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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY


DISCUSSION DRAFT

AN ACT

RELATING TO GOVERNMENT FINANCING; CREATING THE LAND GRANT-MERCED ASSISTANCE FUND; PRESCRIBING DUTIES; PROVIDING FOR DISTRIBUTIONS; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"NEW MATERIAL] DISTRIBUTION--LAND GRANT-MERCED ASSISTANCE FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the land grant-merced assistance fund in an amount equal to five-hundredths percent of the net receipts attributable to the gross receipts tax." 

SECTION 2. A new section of Chapter 49 NMSA 1978 is enacted to read:

"NEW MATERIAL] LAND GRANT-MERCED ASSISTANCE FUND

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Summary of Comments on L:\202\215000\215785.1SA.wpd

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70. Number: 1 Author: caa Subject: Sticky Note Date: 9/15/19, 11:35:53 PM

Significant Issue Identified in the FIR:

For the purpose of this calculation, the net receipts of the gross receipts tax will be considered before the specific distributions, including the hold harmless food and medical payments and the 1.225 percent state share distribution. In essence, this will be 5.125% of the matched taxable gross receipts from all county and municipal locations but excluding out-of-state locations. It may be more equitable if the municipal 1.225 percent and the hold harmless distributions are deducted before calculating the .05 percent net receipts attributable to the gross receipts tax.


Possible Solution to address issue raised would be to add the following or similar language:


The amount of net receipts attributable to the gross receipts tax used for calculating the five-hundredths percent shall exclude distributions made pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978.


Also need to add language stating distributions from the fund will be done in accordance with the new section added to Chapter 49 NMSA 1978.

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1 CREATED--DISTRIBUTION.--


2 A. The "land grant-merced assistance fund" is
3 created in the state treasury and ²shall be administered by the 
4 department of finance and administration. The fund consists of
5 gifts, grants, donations, appropriations to the fund and
6 distributions to the fund made pursuant to the Tax
7 Administration Act. Subject to appropriation by the
8 legislature, money in the fund shall be available for
9 distribution to land grants-mercedes as provided in this
10 section.

11 ⁴. Money in the land grant-merced assistance fund 
12 may be used as matching funds for federal and private grants
13 and to pay the costs and expenses incurred by land grants-
14 mercedes to:

15 (1) carry out their administrative functions,
16 including hiring staff, ⁶contracting with technical experts for 
17 compliance with state reporting requirements, letting out
18 contracts and holding elections;

19 (2) enter into agreements for grants-in-aid;

20 (3) ⁷purchase furniture, fixtures, vehicles,
21 heavy equipment and supplies; 

22 (4) ⁹conduct land surveys, historical research 
23 and hydrological studies and collect and analyze other
24 information needed for land use planning and protection of the
25 lands and waters of a land grant-merced;

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Number: 1 Author: caa Subject: Sticky Note Date: 9/15/19, 10:40:51 PM
Issue raised in FIR:

DFA identified they would require 1 FTE to manage the administer the fund and would need to solicit in accordance with procurement to contact with each land grant to distribute funds.

Response: Since Land Grants are Political Sub-divisions of the State no solicitation would be require to distribute funds. Not clear why DFA would be required to administer the funds. Similar funds including the Small Cities Assistance Fund §3-37A-1 NMSA 1978 and the Small Counties Assistance fund §4-61-1 NMSA 1978 allow for the direct distribution to eligible municipalities and counties from the State Treasurer.

The State Treasurer could distribute funds from the Land Grant-Merced Assistance Fund could directly provided that the Treasurer receive a list of eligible land grants from the NM Land Grant Council or the Treaty of Guadalupe Hidalgo Division in consultation with the Council. This would allow DFA to be removed from the process completely.

Number: 2 Author: caa Subject: Highlight Date: 9/15/19, 10:22:58 PM

Number: 3 Author: caa Subject: Sticky Note Date: 9/15/19, 11:00:46 PM

Given that money in the funds should be distributed directly to eligible land grants this section should be revised. As currently written it could be interpreted that money would be distributed as a reimbursement to land grants for cost incurred. The intention of the bill is to provide land grants with general operating funds that would be distributed to them on an regular basis could be annually at the beginning of each fiscal year or quarterly throughout the fiscal year.

Suggest language for amended language:

Money distributed to eligible land grants-mercedes from the land grant-merced assistance fund must be: placed in their general fund; must be held in a separate bank account from other funds derived by the land grant-merced; may be used as matching funds for federal and private grants; and may be used to pay the costs and expenses incurred by land grants-mercedes to: . . .

