LFC Requester:	Connor Jorgensen

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/11/2025

Bill Number: SB266

Check all that apply:

Original X Correction ____

Amendment ____ Substitute ____

Sponsor: Sen. George Munoz & Sen. Carrie Hamblen

Short Title: Higher Ed. Agreement Approval & Review

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill is cited as the "Higher Education Accountability Act."

Section 2 defines key terms, which fall into one of three major categories:

a. The institutions and individuals to whom the Act references, including boards of regents, community colleges, state educational institutions, and the administrators of those entities;
b. The fiduciary duties that boards and administrators owe to their institutions, including a duty of care and prudent administration, duty of good faith and duty of undivided loyalty;
c. The contractual agreements and related terms that may be subject to review, as outlined below. These include, but are not limited to, employment agreements, separation agreements, settlement agreements, and clauses within those agreements related to indemnification and/or release of liability.

Section 3 sets out parameters for when the state board of finance is responsible for review of an "administrator's" "qualifying agreement" (both defined, in Section 2(A) & (L)). Under SB266, a state educational institution or community college should submit an administrator's qualifying agreement for review to the board of finance if *either*: a) the term of the agreement exceeds five years, or b) the agreement includes a total compensation value that exceeds ten times the total compensation value of the institution's lowest-compensated regular full-time employee. The bill lays out criteria to govern the board of finance's review.

SB266 allots thirty days for the state board of finance to complete their review and either approve the qualifying agreement, request modification of terms, or reject the qualifying agreement. Options for the state educational institution or community college are laid out in the event the board of finance requests modifications or rejects the agreement. Execution of a qualifying agreement without proper review and approval by the state board of finance or the Attorney General renders the agreement null and void. The board of finance can promulgate and adopt rules to implement this section.

Section 4 establishes a similar process as in Section 3 for those qualifying agreements which include terms providing for a release of liability or indemnification of a party to the agreement. Qualifying agreements with such terms must be reviewed and approved by the Attorney General within 30 days. As is true with the state board of finance in Section 3, the

Attorney General may approve the terms, request modification to the terms or reject the terms. If terms are rejected, or modifications requested, the state educational institution or community college may revise and resubmit for review. Execution of a qualifying agreement with release of liability or indemnification terms without approval is null and void.

Section 5 establishes reporting requirements for state educational institutions and community colleges. These entities are required to submit to the Attorney General and Secretary of the Higher Education Department no later than June 30 each year a report containing information about each administrator with an existing qualifying agreement, as well as the administrator's title and total compensation, as well as the total compensation of the lowest-compensated regular full-time employee at the state educational institution or community college. Additionally, by December 31 of each year, the state board of finance is required to submit to the Attorney General and Secretary of the Higher Education Department a report containing the number of qualifying agreements reviewed, which would include five enumerated categories of information.

Section 6 reestablishes the fiduciary duties that are owed to institutions by boards of regents, community college boards and administrators from those entities. An express cause of action is created for breaching those fiduciary duties, which may be brought by the Attorney General. Section 6 lays out the remedies a court may provide for breach, including injunctions, specific performance, reimbursement of costs, impoundment of public funds, and other equitable relief. These remedies would be in addition to, rather than substituted of, other actions or remedies otherwise available, including removal of a board member under Article 12, Section 13 of the New Mexico Constitution. In instances where a member of a board of regents or community college board is a respondent in an action for breach of fiduciary duties, counsel for the state educational institution or community college shall pursue measures to provide independent counsel to the board of regents or community college board.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

The Attorney General, and by extension the New Mexico Department of Justice, would possess two additional responsibilities, one active and one passive, upon passage of SB266. First, the Attorney General would be responsible for reviewing and either approving, seeking modifications or rejecting qualifying agreements from state educational institutions or community colleges that include terms related to releases of liability of indemnification. Second, the Attorney General would be the recipient of annual reports from both the state educational institutions and community colleges (by June 30 each year), as well as the state board of finance (by December 31 of each year). These reports would need to be reviewed, and any follow-up action taken as appropriate.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship with HJR12, which would amend Article 12, Section 13 of the New Mexico Constitution to explicitly list the fiduciary duties of boards of regents and institution administrators. This amendment would also alter the removal process, including who has standing to bring actions, and the removal grounds and forum.

Relationship with SB19, which would require training of boards of regents, including two (2) hours covering financial management, budgeting and fiduciary duties.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The state board of finance and Attorney General would need to promulgate rules to further establish the process of submission and review under Sections 3 and 4 so that state educational institutions and community colleges are aware of the protocols to follow in adhering to SB266's requirements.

ALTERNATIVES

Entities other than the state board of finance could be tasked with contract review and approval. However, the board of finance appears best positioned to undertake this responsibility, as they are tasked with the "general supervision of the fiscal affairs of the state…" NMSA 1978, Section 6-1-1(E).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A