

1 SENATE BILL 169

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO HIGHER EDUCATION; CREATING A HIGHER EDUCATION
12 COORDINATING COUNCIL; PROVIDING POWERS AND DUTIES; GIVING THE
13 HIGHER EDUCATION DEPARTMENT SOLE AUTHORITY TO APPROVE CAPITAL
14 EXPENDITURES OF STATE POST-SECONDARY EDUCATIONAL INSTITUTIONS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 9-25-1 NMSA 1978 (being Laws 2005,
18 Chapter 289, Section 1) is amended to read:

19 "9-25-1. SHORT TITLE.--~~[Sections 1 through 13 of this~~
20 ~~act]~~ Chapter 9, Article 25 NMSA 1978 may be cited as the
21 "Higher Education Department Act"."

22 SECTION 2. Section 9-25-3 NMSA 1978 (being Laws 2005,
23 Chapter 289, Section 3) is amended to read:

24 "9-25-3. DEFINITIONS.--As used in the Higher Education
25 Department Act:

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1 A. "[~~board~~] council" means the higher education
2 [~~advisory board~~] coordinating council;

3 B. "department" means the higher education
4 department; and

5 C. "secretary" means the secretary of higher
6 education."

7 SECTION 3. Section 9-25-10 NMSA 1978 (being Laws 2005,
8 Chapter 289, Section 10) is amended to read:

9 "9-25-10. HIGHER EDUCATION [~~ADVISORY BOARD~~] COORDINATING
10 COUNCIL--MEMBERSHIP--TERMS--DUTIES--ADMINISTRATIVE
11 ATTACHMENT.--

12 A. The "higher education [~~advisory board~~]
13 coordinating council" is created to advise the department and
14 the governor on higher education policy matters, coordinate the
15 development and implementation of the statewide higher
16 education strategic plan and attendant goals and perform other
17 functions as provided by law. The [~~board~~] council is
18 administratively attached to the department, with
19 administrative staff provided by the department.

20 ~~[B. The secretary shall appoint fourteen members~~
21 ~~giving due regard to geographic representation, cultural~~
22 ~~diversity and the composition of higher education institutions~~
23 ~~in New Mexico. Four members shall represent the four-year~~
24 ~~public post-secondary educational institutions, one of whom~~
25 ~~shall represent the university of New Mexico, one of whom shall~~

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1 ~~represent New Mexico state university, one of whom shall~~
2 ~~represent New Mexico institute of mining and technology and one~~
3 ~~of whom shall represent either New Mexico highlands university,~~
4 ~~eastern New Mexico university or western New Mexico university;~~
5 ~~three members shall represent the two-year public post-~~
6 ~~secondary educational institutions; one member shall represent~~
7 ~~the accredited private post-secondary educational institutions;~~
8 ~~one member shall represent business; one member shall represent~~
9 ~~college and university faculty; one member shall represent~~
10 ~~college and university nonfaculty staff; one member shall be a~~
11 ~~college or university student; one representative of the tribal~~
12 ~~colleges in New Mexico; and one representative of the Indian~~
13 ~~nations, tribes and pueblos in New Mexico. The members~~
14 ~~representing the categories of post-secondary educational~~
15 ~~institutions shall be the chief executive officers of the~~
16 ~~institutions of those categories or the chief executive~~
17 ~~officers' designees. The members representing faculty and~~
18 ~~nonfaculty staff and the student member shall be the leaders of~~
19 ~~faculty, staff and student organizations at their respective~~
20 ~~institutions.]~~

21 B. The council shall consist of the following
22 members:

23 (1) the secretary of higher education, who
24 shall serve as the chair;

25 (2) the chief executive officer of a research

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1 university, or the officer's designee, appointed by the council
2 of university presidents for a term of four years, rotating
3 among the state research universities every four years;

4 (3) the chief executive officer of a state
5 comprehensive university, or the officer's designee, appointed
6 by the council of university presidents for a term of four
7 years, rotating among the state comprehensive universities;

