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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/15
LAST UPDATED 03/09/15

SPONSOR Ortiz y Pino **HB** 199/aSCONC/aSFC/aS
SHORT TITLE Land-Grant Merced Project Finance Act **SB** Fl#1

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	\$400.0	\$200.0	\$600.0	Recurring	Land Grant- Merced Project Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)
 Attorney General's Office (AGO)
 Department of Finance & Administration (DFA)

SUMMARY

Synopsis of SFl Amendment #1

Senate Floor Amendment #1 to Senate Bill 199 strikes "Making an Appropriation" from the bill's title, changes the location of the new fund being created from the state treasury to within the NMFA, and changes the reference from "director" to "chief executive officer" when referring to the head of NMFA. It also strikes SCONC's amendment 7 and changes the body to whom that officer is to make annual reports from the legislature to the appropriate legislative interim committee.

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 199 strikes the Senate Conservation Committee Amendment 3, and then strikes Sections 4, 5 and 6 in their entirety, leaving these Sections as numbered in the original bill: Section 1 (Short Title), Section 3 (Definitions), Section 7 as amended by SCONC to authorize land-grant merced project fund monies to be used to make direct payments to vendors upon certain conditions being met (Land Grant-Merced

Project Fund), Section 8 as amended by SCONC to require annual report to the appropriate legislative interim committee of the number of projects completed and pending completion (Report to Legislature), and Section 9 (Effective Date).

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 199 deletes provisions of the original bill providing for loans from the land grant-merced project fund to make vendor payments. Instead, monies in the fund shall be used to make direct payment to vendors for qualifying projects.

However, a reference to “a loan payment” remains in new Section 2 (originally Section 6) and should be revised. The amendment also deletes the Section 3 definitions of “authority”, “qualifying project” and “vendor” from the bill, leaving references to these terms unclear. Paragraph 6 of the amendment refers to a land grant-merced board “receiving the qualifying project”; language such as “that has applied for vendor payments for a qualifying project” may provide a more accurate description. The term “director” in the renumbered Section 4 (originally Section 8) should be replaced with “chief executive officer”, consistent with NMFA’s enabling legislation. See Section 6-21-4(F), NMSA 1978.

Issues raised in the Significant Issues section below concerning failure to identify the source of money DFA uses to reimburse the authority, the inability to use severance tax bond proceeds to pay the authority’s operational costs if that is the funding source for DFA reimbursement, and the absence of a mechanism for the authority to recover a payment from the land grant-merced in the event DFA rejects a voucher request remain relevant to the bill as amended. So too does the alternative discussed below.

Synopsis of Original Bill

Senate Bill 199 enacts the “Land Grant-Merced Project Finance Act.” Its purpose is to address issues related to the inability of land-grant mercedes to make vendor payments related to capital projects with appropriations of severance tax bond proceeds because of land grants’ limited available financial resources. The bill would address this problem by allowing a land grant to obtain loans through NMFA from the land grant-merced project fund created under this bill to make vendor payments.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

SB 199 does not appropriate funds to the Fund it creates.

Investment income and excess revenue in the Fund is credited to the Fund and do not revert to the General Fund.

As shown in the table above, NMFA estimates the additional operating budget impact of \$200 thousand per fiscal year, which includes review of applications, closing loan agreements and processing payments. That figure is based on actual FY 14 NMFA administrative expenses for its other programs, plus an additional \$200 thousand in the first year to cover significant upfront

expenses incurred to develop rules, policies and applications, including necessary attorney time to develop loan agreements. SB 199 allows for NMFA to recover its costs of administration from the Fund, which is unfunded under this bill.

NMFA advises that more clarification is needed as to whether the intent is to create a fund to serve as a clearing house for appropriations (i.e. an appropriation made into the fund is earmarked for a specific land grant-mercedes for a specific qualified project) or whether the intent is to create a revolving loan project fund for land grant-mercedes. It is possible that its estimated operating budget impact may be less if the intent is to serve as a clearing house and potentially more if the fund will be a revolving fund.

Similarly, because it is unclear whether NMFA is tasked with analyzing the qualified project or the land grant's capacity to implement and manage the project, there may be some unquantifiable additional impact on NMFA's budget.

SIGNIFICANT ISSUES

DFA provides this background analysis:

Land grant-mercedes that are political subdivisions of the State of New Mexico must follow the governance requirements of Sections 49-1-1 through 49-1-18 NMSA 1978. However, they may not have sufficient cash flow available up-front to pay for capital outlay projects appropriated by the State. State capital outlay projects typically require the local public body to pay up-front for goods and services rendered, and then await reimbursement from DFA. This can create a financial hardship on land grants-mercedes (as well as other small, cash-restricted public bodies).

The Land Grant-Merced Project Fund created in the bill is the funding source for NMFA loans to land grant-mercedes when the following conditions are met: the land grant-merced board of trustees certifies that the product or construction element for a capital project has been delivered; the board certifies that a voucher for reimbursement for the cost to the capital project has been submitted to DFA's local government division (LGD); and funds are available in the fund. When a loan is approved by NMFA, DFA reads the bill to require NMFA to pay the vendor directly, and the loan fund would be replenished through DFA distributing bond proceeds to the loan fund. (The bill could also be read to direct NMFA to make a loan to the land-grant merced, who then pays the vendor and the loan is paid off with bond proceeds through a reimbursement from DFA.)

