

N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 266 (SB266) can be cited as the Higher Education Accountability Act. It provides for review by the State Board of Finance and the Attorney General of "qualifying agreements" for administrators which agreements may be approved, returned for modification, or rejected. Requires reports to the State Board of Finance and the Secretary of Higher Education. Provides for an action for breach of fiduciary duty against the board or administrator by the attorney general, including impoundment of funds. SB266 includes definitions and provides for rulemaking.

SB266 states that to promote financial stability and responsible allocation of state funds, and to maintain public confidence in the financial management of state educational institutions and community colleges, before the execution of a qualifying agreement for an administrator with such institution, the agreement shall be submitted for review and approval, modification, or rejection by the State Board of Finance if the qualifying agreement: (1) exceeds an employment term of five years; or (2) includes a total compensation value more than ten times the total compensation of the institution's lowest-paid regular full-time employee at the time it is submitted for review. A qualifying agreement is defined as an employment agreement, performance or incentive compensation agreement, retention agreement, separation agreement, or settlement agreement, including a proposed qualifying agreement or an amended qualifying agreement or any financial instrument, however named, that serves the same purposes.

The State Board of Finance shall adopt rules to implement SB266. When reviewing a qualifying agreement, the board shall endeavor to prevent financial loss, waste, or abuse and shall:

- ensure that any significant expenditures in the agreement do not impair the financial standing of the institution or limit the ability of the institution college to invest in academic programs or student services;
- ensure that the agreement does not contain unwarranted terms, including excessive severance compensation or other financial benefits; and
- identify fiscally imprudent terms deemed anomalous as compared to like or similar agreements at peer institutions.

Within 30 calendar days of receiving a qualifying agreement for review, the State Board of Finance shall complete its review of the agreement by:

1. approving the agreement;
2. requesting modification of the terms of the agreement, with specific modifications requested; or
3. rejecting the agreement with clearly stated reasons.

If an agreement results in:

- approval by the board, the institution may formally execute the agreement;
- a request for modification, the institution shall modify the agreement as provided; or
- a rejection, the institution may: (a) revise the agreement so as to address the reasons for rejection; and (b) submit the revised agreement to the attorney general for further review.

A qualifying agreement executed without the required review and approval of the State Board of Finance or the attorney general is null and void. Approval by the State Board of Finance of an agreement does not preclude the Attorney General from instituting an action for breach of fiduciary duty against a board of regents or community college board or a member of those boards as provided in this act.

Beginning with the 2025-26 academic year, a state institution or community college that employs an administrator with an existing qualifying agreement that meets the criteria established in the act shall submit to the Attorney General and the Secretary of Higher Education, by June 30, 2026, and no later than each succeeding June 30, a report containing:

- the name of each administrator employed with an existing qualifying agreement;
- the title of the administrator;
- the total compensation, by category, paid to the administrator; and
- the total compensation, by category, paid to the lowest-paid regular full-time employee at the institution.

By December 31, 2025, and each succeeding year, the State Board of Finance shall submit a report to the Attorney General and the Secretary of Higher Education containing the number of qualifying agreements reviewed, whether the agreements were employment, performance or

incentive compensation, retention, separation or settlement agreements, and for each qualifying agreement:

- the name of the institution or college;
- the name and title of the signatory or desired signatory administrator;
- a brief description of the agreement's terms, including total compensation paid or intended to be paid;
- the State Board of Finance determination to approve, modify or reject it; and
- a brief explanation of the criteria used to justify the board's determination.

SB266 states that a member of a board of regents or a community college board or an administrator of a state educational institution or community college owes the institution or college for which the member or administrator serves a fiduciary duty, including a duty of care and prudent administration, a duty of good faith and a duty of undivided loyalty.

The Attorney General may bring a cause of action against a member of a board or an administrator for a breach of fiduciary duty in the district where the institution is located or in the first judicial district. If the Attorney General does so, counsel for the state educational institution or the community college shall:

- not serve as counsel to a member named in the action;
- immediately submit a plan to the attorney general with a process to provide independent counsel to such a board member; and
- continue to provide independent counsel to an administrator named in the action consistent with the administrator's independent fiduciary duty to the institution or college.

If the court determines that a member of a board or an administrator may breach or has breached a fiduciary duty, the court may:

- enjoin the board or administrator committing the breach;
- compel performance of duties required of a board member or administrator;
- order the board member or administrator to reimburse the state for the cost of defending the action;
- impound public funds related to the breach until the resolution of the action; and
- order any other legal or equitable relief the court deems appropriate.

The civil action and remedies provided by this section are not exclusive and are in addition to any other actions or remedies in law or equity otherwise available, including the ability to seek removal of a member of a board of regents under Article 12, Section 13 of the constitution of New Mexico.

