

AN ACT

RELATING TO HIGHER EDUCATION; BROADENING THE POWER OF THE
EDUCATIONAL ASSISTANCE FOUNDATION TO ISSUE EDUCATIONAL LOANS.

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

Section 1. Section 21-21A-1 NMSA 1978 (being Laws 1981,
Chapter 319, Section 1) is amended to read:

"21-21A-1. SHORT TITLE.--Chapter 21, Article 21A NMSA
1978 may be cited as the "Educational Assistance Act"."

Section 2. Section 21-21A-2 NMSA 1978 (being Laws 1981,
Chapter 319, Section 2) is amended to read:

"21-21A-2. PURPOSE.--The purpose of the Educational
Assistance Act is to promote the public welfare and prosperity
of the people of New Mexico by stimulating the availability of
financial assistance for post-secondary education so as to
give greater higher education opportunities."

Section 3. Section 21-21A-3 NMSA 1978 (being Laws 1981,
Chapter 319, Section 3, as amended) is amended to read:

"21-21A-3. DEFINITIONS.--As used in the Educational
Assistance Act:

A. "bond" means any bond, note or other evidence
of indebtedness;

B. "corporation" means a corporation formed
pursuant to the provisions of the Educational Assistance Act
to guarantee educational loans;

C. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;

D. "foundation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to provide financial assistance for post-secondary education; and

E. "institution of higher education" means the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico or other institution of higher education approved by the foundation."

Section 4. Section 21-21A-5 NMSA 1978 (being Laws 1981, Chapter 319, Section 5, as amended) is amended to read:

"21-21A-5. NONPROFIT FOUNDATION AUTHORIZED--PURPOSE.--A majority of the four-year institutions of higher education may form, pursuant to the provisions of the Nonprofit Corporation Act, a nonprofit foundation, separate and apart from the state. The purpose of the foundation is to improve the educational opportunities of residents of New Mexico by providing financial assistance to qualified persons, including a program of making, financing, purchasing, holding and selling educational loans, and by servicing educational loan, scholarship, grant, work study and other educational assistance programs."

Section 5. Section 21-21A-7 NMSA 1978 (being Laws 1981, Chapter 319, Section 7, as amended) is amended to read:

"21-21A-7. FOUNDATION POWERS.--The foundation may from time to time issue negotiable bonds in conformity with the applicable provisions of the Uniform Commercial Code. The foundation shall have all the powers necessary and convenient to carry out its purposes under the Educational Assistance Act, including the following powers:

A. to make or participate in the making of educational loans, to purchase or participate in the purchase of educational loans and to contract in advance for any such purchase or to purchase and retain rights to make any such purchase and to pay any amounts payable in respect of such rights;

B. to sell or participate in the sale of educational loans to the student loan marketing association or to other purchasers, in conformity with the federal Higher Education Act of 1965, as amended, any such sale to be public or private and on such terms as the foundation may authorize, and to contract in advance for any such sale or to purchase and retain rights to make any such sale and to pay commitment fees or any other amounts payable in respect of such rights;

C. to collect and pay reasonable fees and charges in connection with the making, purchasing, selling and servicing or the causing to be made, purchased, sold or serviced of educational loans held by the foundation;

D. to enter into an agreement with insurance

carriers to insure against any loss in connection with its operations, including without limitation the repayment of any educational loan, in such amounts and from such insurers as it deems necessary or desirable and pay the premiums for that insurance;

E. to consent, when it deems appropriate, to the modification of the rate of interest, the time of payment of any installment of principal or interest or any other terms of any educational loan held by the foundation; provided that no such consent shall be made or given if the effect would be to lessen or invalidate any insurance coverage or reinsurance in respect of any such educational loan;

F. to employ an executive director and such other officers and employees as it deems necessary and set their compensation and prescribe their duties; provided that no salary of any officer or employee of the foundation shall exceed ninety percent of the average of the salaries of the presidents of the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico;

G. to adopt and publish rules in accordance with the provisions of the State Rules Act respecting the foundation's educational loan program and such other rules as are necessary to effectuate the program's purposes and the functions and duties of the foundation;

H. to make, execute and effectuate any and all agreements or other documents with any federal or state agency or other person, corporation, association, partnership, organization or entity necessary to accomplish its purposes under the Educational Assistance Act;

I. to authorize a retirement program for salaried officers and employees of the foundation;

J. to authorize reimbursement of expenses of salaried officers and employees of the foundation not exceeding the amounts authorized by law for salaried state public officers and employees;

K. to purchase liability insurance for officers and directors and such other insurance as may be reasonable and necessary;

L. to accept appropriations, loans, grants, revenue sharing, devises, gifts, bequests, federal grants and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;

M. to sue and be sued in its own name and to plead and interplead;

N. to adopt an official seal and alter it at pleasure;

O. to adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

P. to employ fiscal consultants, attorneys,

counselors and such other consultants and employees as may be required in its judgment and to fix and pay their compensation;

Q. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement as provided in Section 21-21A-17 NMSA 1978;

R. to fix, revise from time to time, charge and collect fees and other charges for services rendered by the foundation in connection with educational loan, scholarship, grant, work study and other educational assistance programs; and

S. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act."

