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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Muñoz/Hamblen **ORIGINAL DATE** 2/13/2025

BILL

SHORT TITLE Higher Ed. Agreement Approval & Review **NUMBER** Senate Bill 266

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
BOF	No fiscal impact	\$116.7 to \$182.2	\$116.7 to \$182.2	\$233.4 to \$364.4	Recurring	General Fund
Total	No fiscal impact	\$116.7 to \$182.2	\$116.7 to \$182.2	\$233.4 to \$364.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Joint Resolution 12 and Senate Bill 19

Sources of Information

LFC Files

Agency Analysis Received From
 Council of University Presidents (CUP)
 Higher Education Department (HED)
 New Mexico Independent Community Colleges (NMICC)
 Office of the Attorney General (NMAG)
 State Board of Finance (BOF)
 University of New Mexico (UNM)

SUMMARY

Synopsis of Senate Bill 266

Senate Bill 266 (SB266) requires the boards of regents of higher education institutions (HEI) to submit certain employment contracts to the State Board of Finance (BOF) for review and approval. Additionally, the bill would require any contracts that limit liability or indemnify HEI administrators to be reviewed and approved by the Attorney General (NMAG). Finally, the bill allows NMAG to bring a civil cause of action against a member of the board of regents of a higher education administrator for breach of fiduciary duty.

Section 3 of the act requires the state Board of Finance (BOF) to review any employment agreement (“qualified agreement”) for an administrator defined in the bill as a president, chancellor, vice president, vice chancellor, provost or vice provost, an athletic director and “any other person that is performing a similar executive function.” SB266 does not apply to any

executive of the University of New Mexico Health Sciences Center. BOF review applies to employment contracts exceeding five years and that have a total value of 10 times the total compensation of the HEI's lowest-paid, full-time employee.

BOF review shall:

- Ensure that any significant expenditures in the qualifying agreement do not impair the financial standing of the [HEI];
- Ensure that the qualifying agreement does not contain unwarranted terms, including excessive severance compensation or other financial benefits;
- Identify fiscally imprudent terms deemed anomalous as compared to like or similar agreements at peer institutions.

SB266 requires BOF to complete the review within 30 days and either approve, modify, or reject the agreement. Approval will allow the HEI to execute the contract with the administrator. If the BOF recommends modification, SB266 states the HEI "shall modify the qualifying agreement as provided for by [BOF]." Should BOF reject an agreement, SB266 requires BOF to clearly state the reason for the rejection and allows the HEI to submit a revised agreement.

Section 4 of SB266 requires that any employment agreement that includes a release from liability or indemnification should be referred to NMAG to complete a review within 30 days. NMAG review can accept, modify, or reject an agreement that includes a release from liability or indemnification. Approval allows the HEI to execute the contract and a rejection would require the HEI to revise and resubmit the contract. A modification of the contract would require the HEI to modify the agreement as provided by the AG.

Section 5 requires BOF to produce an annual report to NMAG and the Higher Education Department that includes details of the qualifying agreements reviewed. The report is not required to be provided to the Legislature.

Section 6 allows NMAG to bring a civil cause of action against a member of a board or regents or an administrator for breach of fiduciary duty. The bill states the HEI shall not serve as counsel for an administrator or regent named in an action brought by NMAG but that the HEI will immediately submit a plan to NMAG for providing independent counsel to named parties. If the court determines a member of the board of regents or administrator "may breach or has breached fiduciary duty," the court may order an administrator or regent to reimburse the state for the cost of defending the action or impound public funds related to the breach until resolution of the action. Finally, SB266 states that the civil actions and remedies provided "are not exclusive and are in addition to any other actions or remedies in law or equity otherwise available."

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

SB266 requires BOF and NMAG to review personnel contracts for executive level administrators. The additional duties will require additional staff as well as specialized contract services. BOF reports that "given the additional oversight and reporting requirements imposed on the Board of Finance by SB266, the Board of Finance staff estimate the need for additional legal support and FTE." BOF estimates cost for administration to be approximately \$47.3

thousand and between \$69.4 thousand and \$134.9 thousand for outside legal counsel, for a total cost between \$116.7 thousand and \$182.2 thousand as reflected in the estimated additional operating budget table.

