have been paid in full or provisions have been made for full payment.

**History:** Laws 2007, ch. 117, § 4.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

#### **21-30-4. Athletic facility revenue bonds; full authority to issue; bonds are legal investments.**

A. The University Athletic Facility Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of athletic facility revenue bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders of the bonds for value.

B. Athletic facility revenue bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

**History:** Laws 2007, ch. 117, § 5.

#### **ANNOTATIONS**

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### **21-30-5. Bonds tax exempt.**

All athletic facility revenue bonds shall be exempt from taxation by the state or any of its political subdivisions.

**History:** Laws 2007, ch. 117, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### **21-30-6. Authorization of surcharge and other fees; use of proceeds; transfer.**

A. The board may establish by resolution an athletic facility surcharge of not less than five percent but not to exceed twenty-five percent of the revenues received by a vendor pursuant to each vendor contract entered into by the university.

B. The athletic facility surcharge shall be imposed only for the period necessary for payment of principal and interest on the bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed thirty years from the date of the resolution imposing the surcharge.

C. A university that has established an athletic facility surcharge shall include the surcharge in the terms of each vendor contract into which it enters.

D. A university may establish charges and fees deemed necessary by the board or the president for the use, operation or management of a university athletic facility by a person other than the university.

**History:** Laws 2007, ch. 117, § 7.

#### **ANNOTATIONS**

## **21-30-7. Collection of athletic facility surcharge; remittance to university.**

A. Upon the sale of a product or service subject to the athletic facility surcharge, a vendor shall collect the athletic facility surcharge from the purchaser of that product or service on behalf of the university and shall act as a trustee for the surcharge receipts. A purchaser of a product or service subject to the athletic facility surcharge shall be charged separately for the athletic facility surcharge from the cost of the product or service, or the vendor shall institute accounting controls or procedures sufficient to identify the amount of the surcharge owed to a university for each sale, transaction or exchange subject to the surcharge. Receipts from the athletic facility surcharge shall be remitted by a vendor to the president no later than the tenth day of the month following the collection of the surcharge.

B. The president shall deposit university athletic facility revenues and athletic facility surcharge receipts into the athletic facility bonding fund and act as trustee of the revenue on behalf of bondholders pursuant to the University Athletic Facility Funding Act so long as any bonds remain outstanding.

**History:** Laws 2007, ch. 117, § 8.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## **21-30-8. Audits.**

The board shall provide by resolution a method to audit or otherwise ensure that vendors subject to the athletic facility surcharge collect and remit to the president the full amount of the surcharge receipts due to the university.

**History:** Laws 2007, ch. 117, § 9.

### **ANNOTATIONS**

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## **21-30-9. Enforcement; penalties.**

A. An action to enforce the imposition and collection of an athletic facility surcharge by a vendor may be brought by a university.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. A judgment issued by a district court requiring athletic facility surcharge receipts to be paid to a university by a vendor shall also award interest at an annual rate of twelve percent on past due amounts, attorney fees and costs to a university.

**History:** Laws 2007, ch. 117, § 10.

#### **ANNOTATIONS**

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

#### **21-30-10. Liberal interpretation.**

The University Athletic Facility Funding Act shall be liberally construed to carry out its purpose.

**History:** Laws 2007, ch. 117, § 11.

#### **ANNOTATIONS**

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.