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HOUSE BILL 215

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE MEMBERSHIP OF THE
EDUCATION TRUST BOARD; PRESCRIBING POWERS AND DUTIES; PROVIDING
FOR THIRD-PARTY MANAGERS; GRANTING IMMUNITY; CLARIFYING THAT
LIABILITIES AND CONTRACTUAL OBLIGATIONS ARE NOT OBLIGATIONS OF
THE STATE OR ANY OF ITS FUNDS; CREATING FUNDS; EXEMPTING FUNDS
FROM CLAIMS OF CREDITORS; CHANGING REPORT REQUIREMENTS;
ABOLISHING PREPAID TUITION CONTRACTS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 21-21K-1 NMSA 1978 (being Laws 1997,
Chapter 259, Section 1) is amended to read:

"21-21K-1. SHORT TITLE.--~~[Sections 1 through 7 of this
act]~~ Chapter 21, Article 21K NMSA 1978 may be cited as the
"Education Trust Act"."

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1 SECTION 2. Section 21-21K-2 NMSA 1978 (being Laws 1997,
2 Chapter 259, Section 2, as amended) is repealed and a new
3 Section 21-21K-2 NMSA 1978 is enacted to read:

4 "21-21K-2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Education Trust Act:

6 A. "account" means an individual trust account
7 pursuant to a college investment agreement entered into
8 pursuant to the college savings program;

9 B. "account owner" means the person who has entered
10 into a college investment agreement with the board and is
11 designated as having the right to withdraw money from the
12 account before the account is disbursed to or for the benefit
13 of the beneficiary;

14 C. "beneficiary" means the person who is designated
15 at the time the account is opened, or the person who replaces a
16 designated beneficiary, as the person whose education expenses
17 are expected to be paid from the account;

18 D. "board" means the education trust board;

19 E. "college investment agreement" means an
20 agreement entered into by the board and an account owner to
21 participate in the college savings program and establish an
22 account to be used for the qualified higher education expenses
23 of a beneficiary at an eligible institution of higher
24 education;

25 F. "department" means the higher education

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1 department;

2 G. "financial institution" means a bank, broker-
3 dealer, insurance company, mutual fund, savings and loan
4 association or other financial entity;

5 H. "institution of higher education" means a post-
6 secondary educational institution eligible to participate in
7 student financial aid programs administered by the United
8 States department of education;

9 I. "Internal Revenue Code" means the federal
10 Internal Revenue Code of 1986, as amended; and

11 J. "manager" means a financial institution under
12 contract with the board to serve as manager of a college
13 savings plan in the college savings program and receive
14 contributions on behalf of the program."

15 SECTION 3. Section 21-21K-3 NMSA 1978 (being Laws 1997,
16 Chapter 259, Section 3, as amended) is repealed and a new
17 Section 21-21K-3 NMSA 1978 is enacted to read:

18 "21-21K-3. [NEW MATERIAL] COLLEGE SAVINGS PROGRAM
19 CREATED--EDUCATION TRUST FUND CREATED--PURPOSE--INVESTMENT OF
20 ACCOUNTS BY THIRD PARTIES--BOARD REVIEW--PROGRAM ADMINISTRATION
21 FUND CREATED--PURPOSE.--

22 A. The "college savings program" is created to
23 allow interested persons to enter into college investment
24 agreements with the board as a means to save money to pay a
25 beneficiary's eligible expenses for a college education. The

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1 college savings program may consist of one or more college
2 savings plans. The board shall administer the college savings
3 program through accounts established in the education trust
4 fund pursuant to college investment agreements. Money in an
5 account may be used by the beneficiary at any eligible
6 institution of higher education in New Mexico or any other
7 state.

8 B. The board shall develop and administer the
9 college savings program in a manner that allows account owners
10 and beneficiaries to obtain and maintain federal income tax
11 benefits or treatment provided by the Internal Revenue Code for
12 qualified state tuition programs and exemptions under the
13 federal securities laws.

14 C. The "education trust fund" is created as a
15 nonreverting fund in the state treasury. The fund shall be
16 administered by the board to carry out the college savings
17 program. The fund consists of separate trust accounts held in
18 the name of account owners. Income from investment of the fund
19 shall be credited to the separate accounts.

20 D. The board may contract with one or more managers
21 to invest the contributions deposited to the education trust
22 fund. The board and the managers shall account for each
23 contribution by an account owner.