SB266 would require NMAG to perform review of certain contracts, but the agency did not estimate an operating budget impact.

BOF notes the provisions of SB266 could create cost savings to the state should the process “prevent financial losses, waste, or abuse.” These potential savings cannot be estimated and therefore are not included in the “Estimated Additional Operating Budget Impact” table.

SIGNIFICANT ISSUES

HED and BOF note the additional review process for executive-level contracts will likely slow the hiring process and possibly result in top candidates accepting positions elsewhere.

The University of New Mexico states:

The bill creates the right of [NMAG] to pursue civil action against regents and community college board members (in the jurisdiction of the state education institution *or* in 1st Judicial District) despite the fact regents of state educational institutions may not be held personally liable in any actions arising based upon a claim for damages arising out of an act or failure to act of that board of regents. 21-1-18 NMSA 1978.

The language in SB266 states that an HEI “*shall modify the qualifying agreement as provided for by the state board of finance.*” This provision seems to give BOF the ability to set the terms of the employment contract through the modification process.

Under the provisions of SB266, BOF and NMAG would take a more active role in approval of executive level contracts, a departure from current practice of leaving this responsibility solely in the control of the board or regents. The constitution of New Mexico states, “The legislature shall provide for the control and management of each of the institutions ... by a board of regents for each institution.”

ADMINISTRATIVE IMPLICATIONS

BOF states training will need to be held for the board so it can best consider qualifying agreements.

Section 3(B)(3) of SB266 requires BOF to “identify fiscally imprudent terms deemed anomalous as compared to like or similar agreements at peer institutions.” However, there is no definition of a peer institution. Fulfilling this requirement will likely require BOF to compare contracts with a nationwide set of institutions, as well as determine what set of these institutions qualify as peer institutions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB266 is related to House Joint Resolution 12, which proposes amending the constitution to add an explicit fiduciary duty of regents to the institution and states the Legislature may provide for additional duties and may define the scope of boards of regents and alter the process for regent removal.

SB266 also relates to Senate Bill 19, which provides for additional training for members of boards of regents.

TECHNICAL ISSUES

The New Mexico Independent Community Colleges (NMICC) notes, “It appears SB266 removes authority from both appointed boards and elected boards as both are given the statutory authority to employ and set compensation for the institutional president.” This could be in conflict with 21-3-7 NMSA 1978 and 21-13-10 NMSA 1978 which both deal with board of regent authority.

HED notes several technical issues, including:

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.

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.

OTHER SUBSTANTIVE ISSUES

NMICC reports:

Postsecondary institutions must have institutional accreditation awarded by a recognized regional accrediting body in order to receive federal funds. New Mexico's public postsecondary institutions are accredited by the Higher Learning Commission (HLC). To be eligible for accreditation, each institution must demonstrate it meets all 19 HLC eligibility requirements. SB266 may be perceived as imposing an external influence on the institution and eliminating the board's authority to engage and dismiss the chief executive officer. If it is determined the boards do have an undue external influence

placed upon them, the post-secondary institution's institutional accreditation is at risk. If an institution does not have regional accreditation – they cannot receive any federal funding, including student financial aid.

The Council of University Presidents states:

SB266 presents a clear violation of the New Mexico constitutional delegation of authority to state educational institutions to manage and control their own affairs. The Legislature lacks authority to appropriate nonstate funds to institutions of higher learning or to control the use thereof through the power of appropriation.

BOF reports:

SB266 does not prohibit the Attorney General from taking action for breach of fiduciary duties after the State Board of Finance has approved an agreement. To the extent the Attorney General's office takes action against based on an agreement approved by the Board of Finance, other regents, Board of Finance Staff, and Attorney General staff may become open to third-party (i.e., students and/or professors) aiding and abetting claims.

BOF further states: "As written, SB266 may require universities and community colleges to pay for the costs of defending regents, members, and/or administrators against any suits instituted for breach of fiduciary duties and pay any settlements or final judgments resulting therefrom."

CJ/hj/hg