Section 6. Section 21-21A-8 NMSA 1978 (being Laws 1981, Chapter 319, Section 8, as amended) is amended to read:

"21-21A-8. ISSUANCE OF REVENUE BONDS.--The foundation may from time to time issue negotiable revenue bonds. The proceeds of the sale of the bonds issued pursuant to the Educational Assistance Act may be used to fund reserves for the bonds, to pay interest on the bonds and to pay the necessary expenses of issuing the bonds, including bond counsel and fiscal advisory fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and

bear interest payable as prescribed by the foundation. The bonds shall mature serially or otherwise not later than thirty years from their date and may be redeemable before maturity, at the option of the foundation, at prices and under terms and conditions fixed by the foundation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the place of the payment of the principal and interest of the bonds. The bonds shall be executed on behalf of the foundation as special obligations of the foundation payable only from the funds specified in the Educational Assistance Act and shall not be a debt of the state, any eligible post-secondary institution or any municipality, and neither the state nor any eligible post-secondary institution or municipality shall be liable for the bonds. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the office of the foundation. After the registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the foundation, and the bonds and coupons are negotiable instruments under the laws of the state. The bonds may be

sold at public or private sale by the foundation at prices and in accordance with procedures and terms it determines to be advantageous and reasonably obtainable. The foundation may provide for replacement of any bond that is mutilated or destroyed."

Section 7. Section 21-21A-11 NMSA 1978 (being Laws 1981, Chapter 319, Section 11) is amended to read:

"21-21A-11. TRUST AGREEMENTS AUTHORIZED.--In the discretion of the foundation, any bonds issued under the provisions of the Educational Assistance Act may be secured by a trust agreement by and between the foundation and a corporate trustee, which may be a bank or trust company having trust powers within or without the state. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign all or any part of the revenues or assets of the foundation, including without limitation educational loan receipts, educational loans, federal interest subsidies, special allowance payments and educational loan commitments; temporary loans, contracts, agreements and other security or investment obligations; the fees or charges made or received by the foundation; the money received in payment of educational loans and interest on that money, including the proceeds of insurance thereon; and any other money received or due to be received by the foundation. The trust agreement or resolution may contain such provisions for protecting and

enforcing the rights and remedies of the holders of bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the foundation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the revenues or assets of the foundation and the custody, safeguarding and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state that may act as depository of the proceeds of bond revenues or other money pursuant to the Educational Assistance Act to furnish such indemnifying bonds or to pledge such securities as may be required by the foundation. The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any bondholders. The trust agreement or resolution may contain such other provisions as the foundation deems reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the foundation."

Section 8. Section 21-21A-18 NMSA 1978 (being Laws 1981, Chapter 319, Section 18) is amended to read:

"21-21A-18. INVESTMENT OF SEVERANCE TAX PERMANENT FUND

HB 132
Page 9

IN BONDS AND EDUCATIONAL LOAN NOTES.--

A. In addition to all other investments of the severance tax permanent fund authorized by law, the state treasurer may, with the prior approval of the state board of finance, annually invest a portion of the severance tax permanent fund in bonds and educational loan notes authorized by the Educational Assistance Act, which bonds and notes shall be held by the state treasurer until maturity unless earlier repurchased or repaid by the foundation.

B. Payments of principal on bonds and educational loan notes purchased by the state treasurer from the severance tax permanent fund shall be credited by the state treasurer to the severance tax permanent fund. Payments of interest on such bonds and educational loan notes shall be credited to the severance tax income fund.

C. The foundation may from time to time purchase any or all of such bonds and educational loan notes from the state treasurer.

D. The commission on higher education may enter into an agreement with the foundation for the servicing of educational loans held by the state treasurer."

Section 9. Section 21-21A-19 NMSA 1978 (being Laws 1981, Chapter 319, Section 19, as amended) is amended to read:

"21-21A-19. GIFTS BY PERSONS, CORPORATIONS, INSTITUTIONS AND ASSOCIATIONS.--

A. Any person or domestic corporation or association organized for the purpose of carrying on a business in New Mexico may, regardless of the provisions of any certificate of incorporation, charter or other articles of organization, make contributions or gifts, grants, bequests, devises or loans to the foundation.

B. Any institution of higher education or nonprofit corporation having funds available for student scholarships or student loans, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan these restricted funds to the foundation under such terms and conditions as may be mutually agreed upon for the purpose of making educational loans."