

## 5-1 Constitutional Enabling Provisions

### • 5-1-1 Purpose

**1. Purpose.** The purpose of this document is to set forth verbatim those provisions of the constitution of New Mexico relating to the establishment and governance of Eastern New Mexico University-Roswell.

### BRANCH COMMUNITY COLLEGE ACT

21-14-1. Branch community college educational program and enrollment defined.

A. "Branch community college educational program," for the purposes of Chapter 21, Article 14 NMSA 1978, includes either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both.

B. The calculation of full-time-equivalent student population for the purposes of Chapter 21, Article 14 NMSA 1978 shall include students enrolled in college-level courses and students enrolled in vocational and technical courses taught by a branch community college that is recognized by the vocational education division as an area vocational school or in courses that are approved by the state board of education. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time-equivalent student population. The public school district shall transfer to the branch community college the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the branch community college.

**History:** 1953 Comp., § 73-30-17, enacted by Laws 1957, ch. 143, § 1; 1963, ch. 162, § 1; 1967, ch. 104, § 1; 1969, ch. 94, § 1; 1971, ch. 48, § 1; 1985, ch. 238, § 27; 1990, ch. 25, § 2; 1999, ch. 219, § 8.

21-14-2. Board duties; relationship with parent institution; elections.

A. As used in Chapter 21, Article 14 NMSA 1978, "board" means either the local school board or the combined local school boards acting as a single board of the school district or the board of the branch community college elected pursuant to Section 21-14-2.1 MSA 1978.

B. The duties of the board are to:

1. Enter into written agreements with the board of regents of the parent institution, subject thereafter to biennial review by all parties concerned and to the review and commentary of the commission on higher education;
2. Act in an advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the branch community college;
3. Approve an annual budget for the branch community college for recommendation to the board of regents of the parent institution;
4. Certify to the board of county commissioners the tax levy; and
5. Conduct the election for tax levies for the branch community college.

C. The board and the board of regents of the parent institution shall enter into a written agreement, which shall include provisions for:

1. The higher education institution to have full authority and responsibility in relation to all academic matters;
2. The higher education institution to honor all credits earned by students as though they were earned on the parent campus;
3. The course of study and program offered;
4. The cooperative use of physical facilities and teaching staff;
5. Consideration of applications of local qualified people before employing teachers of the local school system; and
6. The detailed agreement of financing and financial control of the branch community college.

D. The agreement shall be binding upon both the board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice. However, if the branch community college has outstanding general obligation or revenue bonds, neither the board nor the board of regents may terminate the agreement until the outstanding bonds are retired, except as provided by Section 21-13-24.1 NMSA 1978. This provision shall apply to all agreements in existence between the branch community college and the board of regents of the parent institution.

E. All taxes levied to pay for principal and interest on bonds of the branch community college shall be in addition to the taxes levied for operating, maintaining and providing facilities for the branch community college pursuant to the College District Tax Act [21-2A-1 to 21-2A-10 NMSA 1978.]

F. For the purpose of relating branch community colleges to existing laws, branch community college districts or branch community colleges shall not:

1. Be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;
2. Benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;
3. Be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article 12, Section 6 of the constitution of New Mexico; and
4. Be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned.

G. All elections held pursuant to the branch community college laws shall be as follows:

1. The board calling the election shall give notice of the election in a newspaper of general circulation in the branch community college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election;
2. The election shall be conducted and canvassed in the same manner as municipal school district elections unless otherwise provided in the branch community college laws; and

3. Any person or corporation may institute in the district court of any county in which the branch community college district affected lies an action or suit to contest the validity of any proceedings held under the branch community college laws, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns by the board.

H. The tax rolls of the school districts comprising the branch community college district shall be adopted as the tax rolls of the branch community college district.

**History:** 1953 Comp., § 73-30-18, enacted by Laws 1963, ch. 162, § 2; 1971, ch. 182, § 1; 1983, ch. 85, § 1; 1985, ch. 238, § 28; 1997, ch. 167, § 2; 1998, ch. 61, § 6.

