

AN ACT

RELATING TO EDUCATIONAL ASSISTANCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE EDUCATIONAL ASSISTANCE ACT; PROVIDING FOR THE CONTINUED DEBT SERVICE AND OTHER PAYMENTS ON OUTSTANDING BONDS; PROTECTING THE RIGHTS OF BONDHOLDERS.

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

SECTION 1. 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. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;

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

D. "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 2. 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 or other purpose identified by the foundation, 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;

G. 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;

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

I. to authorize reimbursement of expenses of salaried officers and employees of the foundation;

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

K. to accept loans, public or private grants, devises, gifts, bequests and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;

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

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

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

O. 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;

P. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement;

Q. 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

R. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act or other purpose identified by the foundation."

SECTION 3. Section 21-21A-6 NMSA 1978 (being Laws 1981, Chapter 319, Section 6, as amended) is amended to read:

"21-21A-6. FOUNDATION--BOARD OF DIRECTORS--MEMBERS--TERMS--MEETINGS--BYLAWS.--

A. The foundation shall be governed by and all of its functions, powers and duties shall be exercised by a board of directors. After the effective date of this 2011 act, the board sitting prior to the effective date of this 2011 act shall appoint the next successor board and shall establish staggered four-year terms for the members. The board shall consist of the following members:

- (1) the state treasurer or the state treasurer's designee;
- (2) two members representing post-secondary education;
- (3) two members representing lending institutions; and
- (4) other members as provided by the foundation bylaws.

B. A vacancy shall be filled by appointment by the board for the unexpired term.

C. The board shall elect a chair and such other officers as it deems necessary.

D. Members of the board shall receive no compensation for their service, but may be reimbursed on a per diem and mileage basis for their actual and necessary expenses reasonably incurred in the performance of their duties as board members, in an amount not exceeding the amount authorized by law for nonsalaried public officers of governmental entities of this state.

E. Board meetings shall be open to the public. The board shall adopt bylaws governing board meetings consistent with the provisions of the Open Meetings Act.

F. The foundation shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act, governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act and the federal Higher Education Act of 1965, as amended."

SECTION 4. Section 21-21A-9 NMSA 1978 (being Laws 1981, Chapter 319, Section 9) is amended to read:

"21-21A-9. STATUS OF BONDS.--

A. Bonds and other obligations issued under the provisions of the Educational Assistance Act shall not be deemed to constitute a debt, liability or obligation of or a pledge of the faith and credit of the state or any political subdivision thereof, but shall be payable solely from the

revenues or assets of the foundation pledged for such payment. Each obligation issued on behalf of the foundation under that act shall contain on its face a statement to the effect that neither the state nor the foundation shall be obligated to pay the obligation or the interest on the obligation except from the revenues or assets pledged for payment and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

B. Expenses incurred by the foundation in carrying out the provisions of the Educational Assistance Act may be made payable from the revenues and funds provided pursuant to that act, and no liability shall be incurred by the foundation under that act beyond the extent to which such money has been provided."

SECTION 5. Section 21-21A-13 NMSA 1978 (being Laws 1981, Chapter 319, Section 13) is amended to read:

"21-21A-13. ALL MONEY RECEIVED DEEMED TRUST FUNDS.-- Notwithstanding any other provisions of law, all money received by the foundation under the provisions of the Educational Assistance Act shall be deemed to be trust funds to be held and applied solely as provided in that act. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money may be temporarily invested pending disbursement and shall provide

that any officer with whom or any bank or trust company with which the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the Educational Assistance Act pursuant to the resolution or trust agreement."

SECTION 6. Section 21-21A-16 NMSA 1978 (being Laws 1981, Chapter 319, Section 16) is amended to read:

"21-21A-16. ANNUAL REPORT AND AUDIT.--

A. The foundation shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor, the corporations bureau of the public regulation commission, the state auditor and the legislative finance committee. Each report shall set forth a complete operating and financial statement of the foundation during the year. The board of directors of the foundation shall annually contract with an independent certified public accountant, licensed by the state, to perform an examination and audit of the accounts and books of the foundation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and shall make a determination as to whether the foundation has complied with the provisions of the Educational Assistance Act. The person performing the audit shall furnish copies of the audit report to the governor, the corporations

bureau, the state auditor and the legislative finance committee, where they shall be placed on file and made available for inspection by the general public.

B. Subject to the provisions of any contract with bondholders or noteholders, the foundation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the foundation."

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

"21-21A-21. DISSOLUTION OF FOUNDATION.--Upon termination or dissolution, all rights and properties of the foundation shall pass to and be vested in the state, subject to the rights of any bondholders, lienholders and other creditors."

SECTION 8. A new section of the Educational Assistance Act is enacted to read:

"EDUCATIONAL ASSISTANCE--FOUNDATION ACTIVITIES NOT AFFECTED BY REPEAL.--The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance foundation created pursuant to that act or its activities in relation to bonds issued and outstanding or the servicing of student loans outstanding, including any special status of the foundation or dispensation granted to the foundation prior to the effective

date of this 2011 act in other provisions of law."

SECTION 9. A new section of the Educational Assistance Act is enacted to read:

"EDUCATIONAL ASSISTANCE--NONPROFIT CORPORATION STATUS NOT AFFECTED BY REPEAL.--The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance nonprofit corporation created pursuant to that act or its designation as the single nonprofit corporation authorized to provide a statewide educational loan program for the purposes of the federal Higher Education Act of 1965."

SECTION 10. REPEAL.--Sections 21-21A-2, 21-21A-4, 21-21A-17, 21-21A-18, 21-21A-20 and 21-21A-23 NMSA 1978 (being Laws 1981, Chapter 319, Sections 2, 4, 17, 18, 20 and 23, as amended) are repealed.