In addition to defining a "qualifying agreement", there are several other definitions in SB266. The most significant ones are:

- "administrator" means a president, chancellor, vice president, vice chancellor, provost, or vice provost, regardless of any executive, senior or assistant designation, a director of

athletics and any other person that is performing a similar executive function or role at a state institution or community college, regardless of the person's title, but does not include any executive personnel who are employed by the University of New Mexico Health Sciences Center

- "duty of care and prudent administration" means the duty of a board member to carry out the member's responsibilities using the degree of diligence, sound judgment and skill that an ordinarily prudent person would reasonably exercise under similar circumstances
- "duty of good faith" means the duty of a board member to act within the law to advance the interests of the institution or college and to carry out the member's responsibilities ethically, honestly, and with sincere conduct free from malice or ill intent
- "duty of undivided loyalty" means the duty of a board member to faithfully pursue the mission of, and act solely in the best interest of, the institution or college, rather than for personal gain or the benefit of other organizations, groups or individuals
- "total compensation" means the complete package of direct monetary payments and indirect non-monetary benefits that an employee receives from the employee's employer. The definition goes on to specify everything of value that qualifies as compensation

Other definitions in SB266 include:

- "board of regents"
- "community college"
- "consideration"
- "employment agreement"
- "indemnification"
- "performance or incentive compensation agreement"
- "release of liability"
- "retention agreement"
- "separation agreement"
- "settlement agreement"
- "severance compensation"

The effective date of SB266 is July 1, 2025.

FISCAL IMPLICATIONS

There is no appropriation in SB266. It is unclear if there would be costs to postsecondary institutions, but the State Board of Finance would be taking on additional duties and rulemaking, and the New Mexico Higher Education Department (NMHED) would need to collect and monitor the reports from each institution.

SIGNIFICANT ISSUES

The language in SB266 that refers to "state educational institutions or community colleges" would be simpler if "public postsecondary educational institutions" was used to refer to all the schools this bill tries to cover. This could also help to clarify the status of branch campuses. Branch campuses have a community college role and mission, but are under the governance of

the board of regents of their parent university. They also have separate statutory authorization. It would be clearer to use the term public postsecondary educational institutions that would encompass the constitutional institutions, the branch campuses, and the independent community colleges. "Special schools" would also need to be included for the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf.

The provisions in SB266 that create oversight of institutions by the Board of Finance and the Attorney General would also require a change to other existing statute, including 21-3-7 NMSA 1978. [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] With respect to the institutions named in the Constitution of New Mexico, those provisions in SB266 may also be in conflict with the provision in Article XII, Section 13 of the Constitution of New Mexico that states that the legislature shall provide for the control and management of each of the institutions by a board of regents for each institution.

There is also a conflict with 21-1-18 NMSA 1978. [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.

In Section 2.A. executive personnel who are employed by the University of New Mexico Health Sciences Center (UNM HSC) are excluded from the definition of "Administrator". however, the UNM HSC isn't a separate entity, it is an administrative unit of the University of New Mexico (UNM). The Board of Regents for UNM has full authority over them, the UNM President has full authority to hire and fire, and given the amount of money that flows through the UNM HSC and recent personnel changes there, excluding them could be both short-sighted and risky.

In Section 2.B., SB266 defines "board of regents" as a board created by the legislature. But regents are nominated by the governor and approved by the senate.

In Section 2.F., "state educational institutions" is defined as an institution designated in Article 12, Section 11 of the constitution of New Mexico and provided for in Chapter 21, Article 1 NMSA 1978. This could be confusing as this definition is limited to the constitutional schools.

In Section 2.M., "regular full-time employee" is defined as a non-faculty employee. Many administrators at postsecondary institutions, however, also have faculty rank, and faculty can also have qualifying agreements, Defining "regular full-time employee" as being non-faculty, could lead to confusion and definitional issues.

In addition, there is the possibility that the process of getting contracts approved for new hires could greatly slow down the hiring process and result in the loss of preferred candidates.

PERFORMANCE IMPLICATIONS

There are no performance measures defined in SB266, but there are mandatory reporting requirements that would need to be monitored and verified.

ADMINISTRATIVE IMPLICATIONS

There could be a significant additional burden on the State Board of Finance in carrying out the duties laid out in SB266.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

See the points listed in the Significant Issues section. The language in SB266 could be clarified in several places.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB266 is not passed, qualifying agreements would be approved by the associated board of regents or governing board and would not be subject to review by the State Board of Finance. Recruitment would not be a concern for quality candidates for state educational institutions and community colleges.

AMENDMENTS

N/A