24 E. Amounts may be withdrawn or transferred from
25 trust accounts in the education trust fund only as provided in

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1 the related college investment agreements. All money
2 contributed to accounts established in the fund are held in
3 trust by the board and the respective managers for the sole
4 benefit of the respective account owners and beneficiaries.

5 F. The "program administration fund" is created as
6 a nonreverting fund in the state treasury. The fund consists
7 of all administrative and other fees received by the board
8 pursuant to college investment agreements and contracts with
9 managers and any other money credited to the fund. The state
10 treasurer shall invest the fund, and the investment income
11 shall be credited to the fund. Money in the fund may be used
12 to pay costs of establishing, marketing and otherwise
13 administering the college savings program in accordance with
14 the Education Trust Act. Disbursements from the fund shall be
15 by warrants of the secretary of finance and administration on
16 vouchers signed by the director of the board or the director's
17 authorized representative."

18 SECTION 4. Section 21-21K-4 NMSA 1978 (being Laws 1997,
19 Chapter 259, Section 4, as amended) is amended to read:

20 "21-21K-4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS OF
21 OFFICE [~~POWERS AND DUTIES~~].--

22 A. [~~There is created~~] The "education trust board"
23 is created. The board is administratively attached to the
24 [~~higher education~~] department, and the department shall provide
25 administrative support for the board in carrying out its duties

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1 pursuant to the Education Trust Act. The board shall consist
2 of the following voting members:

3 (1) the secretary of higher education or the
4 secretary's designee, who shall be the ex-officio chair of the
5 board;

6 (2) ~~[one member]~~ two members appointed by the
7 governor;

8 (3) one member representing institutions of
9 higher education appointed by the speaker of the house of
10 representatives; and

11 (4) one member representing students at
12 institutions of higher education, appointed by the president
13 pro tempore of the senate.

14 B. The appointed members must possess knowledge,
15 skill and experience in higher education, business or finance.

16 C. The appointed members shall serve six-year
17 terms, with the exception of the member representing students,
18 who shall be appointed for a two-year term. Vacancies on the
19 board shall be filled by the respective appointing authority
20 for the remainder of the vacating member's term.

21 D. Three members of the board constitute a quorum.
22 Action may be taken by the board upon an affirmative vote of
23 the majority of members present at the meeting at which a
24 quorum is present. A vacancy in the membership of the board
25 does not impair the right of a quorum to exercise the powers

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1 and duties of the board.

2 [D-] E. Members of the board shall be subject to
3 the provisions of the Per Diem and Mileage Act and shall
4 receive no other compensation, perquisite or allowance for
5 their service on the board.

6 [E. ~~The board is authorized to adopt and promulgate~~
7 ~~rules and regulations as necessary to carry out the provisions~~
8 ~~of the Education Trust Act, protect the financial integrity of~~
9 ~~the fund, preserve the program's benefits and ensure the~~
10 ~~appropriate use of the tax benefits. The board shall also~~
11 ~~determine and adopt by regulation the cost of attendance at~~
12 ~~institutions of higher education; provided that the cost of~~
13 ~~attendance shall include the same components and allowances as~~
14 ~~are used to determine cost of attendance for the federal~~
15 ~~student financial assistance programs.]"~~

16 SECTION 5. A new section of the Education Trust Act is
17 enacted to read:

18 "[NEW MATERIAL] BOARD--POWERS AND DUTIES.--

19 A. The board may:

20 (1) adopt, amend or repeal and promulgate
21 rules necessary to carry out the provisions of the Education
22 Trust Act;

23 (2) sue and be sued;

24 (3) enter into contracts;

25 (4) employ or contract for professional,

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1 technical and clerical staff and independent counsel;

2 (5) contract with one or more financial
3 institutions to manage the education trust fund and the
4 separate trust accounts;

5 (6) enter into college investment agreements
6 with interested persons to participate in the college savings
7 program;

8 (7) charge, impose and collect administrative
9 fees as provided in a college investment agreement or other
10 contract relating to the college savings program in amounts not
11 exceeding the reasonable costs of establishing, marketing and
12 otherwise administering the program; and

13 (8) do those things necessary or convenient in
14 accordance with the Education Trust Act to carry out the
15 provisions of that act.

16 B. The board shall adopt and promulgate education
17 trust fund investment guidelines and otherwise administer the
18 college savings program in compliance with the Uniform Prudent
19 Investor Act."

