

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 762

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Danice R. Picraux

AN ACT

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

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

underscored material = new
[bracketed material] = delete

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

3 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD. --

4 A. A multi-term contract for items of tangible
5 personal property, construction or services except for
6 professional services, in an amount under twenty-five thousand
7 dollars (\$25,000), may be entered into for any period of time
8 deemed to be in the best interests of the state agency or a
9 local public body not to exceed four years; provided that the
10 term of the contract and conditions of renewal or extension,
11 if any, are included in the specifications and funds are
12 available for the first fiscal period at the time of
13 contracting. If the amount of the contract is twenty-five
14 thousand dollars (\$25,000) or more, the term shall not exceed
15 eight years, including all extensions and renewals, except
16 that for any such contract entered into pursuant to the Public
17 Building Energy Efficiency and Water Conservation Act, the
18 term shall not exceed ten years, including all extensions and
19 renewals. Payment and performance obligations for succeeding
20 fiscal periods shall be subject to the availability and
21 appropriation of funds therefor.

22 B. A contract for professional services [~~except~~
23 ~~for~~] may not exceed four years, including all extensions and
24 renewals, except for the following:

25 (1) services required to support or operate

. 136225. 1

underscored material = new
[bracketed material] = delete

1 federally certified medicaid, financial assistance and child
2 support enforcement management information or payment systems
3 [~~and except for~~];

4 (2) services to design, develop or implement
5 the taxation and revenue information management systems
6 project authorized by Laws 1997, Chapter 125 [~~may not exceed a~~
7 ~~term of four years, including all extensions and renewals,~~
8 ~~except that~~];

9 (3) a multi-term contract for the services of
10 trustees, escrow agents, registrars, paying agents, letter of
11 credit issuers and other forms of credit enhancement and other
12 similar services, excluding bond attorneys, underwriters and
13 financial advisors with regard to the issuance, sale and
14 delivery of public securities, may be for the life of the
15 securities or as long as the securities remain outstanding;
16 and

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

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

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

22 A. The "education trust fund" is created in the
23 state treasury. The board shall deposit all money received
24 pursuant to college investment agreements and prepaid tuition
25 contracts into the fund. Money in the fund shall consist of

. 136225. 1

underscored material = new
[bracketed material] = delete

1 appropriations, investments, payments, gifts, bequests and
2 donations. All money invested in the fund is appropriated to
3 the board. Money in the fund shall not revert to the general
4 fund at the end of the fiscal year. The board shall account
5 for each payment from an investor or purchaser on behalf of a
6 beneficiary pursuant to a college investment agreement or
7 prepaid tuition contract. The board shall provide that all
8 money in the fund shall be invested either by the state
9 investment officer according to rules promulgated by the
10 council, subject to the approval of the board, or by a private
11 investment advisor, approved by the council, pursuant to a
12 contract between the board and the investment advisor. The
13 board shall review investments made pursuant to this
14 subsection at least quarterly.

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

20 C. In no event shall any liability of, or
21 contractual obligation incurred by, the program established
22 pursuant to the provisions of the Education Trust Act obligate
23 or encumber any of the state's land grant permanent funds, the
24 severance tax permanent fund or any money that is a part of a
25 state-funded financial aid program. Nothing in the Education

underscored material = new
[bracketed material] = delete

1 Trust Act creates any obligation, legal, moral or otherwise,
2 to fulfill the terms of any college investment agreement or
3 prepaid tuition contract out of any source other than the
4 education trust fund.

5 D. The board may create within the fund separate
6 trust funds or accounts for college investment agreements and
7 prepaid tuition contracts, and may deposit all money received
8 pursuant to college investment agreements and prepaid tuition
9 contracts into the related separate trust funds or accounts.
10 The board may appoint one or more custodians of the separate
11 trust funds or accounts that shall be a state or national bank
12 authorized to do business in the United States. No member of
13 the board, while acting within the scope of his authority or
14 while acting as a trustee of any trust fund or account of the
15 board, shall be subject to any personal liability for any
16 action taken or omitted within that scope of authority."

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

19 "21-21K-5. COLLEGE INVESTMENT AGREEMENT. --

20 A. An investor may enter into a college investment
21 agreement with the board under which the investor agrees to
22 make investments into the fund from time to time for the
23 purpose of defraying the costs of attendance billed by
24 institutions of higher education. An investor may enter into
25 a college investment agreement on behalf of any beneficiary.

. 136225. 1

1 The board shall adopt a form of the college investment
2 agreement to be used by the board and investors.

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

8 C. A college investment agreement may be
9 terminated by the investor at any time. The investor may
10 modify the college investment agreement to designate a new
11 beneficiary instead of the original beneficiary if the new
12 beneficiary meets the requirements of the original beneficiary
13 on the date the designation is changed and if the original
14 beneficiary:

15 (1) dies;

16 (2) is not admitted to an institution of
17 higher education following proper application;

18 (3) elects not to attend an institution of
19 higher education or, if attending, elects to discontinue
20 higher education; or

21 (4) for any other circumstance approved by
22 the board, does not exercise his rights under the college
23 investment agreement.

24 D. The board shall provide, by rule, procedures
25 for determining the amount to be refunded for college

underscored material = new
[bracketed material] = delete

1 investment agreements terminated pursuant to the provisions of
2 this section. The balance of the accrued investment earnings
3 and capital appreciation less the amount refunded and
4 administrative costs shall be credited to the fund.

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

7 F. [A] The board shall specify, by rule,
8 appropriate provisions for the term and termination of college
9 investment [agreement terminates on the tenth anniversary of
10 the date the beneficiary is projected to graduate from high
11 school, not counting time spent by the beneficiary as an
12 active-duty member of the United States armed services]
13 agreements.

14 G. Gifts and bequests to the fund may be made in
15 the name of a specific beneficiary or in the name of the fund
16 in general. Gifts and bequests given for the benefit of a
17 specific beneficiary shall be credited to that beneficiary,
18 and gifts and bequests given to the fund in general shall be
19 credited equally to each beneficiary of a college investment
20 agreement.

21 H. Principal paid into the fund, together with
22 accrued investment earnings and capital appreciation, shall be
23 excluded from any calculation of a beneficiary's state student
24 financial aid eligibility.

25 I. The board shall annually notify each investor

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

of the status of the [~~education trust~~] fund. "