8 (4) the chief executive officer of a state
9 branch community college, or the officer's designee, appointed
10 by the New Mexico association of community colleges for a term
11 of two years, rotating among the state branch community
12 colleges every two years;

13 (5) the chief executive officer of a public
14 independent community college, or the officer's designee,
15 appointed by the New Mexico independent community colleges for
16 a term of two years, rotating among the public independent
17 community colleges every two years;

18 (6) the chief financial officer of a state
19 research university, or the officer's designee, appointed by
20 the council of university presidents for a term of two years,
21 rotating among the state research universities every two years;

22 (7) the chief financial officer of a state
23 comprehensive university, or the officer's designee, appointed
24 by the council of university presidents for a term of two
25 years, rotating among the state comprehensive universities

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1 every two years;

2 (8) the chief financial officer of a public
3 independent community college, or the officer's designee,
4 appointed by the New Mexico independent community colleges for
5 a term of four years, rotating among the independent community
6 colleges every four years;

7 (9) the chief executive officer of a tribal
8 college located in New Mexico, or the officer's designee,
9 appointed by the governor in consultation with the secretaries
10 of higher education and Indian affairs for a term of four
11 years, rotating among the New Mexico tribal colleges every four
12 years;

13 (10) the following ex-officio members or their
14 designees:

15 (a) the secretary of public education;

16 (b) the secretary of workforce
17 solutions; and

18 (c) the secretary of economic
19 development;

20 (11) three public members with expertise in
21 education, research, business or finance to serve staggered
22 terms of four years, as follows:

23 (a) one member appointed by the governor
24 in consultation with the secretary of higher education for an
25 initial term of four years;

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(b) one member appointed by the president pro tempore of the senate for an initial term of three years; and

(c) one member appointed by the speaker of the house of representatives for an initial term of two years; and

(12) one ex-officio student member of a public post-secondary educational institution appointed by the governor for a term of two years; provided that if the student member ceases to be a student at the public post-secondary educational institution, a new ex-officio student member shall be appointed to finish out the term.

~~C. [Four members of the initial board, including the student member, shall be appointed for two years, five members shall be appointed for three years and five members shall be appointed for four years; thereafter, the student member shall serve a two-year term and the other members shall serve four-year terms.]~~ Public members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

D. The ~~[board]~~ council shall annually elect a ~~[chair]~~ vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business.

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1 E. The ~~[board]~~ council shall meet at the call of
2 the chair at least quarterly. Meetings of the ~~[board]~~ council
3 shall be held in Santa Fe and at other sites within the state
4 at the direction of the ~~[board]~~ chair.

5 F. The council is subject to the Open Meetings Act
6 and meetings shall be webcast, recorded and archived.

7 G. The council shall:

8 (1) coordinate ongoing discussions and
9 analyses of:

10 (a) ways to improve New Mexico's public
11 higher education system and the services provided to residents
12 by each post-secondary educational institution in New Mexico;
13 and

14 (b) possibilities of improving
15 operational and financial efficiencies in the public system;
16 and

17 (2) with the department, develop and update
18 the statewide higher education strategic plan and monitor the
19 progress of post-secondary educational institutions in meeting
20 the goals of the plan."

21 SECTION 4. Section 9-25-13 NMSA 1978 (being Laws 2005,
22 Chapter 289, Section 13) is amended to read:

23 "9-25-13. ADVISORY COMMITTEES.--

24 A. ~~[In addition to the higher education advisory~~
25 ~~board]~~ The department may create ~~[other]~~ advisory committees.

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1 "Advisory" means furnishing advice, gathering information,
2 making recommendations and performing such other activities as
3 may be instructed or delegated and as may be necessary to
4 fulfill advisory functions or to comply with federal or private
5 funding requirements and does not extend to administering a
6 program or function or setting policy unless specified by law.
7 Advisory committees shall be appointed in accordance with the
8 provisions of the Executive Reorganization Act.