20 SECTION 6. Section 21-21K-5 NMSA 1978 (being Laws 1997,
21 Chapter 259, Section 5, as amended) is repealed and a new
22 Section 21-21K-5 NMSA 1978 is enacted to read:

23 "21-21K-5. [NEW MATERIAL] COLLEGE INVESTMENT AGREEMENTS--
24 ACCOUNTS.--

25 A. An account owner may enter into a college

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1 investment agreement with the board under which an account in
2 the education trust fund is established and contributions may
3 be made to the account from time to time, consistent with the
4 terms of the agreement, to defray the cost of eligible higher
5 education expenses at institutions of higher education. Each
6 account shall be accounted for separately from all other
7 accounts in the education trust fund. An account owner may
8 enter into a college investment agreement on behalf of any
9 beneficiary.

10 B. Gifts and bequests by persons other than the
11 account owner may be made to an account in the education trust
12 fund for the benefit of the beneficiary in accordance with the
13 terms of the college investment agreement.

14 C. The board shall set forth procedures relating to
15 the withdrawal of money from an account established in the
16 education trust fund pursuant to a college investment
17 agreement.

18 D. A college investment agreement may be terminated
19 by the account owner at any time. The board shall specify by
20 rule appropriate provisions for the term and termination of
21 college investment agreements.

22 E. Contributions made to an account in the
23 education trust fund, together with accrued investment earnings
24 and capital appreciation in such account, shall be excluded
25 from any calculation of the respective beneficiary's student

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1 financial aid eligibility in New Mexico.

2 F. The board shall notify each account owner
3 annually about the status of the account owner's account in the
4 education trust fund."

5 SECTION 7. Section 21-21K-6 NMSA 1978 (being Laws 1997,
6 Chapter 259, Section 6, as amended) is repealed and a new
7 Section 21-21K-6 NMSA 1978 is enacted to read:

8 "21-21K-6. [NEW MATERIAL] CLAIMS OF CREDITORS--
9 EXEMPTION--LIABILITY IMMUNITY--STATE NOT LIABLE.--

10 A. Money credited to or expended from any account
11 in the education trust fund by or on behalf of an account owner
12 or beneficiary is exempt from all claims of creditors of the
13 account owner, the beneficiary or the board.

14 B. If the board carries out its review
15 responsibility of the manager's investment decisions consistent
16 with the Uniform Prudent Investor Act, the board or an employee
17 shall not be liable to anyone for any losses sustained as a
18 result of investment decisions. A member of the board, while
19 acting within the scope of the member's authority or while
20 acting as a trustee of the education trust fund or any separate
21 trust fund or account of the board, shall not be subject to any
22 personal liability for any action taken or omitted within that
23 scope of authority.

24 C. In no event shall any liability of or
25 contractual obligation incurred by the college savings program

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1 obligate or encumber any of the state's funds or treasury,
2 including but not limited to the state's general fund, land
3 grant permanent funds, the severance tax permanent fund or any
4 other permanent fund or any money that is a part of a state-
5 funded financial aid program. Nothing in the Education Trust
6 Act creates any obligation, legal, moral or otherwise, to
7 fulfill the terms of any college investment agreement or any
8 other obligation or liability out of any source other than the
9 education trust fund or the program administration fund."

10 SECTION 8. Section 21-21K-7 NMSA 1978 (being Laws 1997,
11 Chapter 259, Section 7, as amended) is amended to read:

12 "21-21K-7. REPORTS.--

13 A. The board shall annually submit to the governor
14 and to the appropriate interim legislative committee a report
15 including:

16 (1) the board's fiscal transactions during the
17 preceding fiscal year;

18 (2) the market [~~and book~~] value of the
19 education trust fund as of the end of the preceding fiscal
20 year;

21 (3) the asset allocations of the education
22 trust fund expressed in percentages of stocks, fixed income
23 securities, cash or other financial assets; and

24 (4) the rate of return on the investment of
25 the education trust fund's assets during the preceding fiscal

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1 year

2 ~~[(5) an actuarial valuation of the assets and~~
3 ~~liabilities of the program, including the extent to which the~~
4 ~~program's liabilities are unfunded; and~~

5 ~~(6) complete prepaid tuition contract sales~~
6 ~~information, including projected enrollments of beneficiaries~~
7 ~~at institutions of higher education].~~

8 B. The board shall make the report described by
9 Subsection A of this section available to ~~[purchasers of~~
10 ~~prepaid tuition contracts and investments under college~~
11 ~~investment agreements]~~ account owners."