Number: 4 Author: caa Subject: Highlight Date: 9/15/19, 10:41:47 PM

Number: 5 Author: caa Subject: Sticky Note Date: 9/16/19, 12:13:09 AM

recommend changing this language to "entering into professional and general service contracts," - this would allow them to contract with CPA's for auditing purposes, attorneys for legal assistance, engineers, architects and planning professionals as needed as well as other general services contracts such as facilities repair, maintenance and construction. Also recommend adding purchasing of property and liability insurance and required surety bonds.

Would read:

carry out their administrative functions, including hiring staff, entering into professional and general service contracts, letting out contracts, holding elections, purchasing property and liability insurance and required surety bonds for board of trustee members and staff;

Number: 6 Author: caa Subject: Highlight Date: 9/15/19, 11:15:02 PM

Number: 7 Author: caa Subject: Highlight Date: 9/15/19, 11:18:04 PM

Number: 8 Author: caa Subject: Sticky Note Date: 9/15/19, 11:21:02 PM

recommend inserting "equipment" before vehicles and "building materials" before supplies. would read:

purchase furniture, fixtures, equipment, vehicles, heavy equipment, building materials and supplies.

Number: 9 Author: caa Subject: Highlight Date: 9/15/19, 11:21:47 PM

Number: 10 Author: caa Subject: Sticky Note Date: 9/15/19, 11:25:49 PM


Recommend including "comprehensive land use plans" and "zoning ordinances" would read:


conduct land surveys, historical research, hydrological studies, comprehensive land use plans, zoning ordinances and collect and analyze other information needed for land use planning, natural resource conservation and protect of the common lands and common waters of the land grant-merced;


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1 (5) carry out community and economic
2 development projects, including maintenance, repair, renovation
3 and construction of land grant-merced infrastructure,
4 buildings, facilities and parks and the acquisition of real
5 property; and

6 (6) carry out natural resource conservation
7 initiatives, including projects related to watershed health,
8 ecological restoration, fuels reduction, range improvements and
9 soil and water conservation.

10 C. Each year on or before July 5, ¹the Guadalupe
11 Hidalgo treaty division of the office of the attorney general
12 shall notify in writing the local government division of the 
13 department of finance and administration of each land grant-
14 merced that constitutes a political subdivision of the state
15 pursuant to the provisions of Chapter 49 NMSA 1978.

16 D. ⁴Each year on or before July 10, the local 
17 government division shall calculate the amount as appropriated
18 by the legislature to be distributed from the land grant-merced
19 assistance fund to each certified land grant-merced. A
20 distribution amount to each certified land grant-merced shall
21 be an equal share of the money available in the land grant-
22 merced assistance fund as appropriated by the legislature.

23 E. ⁶Each year on or before July 20, the local 
24 government division shall certify to the department of finance
25 and administration's state budget division and financial

Number: 1 Author: caa Subject: Highlight Date: 9/15/19, 11:36:23 PM

Number: 2 Author: caa Subject: Sticky Note Date: 9/16/19, 12:19:54 AM

Recommend amending this section to remove local government division and replace with State Treasurer. Also should include language directing the Guadalupe Hidalgo treaty division to consult with the New Mexico Land Grant Council when developing the list. As well timing of prep work leading up to the distribution should start prior to the beginning of the next fiscal year. Perhaps in May or June.

Suggested language: Each year on or before June, the Guadalupe Hidalgo treaty division of the office of the attorney general, in consultation with the New Mexico land grant council, shall notify in writing the state treasurer of each land grant-merced that constitutes a political subdivision of the state pursuant to the provisions of Chapter 49 NMSA 1978.

Need to consider specifically naming all eligible land grants in the General Provisions to make clear distinction of those currently recognized as political subdivisions and provide a additional step for any land grants that reorganize and seek to become recognized as a political subdivision eligible for distributions from the fund. This would address concerns raised in the FIR about how many land grants would be eligible as well as concerns over capacity to properly administer funds received. LCS has in the passed raised issues concerning a constitutional prohibition (N.M. Const., art. IV, § 24) on passing legislation for specific local government entities however their is a NM Supreme Court Case that exempts land grant from this prohibition. It is Board of Trustees v. Montano, 1971-NMSC-025, 82 N.M. 340, 481 P.2d 702.