9 B. All members of advisory committees are entitled
10 to receive per diem and mileage as provided in the Per Diem and
11 Mileage Act and shall receive no other compensation, perquisite
12 or allowance."

13 SECTION 5. Section 13-6-2.1 NMSA 1978 (being Laws 1989,
14 Chapter 380, Section 1, as amended) is amended to read:

15 "13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF
16 FINANCE APPROVAL.--

17 A. Except as provided in Section 13-6-3 NMSA 1978,
18 for state agencies, any sale, trade or lease for a period of
19 more than five years of real property belonging to a state
20 agency, local public body or school district or any sale, trade
21 or lease of such real property for a consideration of more than
22 twenty-five thousand dollars (\$25,000) shall not be valid
23 unless it is approved prior to its effective date by the state
24 board of finance.

25 B. The provisions of this section shall not be

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1 applicable to:

2 (1) those institutions specifically enumerated
3 in Article 12, Section 11 of the constitution of New Mexico;

4 (2) the state land office;

5 (3) the state transportation commission;

6 (4) the economic development department when
7 disposing of property acquired pursuant to the Statewide
8 Economic Development Finance Act; [✗]

9 (5) a school district when leasing facilities
10 to a locally chartered or state-chartered charter school; or

11 (6) a community college organized pursuant to
12 the Community College Act or a technical and vocational
13 institute organized pursuant to the Technical and Vocational
14 Institute Act."

15 SECTION 6. Section 21-1-21 NMSA 1978 (being Laws 1971,
16 Chapter 235, Section 4) is amended to read:

17 "21-1-21. CAPITAL EXPENDITURES.--No expenditure shall be
18 made by any state educational institution confirmed by Article
19 12, Section 11 of the [~~state~~] constitution of New Mexico for
20 the purchase of real property or the construction of buildings
21 or other major structures or for major remodeling projects
22 without prior approval of the proposed purchase, [✗]
23 construction or remodeling by the [~~board of educational finance~~
24 ~~and the state board of finance~~] higher education department."

25 SECTION 7. Section 21-1-24 NMSA 1978 (being Laws 1971,

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1 Chapter 235, Section 3) is amended to read:

2 "21-1-24. GRADUATE PROGRAMS.--None of the funds
3 appropriated in the general [~~appropriations act~~] appropriation
4 acts to the state educational institutions confirmed by Article
5 12, Section 11 of the [~~state~~] constitution of New Mexico that
6 are not special schools may be used for the support of any
7 program [~~or programs~~] of graduate study beyond the level of the
8 bachelor's degree other than programs that were maintained by
9 each institution previous to September 1, 1954, except by
10 explicit approval of each program by the [~~board of educational~~
11 ~~finance and the state board of finance~~] higher education
12 department prior to [~~such~~] the use of the funds."

13 SECTION 8. Section 21-1-26.9 NMSA 1978 (being Laws 1998,
14 Chapter 61, Section 2, as amended) is amended to read:

15 "21-1-26.9. LIMITATION--HIGHER EDUCATION DEPARTMENT--
16 REVIEW OF PROPOSED CAMPUSES.--Effective January 1, 1998, no new
17 [~~public~~] state post-secondary educational institution, branch
18 campus or off-campus instructional center shall be created
19 except as specifically created by the legislature. The higher
20 education department and the higher education coordinating
21 council shall review any proposal for the establishment of a
22 new [~~public~~] state post-secondary educational institution or
23 campus and submit its recommendations to the legislature. In
24 reviewing proposals, the department and the council may
25 consider:

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1 A. provisions for a local mill levy of at least two
2 mills;

