

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 215

51st Legislature, 2nd Session, 2014

Tracking Number: .195398.1SA

Short Title: Education Trust Board Changes

Sponsor(s): Representative Jim R. Trujillo

Analyst: Ian Kleats

Date: February 13, 2014

Bill Summary:

HB 215 amends, repeals, and creates sections of the *Education Trust Act* to:

- establish a “college savings program”;
- abolish prepaid tuition contracts;
- create the Program Administration Fund apart from the Education Trust Fund;
- change the membership of the Education Trust Board (“the Board”) to include an additional member appointed by the Governor; and
- expand the powers and duties of the Board.

Apart from a restructuring of certain provisions in the *Education Trust Act* to reflect the abolition of prepaid tuition contracts, provisions of HB 215 are outlined by section below:

Section 2 defines new terms and revises the definition of existing terms relating to the Board’s administration of the *Education Trust Act*:

- providing definitions for new terms, including:
 - “account” to mean an individual trust account pursuant to a college investment agreement entered into pursuant to the college savings program;
 - “account owner” to mean the person who has entered into a college investment agreement with the Board and is authorized to withdraw money from a college savings account prior to disbursement to the account’s beneficiary;
 - “financial institution” to mean a bank, broker-dealer, insurance company, mutual fund, savings and loan association, or other financial entity; and
 - “manager” to mean a financial institution under contract with the Board to serve as manager of a college savings plan in the college savings program and receive contributions on behalf of the program; and
- providing revised definitions for:
 - “beneficiary” to mean the person who is designated at the time the account is opened, or the person who replaces a designated beneficiary, as the person whose education expenses are expected to be paid from the account;

- “college investment agreement” to mean an agreement entered into by the Board and an account owner to participate in the college savings program and establish an account to be used for the qualified higher education expenses of a beneficiary at an eligible institution of higher education; and
- “institution of higher education” to mean a postsecondary educational institution eligible to participate in student financial aid programs administered by the US Department of Education.

Section 3:

- establishes the college savings program, which is based on college investment agreements that are provided by current law; and
- creates the non-reverting Program Administration Fund, the proceeds of which may be used to pay costs of establishing, marketing, and otherwise administering the college savings program (see “Technical Issues,” below).

Section 4 changes the membership of the Board to include an additional member appointed by the Governor, while clarifying the requirements of a quorum for a meeting of the Board.

Section 5 specifies the powers and duties of the Board. Among these provisions, HB 215:

- allows the Board to:
 - adopt, amend, or repeal and promulgate rules necessary to carry out the provisions of the *Education Trust Act*;
 - sue and be sued;
 - enter into contracts;
 - employ or contract for professional, technical and clerical staff, and independent counsel;
 - contract with one or more financial institutions to manage the Education Trust Fund and the separate trust accounts;
 - enter into college investment agreements; and
 - charge, impose, and collect administrative fees as provided in a college investment agreement or other contract relating to the college savings program in amounts not exceeding the reasonable costs of establishing, marketing, and otherwise administering the program; and
- requires the Board to:
 - adopt and promulgate investment guidelines for the Education Trust Fund; and
 - administer the college savings program in compliance with the *Uniform Prudent Investor Act*.

Section 6 includes provisions for the creation and administration of accounts for college investment agreements.

Section 7 details liability protections, which are provided under current law by §22-21K-3 NMSA 1978 but were not included **Section 3** of HB 215.

Section 8 amends reporting requirements for the Board to exclude provisions pertaining to prepaid tuition contracts, which HB 215 abolishes.

Fiscal Impact:

HB 215 does not contain an appropriation.

Fiscal Issues:

Under the section of the *Education Trust Act* that creates the Board, statute requires that the Higher Education Department (HED) provide administrative support to the Board in carrying out its duties. However, the powers and duties of the Board, as expanded by HB 215, appear to allow the Board to employ its own administrative support staff. It is unclear whether this provision might result in changes to the HED budget that reduce budgeted positions currently providing administrative support to the Board.

Technical Issues:

On page 4, lines 20 through 23, HB 215 allows the Board to contract with one or more managers to invest the contributions deposited within the Education Trust Fund. However, trust accounts receive two sources of income:

1. periodic contributions by the account owner; and
2. income from the investment of the Education Trust Fund.

As written, the language suggests that only those receipts from the first source may be invested, and account owners would consequently not benefit from compound interest. The sponsor may wish to consider amending that language to include a phrase similar to “together with accrued investment earnings.”

On page 5, lines 5 through 17, HB 215 creates the Program Administration Fund and allows that money in the fund may be used to pay costs of establishing, marketing, and otherwise administering the college savings program. However, that language does not appropriate the fund to the Board. The sponsor may wish to consider amending this section to include language similar to “the Program Administration Fund is appropriated to the board.”

Substantive Issues:

HB 215 removes a requirement that the Board review investments of the Education Trust Fund by a third-party investment manager at least quarterly. However, HB 215 requires that the Board administer the college savings program in compliance with the *Uniform Prudent Investor Act*, which requires that a trustee periodically review an investment manager’s actions to monitor its performance. It is unclear whether “periodically” would be more or less frequent than quarterly.

Background:

HED’s bill analysis provides a brief summary of the *Education Trust Act*, along with two college savings plans currently administered by the Board:

“The ETB is currently governed by a four-person board, chaired by the secretary of Higher Education (NMHED) with members appointed by the governor, the Speaker of the House, and the President Pro Tem of the Senate. The ETB had a fifth board member, representing the State Investment Council, but this position was eliminated under Laws 2011, Chapter 51.

In 1997, the ETB was created pursuant to the Education Trust Act. (Section 21-21k-1 through 21-21k-7 NMSA 1978) The ETB administers the education trust fund, which includes all funds received pursuant to college savings agreements as a part of the state’s qualified tuition program authorized by the Internal Revenue Code Section 529. The ETB authorizes rules and regulations governing the college savings plans, protects the integrity of the trust, and ensures the proper use of tax benefits.

As of December 31, 2013, the ETB manages over \$2.2 billion in gross assets in two college savings plans: the Education Plan and Scholar’s Edge. The Education Plan has 20,297 accounts and \$442 million in investments. The Scholar’s Edge has 126,526 accounts and \$1.8 billion in investments. Most of the accounts are held by non-New Mexicans.”

Committee Referrals:

HEC/HAFC

Related Bills:

None as of February 13, 2014.