21-14-2.1. Branch community college board; local option.

A. A majority of the local board of education or the combined boards of education acting as a single board may cease to operate as the branch community college board and provide for an elected branch community college board. In that event, the majority of the local board of education or the combined boards of education acting as a single board shall elect five persons as members of the branch community college board. The persons elected shall be assigned position numbers one through five. Board members shall be over twenty-one years of age, qualified electors and residents of the branch community college district. The members of the board shall continue to serve until the next regular branch community college election, to be held on the first Tuesday of February of each odd-numbered year, at which time five board members shall be elected by the registered voters of the branch community college district. The candidates shall file for and be elected to a particular position number. The candidate receiving the highest number of votes for a particular position shall be elected. At the first board meeting after the election, the five members shall draw lots for the following terms: two for terms of two years and three for terms of four years. Thereafter, board members shall be elected for terms of four years from March 1 succeeding their election. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members.

B. Immediately after the election of the five members by the assembled board of education members, the board shall select from its members a chairman and secretary who shall serve in these offices until the next regular branch community college board election. After each branch community college board election, the members shall proceed to reorganize.

C. The duties of the board shall continue as set out in Chapter 21, Article 14 NMSA 1978.

**History:** 1978 Comp., § 21-14-2.1, enacted by Laws 1985, ch. 238, § 29.

21-14-2.2. Limitations on branch community colleges.

There shall be no new branch community college or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 7.

21-14-3. Repealed.

21-14-4. Availability of school facilities; use of other facilities.

Upon establishment of a branch community college, public school facilities are to be made available to the college if needed, and in such manner as will not interfere with the regular program of instruction. No public school funds shall be expended in the program, and the branch community college shall pay a proper amount for utilities and custodian service. The board may arrange for the use of available facilities other than public school facilities if approved by the board of regents.

**History:** 1953 Comp., § 73-30-19, enacted by Laws 1957, ch. 143, § 3; 1963, ch. 162, § 3.

21-14-5. Financing of branch community colleges; tuition and fee waivers.

A. Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available pursuant to the provisions of the College District Tax Act [21-2A-1 to 21-2A-10 NMSA 1978] or Chapter 21, Article 14 NMSA 1978.

B. The board of regents of the respective parent institution of the branch community college may establish and grant gratis scholarships to students of the branch community college who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-1-4.3 NMSA 1978, the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in the branch community college and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of his institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. At least thirty-three and one-third percent of the gratis scholarships established and granted by the board of regents for a branch community college each year shall be granted on the basis of financial need.

**History:** 1953 Comp., § 73-30-20, enacted by Laws 1957, ch. 143, § 4; 1963, ch. 162, § 4; 1995, ch. 224, § 20; 1999, ch. 219, § 9.

21-14-6 to 21-14-8. Repealed.

21-14-9. State support; appropriation.

A. The Higher Education Department (HED) shall recommend an appropriation for each branch community college and junior college based upon the college's financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The HED shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any branch community college that levies a tax at a rate less than one dollar (\$1.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], or any branch community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** 1953 Comp., § 73-30-23, enacted by Laws 1973, ch. 371, § 1; 1995, ch. 224, § 22.

21-14-10. Applicability of other laws.

Any law concerning public schools and any law concerning the higher education institution shall, when applicable, govern the operation and conduct of the branch community college.

**History:** 1953 Comp., § 73-30-24, enacted by Laws 1963, ch. 162, § 8.

21-14-11. Repealed.

21-14-12, 21-14-13. Repealed.

21-14-14. Title to property acquired from proceeds of bond issue.

All property acquired from the proceeds of a bond issue shall be taken in the name of the board of education or the board of regents of the parent institution. In the event an independent public college entity evolves from the branch community college, the property so held by the board of education or the board of regents of the parent institution shall be transferred and conveyed to the governing body of the new independent public college entity. No transfer or conveyance shall take place without the express approval of the board of educational finance.

**History:** 1953 Comp., § 73-30-28, enacted by Laws 1965, ch. 162, § 3; 1970, ch. 72, § 3.

21-14-15. Repealed.