3 B. population base to provide at least five hundred
4 full-time students;

5 C. whether at least fifty percent of the costs of
6 initial construction comes from private or local sources;

7 D. governance structure;

8 E. means for acquisition of property, including
9 purchase, lease, donations or any other means;

10 F. eligibility and level of funding request of the
11 state; and

12 G. brokering of extended learning provisions."

13 SECTION 9. Section 21-1-26.12 NMSA 1978 (being Laws 2005,
14 Chapter 289, Section 14) is amended to read:

15 "21-1-26.12. EDUCATIONAL NEEDS AND GUIDELINES--
16 ACCOUNTABILITY REPORTS.--

17 A. The higher education department shall, [~~through~~
18 ~~consultation~~] with the assistance of the higher education
19 coordinating council and all public post-secondary educational
20 institutions, develop and publish a statement of statewide
21 educational needs and guidelines to assist the public post-
22 secondary educational institutions in the development or
23 modification of institutional strategic plans. The department,
24 with the assistance of the higher education coordinating
25 council, may conduct studies of statewide educational needs and

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1 make recommendations to the governor, the legislature and
2 public post-secondary educational institutions.

3 B. All public post-secondary educational
4 institutions, including off-campus instruction programs and
5 learning centers, shall:

6 (1) approve and submit accountability reports
7 prepared in accordance with the statewide public agenda; and

8 (2) submit budgets for review no later than
9 August 1 each year for the following fiscal year."

10 SECTION 10. Section 21-2-3 NMSA 1978 (being Laws 1973,
11 Chapter 233, Section 3, as amended) is amended to read:

12 "21-2-3. STATE COMMISSION CREATED--DESIGNATED MEMBERS--
13 DESIGNATION OF SUPPLEMENTARY MEMBERS FOR SPECIFIC FUNCTIONS.--
14 [~~There is created~~] The "state commission on post-secondary
15 education" is created. The [~~commission on~~] higher education
16 coordinating council is designated the state commission and
17 shall work closely with the higher education department when
18 undertaking commission duties. For the purposes of the Post-
19 Secondary Educational Planning Act, the [~~commission on~~] higher
20 education coordinating council, in functioning as the state
21 commission, is charged with a concern for all types of post-
22 secondary education and all types of educational institutions
23 and programs as enumerated in Section 21-2-2 NMSA 1978.
24 Whenever federal statutes and regulations so require, the state
25 commission may request the [~~governor~~] secretary of higher

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1 education to appoint, for specific functions relating to
2 federally sponsored programs, supplementary members to the
3 state commission, and members shall be appointed by the
4 [~~governor~~] secretary to fulfill those specific functions as
5 requested. When sitting with the state commission, the
6 supplementary members shall have, for purposes of the specific
7 functions for which they were appointed, all the powers and
8 perquisites of regular members of the state commission."

9 SECTION 11. Section 21-2-5.1 NMSA 1978 (being Laws 1988,
10 Chapter 164, Section 1, as amended) is amended to read:

11 "21-2-5.1. FUNDING FORMULA.--

12 A. The [~~commission on~~] higher education department
13 shall develop a funding formula that will provide funding for
14 each institution of higher education to accomplish its mission
15 as determined by a statewide plan.

16 B. The [~~commission on~~] higher education department
17 may include factors in the funding formula, which when
18 implemented will achieve the following:

19 (1) improve the quality of programs central to
20 each institution's mission;

21 (2) develop and enhance programs that meet
22 targeted post-secondary educational needs and the related needs
23 of public schools;

24 (3) eliminate unnecessary, unproductive or
25 duplicative programs;

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1 (4) consider faculty salaries and benefits
2 adjustment to a competitive level with similar institutions in
3 similar states, when such compensation adjustments are
4 supported by detailed analyses of faculty workloads and
5 educational outcomes assessments, and nonteaching staff
6 salaries and benefits at a competitive level with other similar
7 public or private sector employment in the community in which
8 the institution is situated;

9 (5) recognize additional costs incurred
10 through increases in enrollment;