Also need to consider including language requiring the Treaty Division in consultation with the Land Grant Council to develop criteria for certifying which land grants constitute political subdivision. Criteria in regulation could include compliance with requirements in Chapter 49, such as compiling of annual report, filing of bylaws and elected officials with land grant registry, proof of compliance with election requirements, compliance with bonding requirements, compliance with financial reporting requirements of State Budget Act and Audit Act; compliance with Open Meetings Act, etc

Also may want to consider establishing a requirement that members elected to the Board of Trustees of a land grant must receive a minimum number of hours of training in areas of governance capacity this could include joint training by NM Land Grant Council, Attorney General's Office, State Auditor, DFA-Local Government Division.

Number: 3 Author: caa Subject: Sticky Note Date: 9/16/19, 12:27:34 AM

State Treasurer should be able to calculate the amount to be distributed from the list of eligible land grant provided by the Treaty Division thus removing the requirement to have DFA listed here. Also the funds should be formula driven based on a percentage of the gross receipts tax and therefore should not require a separate appropriation from the legislature. This was pointed out in the FIR. The land grants would prefer the formula driven method over requiring a general fund appropriation every year as it would truly be a guaranteed revenue stream.

If the state treasurer's office would need to tap a small percentage of the money available in the fund to recoup cost associated with administering the fund that should be okay provided that the legislation cap the amount that can be pulled for administrative cost to 5% or less.

Number: 4 Author: caa Subject: Highlight Date: 9/16/19, 12:20:50 AM

Number: 5 Author: caa Subject: Sticky Note Date: 9/16/19, 12:29:31 AM

If administered by the state treasurer provisions E. and F. would not be necessary.

Author: caa Subject: Sticky Note Date: 9/16/19, 12:28:51 AM


Author: caa Subject: Sticky Note Date: 9/16/19, 12:29:23 AM


Number: 6 Author: caa Subject: Highlight Date: 9/16/19, 12:28:00 AM


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1 control division the distribution amount appropriated by the
2 legislature and calculated for each land grant-merced and the
3 respective routing numbers required for electronic deposit.

4 F. Each year on or before July 25, the financial
5 control division shall distribute via electronic transfer of
6 funds to each certified land grant-merced the amount
7 appropriated by the legislature and certified by the local
8 government division for that year.

9 G. ² After a distribution is made to each land grant-
10 merced from the land grant-merced assistance fund, but no later
11 than July 30 of each year, the unexpended or unencumbered
12 balance in the fund shall revert to the general fund." 

13 ⁴ SECTION 3. APPROPRIATION.--One million two hundred fifty 
14 thousand dollars (\$1,250,000) is appropriated from the general
15 fund to the land grant-merced assistance fund for expenditure
16 in fiscal year 2021 for the purposes of the fund. Any
17 unexpended or unencumbered balance remaining at the end of
18 fiscal year 2021 shall revert to the general fund.

19 SECTION 4. EFFECTIVE DATE.--The effective date of the 
20 provisions of this act is July 1, 2020.

Number: 1 Author: caa Subject: Sticky Note Date: 9/16/19, 12:33:43 AM

If administrative fee is allowed would need to include language for it here as well. Also not sure if any money would be left in the fund if it is all equally distributed to the eligible land grants. This provision may not be necessary.

Number: 2 Author: caa Subject: Highlight Date: 9/16/19, 12:30:48 AM

Number: 3 Author: caa Subject: Sticky Note Date: 9/16/19, 12:32:44 AM

Not sure if an appropriation from the general fund is needed if the fund primarily funded by the gross receipts percentage formula.

Number: 4 Author: caa Subject: Highlight Date: 9/16/19, 12:31:02 AM

Number: 5 Author: caa Subject: Sticky Note Date: 9/16/19, 12:53:27 AM

Other concerns raised in the Fiscal Impact Reports:

- Total number of land grants possibly eligible. FIR states as many as 700 not accurate. According to the GAO report the total number of community land grants in New Mexico, excluding the Pueblo grants did not exceed 131. That would be the upper limit of potentially eligible land grants however many of those represent communities that are no longer in existence or whose nature as a land grant community has drastically changed over the course of the past hundred years. Therefore the true upper limit would be significantly smaller.

FIR also raises question if Tome and Atrisco would be eligible entities and since they are both clearly listed in Chapter 49 Article 1 NMSA 1978 it is clear that they would be.

FIR also misinterpreted the role of the Land Grant Council and made assumptions that this bill would result in duplication of services. The Council serves land grants by providing support and assistance but does not have the resources to provide for the day to day needs of all land grants operating as political subdivisions. Like municipalities, counties and tribes the land grants-mercedes require a guaranteed revenue stream to fulfill their governmental functions independent of agencies aimed at providing them support. The Council can play a role in providing them assistance in building their governance capacity and helping them to properly budget and expend any general fund dollars they receive from the land grant-merced assistance fund.