The State Board of Finance (SBOF) is the issuer of bonds to fund state capital projects and is the entity that disburses bond proceeds on a reimbursement basis to fund capital project expenses. The SBOF processes disbursements twice per month. For purposes of federal tax law, the SBOF must treat land grants-mercedes as private entities rather than as public political subdivisions. This requires the SBOF to issue any appropriations for land grants-mercedes through its taxable sponge notes. Taxable sponge note capacity has become scarcer in recent years with the creation of severance tax bond earmarks for water, tribal and colonias infrastructure, which are also ideally issued on a taxable basis.

DFA points to these issues that arise from the provisions of SB 199:

Language in Section 5 regarding certification by the board of trustees of a land grant-merced suggests that as a condition of obtaining a loan through NMFA an element of the capital outlay project must be completed. Further, the board must certify that a voucher for reimbursement has already been submitted to LGD. Submitting a voucher to LGD seems to contradict the purpose of the legislation: to obtain the loan through NMFA first to allow the capital outlay project to start right away.

In addition, the State Constitution prohibits public bodies in New Mexico from taking on any debt outside the current fiscal year unless it is 1) general obligation debt approved by the electorate, or 2) backed only by revenues in a special fund pledged for that purpose. To the extent a loan may be approved by NMFA but not repaid within the same fiscal year, the bill may be suggesting the creation of loans that could be determined to be unconstitutional debt of a land grant-merced.

Further, it seems plausible that NMFA could approve a loan to a land grant-merced and effectuate payment to a vendor from the newly-created fund, after which LGD may reject reimbursement to the Fund if its review finds that the expenditures were not allowable under the appropriation language. The bill does not provide a mechanism for the land grant-merced to repay NMFA's fund in the event DFA rejects the voucher request.

Additionally, AGO reports that there is an apparent mismatch between the purpose of the bill and its substantive provisions:

1. One of the legislative findings contained in the bill is that the requirements of the funding process for a capital project “including the required initial payments to vendors by appropriation recipients,” such as land grants-mercedes, “often exceed the resources of the recipients,” which leads to project delays, missed deadlines for the use of severance tax bond revenues and cancellation of the projects. Section 2(A) (4). This suggests that the loans authorized under SB 199 are to allow land grants to make initial vendor payments that, if missed, have the negative results described in that subsection. The substance of the bill, however, permits loans for any vendor payment related to a capital project for which an appropriation has been authorized by the legislature. See Sections 4 & 5.
2. The bill refers to payments made by the NMFA as “loans.” However, SB 199 does not require land grants to repay the money they receive for vendor payments. Instead, SB 199 apparently contemplates that DFA will reimburse the land grant-merced project fund for amounts NMFA pays out for loans. See Section 6.
3. SB 199 does not specify the source of the money DFA uses to reimburse the fund under Section 6. Presumably, it comes from the amount appropriated for the underlying capital project. Whatever the source is, it should be expressly identified in the bill.

Similarly, NMFA expresses confusion about the bill’s provisions:

SB 199 acknowledges that land grant-mercedes often lack resources to cover necessary project costs. Due to the lack of resources, most land grant-mercedes will be unable to

qualify for a traditional “loan” as the bill contemplates without allowing for any portion of a loan to be forgiven, more akin to a “grant” structure. The bill does not contemplate a grant.

Finally, NMFA points out that if the Fund created in this bill is funded with severance tax bond proceeds, those monies cannot be used to pay operating costs related to administration of a fund or program, and NMFA would have to rely on loan repayments from land grants or interest income to recover administrative costs, which sources may not be sufficient. Further, like DFA, it raises a question as to Section 5’s requirement that loans are to be made only after the product or construction element has been delivered and a reimbursement voucher has been certified. Those requirements may create ambiguity and timing issues as to when a loan application should be submitted—before or after work is completed. Since it typically takes 60 or 90 days to close a loan transaction, reimbursement could be significantly delayed, which may defeat the purpose of the legislation.

ADMINISTRATIVE IMPLICATIONS

The lack of clarity in the bill may lead to difficulties in NMFA’s implementation of the Act.

OTHER SUBSTANTIVE ISSUES

DFA comments that although land grants-mercedes qualify as political subdivisions if they follow the requirements of Section 49-1-1 through 49-1-18 NMSA 1978, there are no mechanisms in place to ensure that the requirements of those laws are being followed. In addition, land-grant Mercedes also must comply with Executive Order 2013-006, which establishes uniform funding criteria, grant management and oversight requirements for all state capital outlay appropriations.

ALTERNATIVES

Currently, the State Board of Finance rules governing distribution of severance tax proceeds allow for direct pay to vendors to handle situations that are the focus of this bill: when the public entity is unable to pay the vendors before seeking reimbursement from the Board. See 2.61.6.9 NMAC. This process has been used for capital projects such as those located on land owned by Indian nations, tribes and pueblos (through Indian Affairs Department) and at small community colleges. Proceeding under this rule may be a more direct way of handling this issue, rather than creating a whole new program at NMFA.

AMENDMENTS

If the intent of SB 199 is not to require a land grant to repay the loans, but rather to have the loans repaid from amounts appropriated for a qualifying project, the AGO suggests any payment to a land grant might better be described as an “advance.”

Further, DFA points out that state agencies other than DFA, such as the Department of Environment, also provide capital outlay projects to the land grants-mercedes. It may be appropriate to amend Section 5(C) of this bill to allow vouchers submitted by any state agency that administers capital outlay projects for land grants-mercedes be included in the program established in SB 199.