11 (6) provide for equipment and equipment
12 maintenance and library acquisitions and operations since the
13 development of the prior funding formula;

14 (7) fund off-campus courses and other
15 nontraditional course delivery systems at a level sufficient to
16 allow their development;

17 (8) provide incentives to institutions to
18 pursue private or alternative funding sources;

19 (9) encourage the sharing of expertise,
20 equipment and facilities and development of joint instructional
21 programs, research and public service projects;

22 (10) implement uniform articulation agreements
23 and facilitation of transfer of students between institutions;

24 (11) encourage energy conservation;

25 (12) require mechanisms to track expenditures

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1 to ensure greater accountability; and

2 (13) require each institution of higher
3 education that offers distance learning and computer-based
4 courses of study to provide accompanying electronic formats
5 that are usable by an individual with a disability using
6 assistive technology, and those formats shall be based on the
7 American standard code for information interchange, hypertext
8 markup language and extensible markup language."

9 SECTION 12. Section 21-2-6 NMSA 1978 (being Laws 1978,
10 Chapter 54, Section 1, as amended) is amended to read:

11 "21-2-6. STATEWIDE PLANNING--PARTICIPATING AGENCIES AND
12 PERSONS.--

13 A. The state commission in carrying out its
14 planning activities for post-secondary education shall consult
15 with [~~and invite the active participation of~~]:

16 (1) the higher education department;

17 [~~(1)~~] (2) representatives of post-secondary
18 educational institutions of the several types enumerated in
19 Paragraph (2) of Subsection A of Section 21-2-2 NMSA 1978;

20 [~~(2)~~] (3) the public education commission;

21 [~~(3)~~] (4) the public education department;

22 [~~(4)~~] (5) representatives of public and
23 private elementary and secondary schools;

24 [~~(5)~~] (6) the secretary of [~~labor~~] workforce
25 solutions;

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1 [~~(6)~~] (7) the tourism department;
2 [~~(7)~~] (8) the apprenticeship council;
3 [~~(8)~~] (9) the economic development department;
4 [~~(9)~~] (10) the state advisory council on
5 vocational education;

6 [~~(10)~~ the secretary of finance and
7 administration or the secretary's designee;]

8 (11) persons familiar with the education needs
9 of persons with [~~a disability~~] disabilities and persons
10 disadvantaged by economic, racial or ethnic status;

11 (12) representatives of business, industry,
12 organized labor and agriculture;

13 (13) the general public; and

14 (14) private in-state post-secondary
15 institutions.

16 B. Whenever the planning activities carried out
17 under the provisions of Section 21-2-5 NMSA 1978 are concerned
18 with the types of post-secondary education enumerated in
19 Subparagraphs (a) through (e) of Paragraph (1) of Subsection A
20 of Section 21-2-2 NMSA 1978, the state commission shall
21 directly involve the public education commission and the public
22 education department in all planning activities."

23 SECTION 13. Section 21-2-7 NMSA 1978 (being Laws 1973,
24 Chapter 233, Section 7) is amended to read:

25 "21-2-7. ANNUAL REPORT.--The state commission shall

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1 submit an annual report to the governor and the legislature
2 prior to November 15 each year. [~~Such~~] The report shall
3 describe the planning activities undertaken, present data on
4 the status of all types of post-secondary education and set
5 forth all recommendations developed under Subsections I, J and
6 K of Section [5, Items I, J and K of the Post-Secondary
7 Educational Planning Act] 21-2-5 NMSA 1978. Prior to the final
8 adoption of the annual report, the state commission shall
9 distribute a draft of the report to all institutions and
10 programs of the types enumerated in Paragraph (2) of Subsection
11 A of Section [2A-(2)] 21-2-2 NMSA 1978 and to representatives
12 of all other interests enumerated in Section [6] 21-2-6 NMSA
13 1978 and shall then hold a hearing at which all [~~such~~] those
14 institutions, programs and interests may comment upon the draft
15 report."

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