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## FISCAL IMPACT REPORT

**LAST UPDATED** 2/03/2023

**SPONSOR** Chandler/Roybal Caballero **ORIGINAL DATE** 1/27/2023

**BILL**

**SHORT TITLE** Student Loan Bill of Rights Act **NUMBER** House Bill 82/aHEC

**ANALYST** Lobaugh

### REVENUE\* (dollars in thousands)

| Estimated Revenue |               |               | Recurring<br>or Nonrecurring | Fund<br>Affected                    |
|-------------------|---------------|---------------|------------------------------|-------------------------------------|
| FY23              | FY24          | FY25          |                              |                                     |
|                   | Indeterminate | Indeterminate | Recurring                    | Student Loan Bill<br>of Rights Fund |

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

|     | FY23  | FY24    | FY25    | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected                    |
|-----|-------|---------|---------|----------------------|------------------------------|-------------------------------------|
| RLD | \$0.0 | \$228.0 | \$0.0   | \$228                | Nonrecurring                 | General Fund                        |
| RLD | \$0.0 | \$0.0   | \$455.9 | \$455.9              | Recurring                    | Student Loan Bill<br>of Rights Fund |

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Higher Education Department (HED)

New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of HEC Amendment

The House Education Committee (HEC) amendment to House Bill 82 added language to specifically mention tuition is included among higher education costs related to courses, instruction, training, or education. The HEC amendment also added language specifying that applicants need to be registered and in good standing to do business in New Mexico to receive a student loan servicer license from the Regulation and Licensing Department (RLD).

## Synopsis of Original House Bill 82

House Bill 82 creates a new Student Loan Bill of Rights Act in state law relating to private student loans. Private student loans are extensions of credit to students or parents to fund higher education that are not made, insured, or guaranteed under the federal Higher Education Act of 1965. Banks, credit unions, nonprofits, state-affiliated organizations, higher education institutions, and other private entities can hold or service private student loans.

House Bill 82 requires the Financial Institutions Division of the Regulation and Licensing Department (RLD) to license persons or entities engaged in the business of servicing private student loans. The bill specifies student loan servicers must provide RLD with a written application for an initial license and a nonrefundable initial license fee of no more than \$5,000. The bill requires student loan servicers to attain a license for each place of business that they maintain in New Mexico. House Bill 82 requires RLD to conduct background checks and investigate whether applicants for a student loan servicer license are financially sound and of good character before issuing a license. The bill exempts banks, credit unions, subsidiaries of banks and credit unions, and the state Higher Education Department (HED) from its licensing and other requirements. Student loan servicing licenses issued by RLD expire at the end of the calendar year following its issuance and must be renewed through a renewal application process and fee.

House Bill 82 requires RLD to automatically issue licenses to federal student loan servicing contractors if they pay of the required license fee. The bill requires federal student loan servicing contractors to inform RLD within seven days after being notified of the expiration, revocation, or termination of their federal contract with the U.S. Department of Education.

House Bill 82 prohibits private student loan providers and servicers from engaging in unfair, abusive, or deceptive practices. The bill states such practices are subject to the enforcement and penalty provisions of the state Unfair Practices Act. The bill authorizes RLD to monitor and assess risk to borrowers by requiring information and reports from private student loan providers and servicers. House Bill 82 authorizes RLD to revoke a license and impose administrative penalties for violations of Student Loan Bill of Rights Act. The bill also allows for judicial enforcement of the Student Loan Bill of Rights Act and creates civil penalties. The bill also allows a person to bring an action in district court against a private lender or servicer to recover actual damages, punitive damages, legal fees, or other remedies.

House Bill 82 requires private lenders to provide cosigners with notifications and disclosures prior to offering a student loan or a loan to refinance an existing student loan. The bill also provides cosigners with access to student loan records and a processes for releasing cosigners from loan obligations.

House Bill 82 prohibits private lenders from accelerating loan payments, except in cases of payment default. The bill also requires a private lender to make any flexible or modified repayment options they offer equally available to all borrowers. Additionally, the bill requires private lenders and servicers to discharge student loan obligations after notification of a borrower or cosigner experiencing a total and permanent disability.

House Bill 82 creates a student loan ombudsman position at RLD to assist student loan borrowers and attempt to resolve their complaints. The bill requires the New Mexico Attorney General (NMAG) and HED to collaborate with the student loan ombudsman in assisting

borrowers and enter into an information sharing agreement by July 2024. The bill also requires the student loan ombudsman, NMAG, and HED to create a student loan borrower course by December 2025 and thereafter publish annual status reports on the implementation of the Student Loan Bill of Rights Act.

The effective date of the bill is January 1, 2024.

## **FISCAL IMPLICATIONS**

House Bill 82 creates a new “student loan bill of rights fund” in the state treasury. The new nonreverting fund would consist of licensing fees collected by RLD related to the Student Loan Bill of Rights Act and money that is otherwise appropriated, donated, or accrues to the fund. House Bill 82 provides for continuing appropriations from the fund to the RLD to administer the Student Loan Bill of Rights Act. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities.

Licensing fee revenue projections for the student loan bill of rights fund are indeterminate because of limited data. RLD reports the number of student loan servicers impacted by House Bill 82 is unknown because student loan servicers are not currently required to license or register in New Mexico. Similarly, HED notes it does not currently collect data on how many private colleges and universities offer private student loans in the state. If licensing fee revenue collected by RLD is insufficient to cover RLD’s costs of implementing House Bill 82, there would be a recurring cost to the state general fund.

RLD reports it would need an additional \$455.9 thousand each year for four full-time employees to implement the requirements of House Bill 82. Specifically, RLD reports this additional funding would cover the salaries, benefits, and operational costs of the new ombudsman position, two examiners, and a licensing specialist. RLD projected only an additional operating budget impact of \$228 thousand in FY24 because of the bill going into effect in the middle of the fiscal year.

## **SIGNIFICANT ISSUES**

The student loan ombudsman position created by House Bill 82 may duplicate the responsibilities of other existing student loan ombudsman offices and borrower assistance resources. The U.S. Consumer Financial Protection Bureau has an education loan ombudsman’s office to assist borrowers and handle complaints related to both federal and private student education loans. Additionally, HED reports federal student loan servicing contractors are each required to have an ombudsman office to address borrower concerns. The New Mexico Educational Assistance Foundation, a nonprofit foundation authorized under state law to make and service private student loans, also has a student loans ombudsman. HED also maintains a hotline for concerns related to student financial aid.

Section 4, Subsection F, Paragraph 3 of House Bill 82 states RLD shall issue a student loan servicer license if RLD finds “the applicant's business will be conducted honestly, fairly, equitably, carefully, efficiently and in a manner commanding the confidence and trust of the community.” The New Mexico Attorney General (NMAG) notes these criteria could be subject to varying interpretations and potentially lead to legal challenges to the Student Loan Bill of Rights Act.

## TECHNICAL ISSUES

House Bill 82 requires license renewal applications to be filed with RLD on or before November 1 of the year in which the student loan servicer license expires. RLD reports that this application deadline in House Bill 82 is incompatible with its online technical system for processing applications and issuing licenses. RLD noted a license renewal application deadline of December 31 would be compatible with its online technical system for processing applications and issuing licenses.

RLD and NMAG note that the bill is unclear as to whether the department can seek judicial enforcement only after conducting a hearing and issuing an order or if judicial enforcement is a mechanism independent of the hearing process.

NMAG notes that Section 2 and Section 28 of House Bill 82 contain different definitions of the word “person” which could potentially lead to confusion in interpreting the Student Loan Bill of Rights.

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