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FISCAL IMPACT REPORT

ORIGINAL DATE 1/14/2016

SPONSOR Ortiz y Pino/Garcia **LAST UPDATED** _____ **HB** _____

SHORT TITLE Colonia, Acequia & Colonia Legal Services **SB** 28

ANALYST Mulligan

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
	Unknown	Recurring	Community Governance Attorney and Conditional Tuition Waiver Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

- Relates to HB2, Section 4J, Higher Education, appropriation to the Higher Education Department

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Higher Education Department (HED)

SUMMARY

Synopsis of Bill

SB 28 would enact the Community Governance Attorney Act to be administered by the the Higher Education Department; create a tuition waiver program for attorneys who participate in the program by serving as a community governance attorney; create a five-member community governance attorney commission; create the community governance attorney and conditional tuition waiver fund; and provide for contracts community governance attorney services for acequias, land grants, and low-income residents of colonias through universities or non-profits that provide free legal services. The maximum number of participants is limited to two per year.

Although the bill contains provisions that would appropriate money via statute to HED to carry out provisions of the act, SB 28 does not make an appropriation from the general fund, and all

money appropriated would “consist of money appropriated, donated or otherwise accruing to the fund.”

FISCAL IMPLICATIONS

The bill includes provisions that require contractors to provide matching funds to support a portion of a full time attorney. The bill also includes a five percent limit on administrative expenses. No appropriation is contained in the bill.

SIGNIFICANT ISSUES

It is unclear whether the bill would require the Higher Education Department to pay the University of New Mexico Law School the waived tuition fees or whether UNM Law would simply waive the costs of the student’s tuition. This issue would need to be defined under rules issued by HED under the program.

ADMINISTRATIVE IMPLICATIONS

No funding is appropriated to HED to administer or carry out provisions of the proposed legislation. Several agencies, including UNM Law School, NMHED, and others, will likely have new administrative duties associated with this legislation and would have to bear those costs within current levels of funding.

TECHNICAL ISSUES

The AGO and the HED point out that one legal education loan repayment program currently exists in statute, the Public Service Law Loan Repayment Act, 21-22F-1 through 21-22F-11, NMSA 1978, which provides for granting awards to recipients to repay loans obtained for legal education expenses of a participating attorney who is employed in public service law working for a non-profit entity that serves indigent persons in New Mexico with civil legal services; the public defender department; or a New Mexico district attorney's office. It may be more desirable to amend that act than to create a new section of similar law.

For a more detailed information on the impact of the proposed program, refer to the attached analysis provided by the HED.

MM/al/jle

Attachment

Extract from HED Analysis

BILL SUMMARY

Synopsis:

This bill provides for the creation of a fund to provide tuition waivers and assistance with living expenses for third-year law students at the University of New Mexico School of Law who agree to practice community law and provide legal services to acequias, land grant- Mercedes, and low income residents of colonias.

FISCAL IMPLICATIONS

This legislation specifically states that it contains an appropriation. It does not, however, identify any specific source of funding for this program/fund. The funding is not identified or appropriated in the bill and could come from a variety of sources. While the bill does not contain an appropriation, it will require funds to create the program, pay per diem to board commission members and provide financial assistance to participating law students who provide community attorney services for acequias, colonias, and land grants-mercedes.

This bill creates a new fund and provides for continuing appropriations. The fund created pursuant to this bill shall consist of money appropriated, donated, or otherwise accruing to the fund, including repayment of loans and any penalties (interest). Any unexpended or unencumbered balance remaining at the end of FY16 (or other fiscal year) shall not revert to the General Fund.

SIGNIFICANT ISSUES

This legislation creates a tuition waiver program which is in essence a loan for services for third-year law students who agree to provide legal services in certain rural communities. It also provides a stipend for living expenses, but it is unclear if that stipend begins in the third year of law school or after the attorney passes the bar exam and begins the appropriate practice.

UNM Law School is the only law school in New Mexico and is designated by the legislation to provide the waiver. The Law School had 343 students and 42 faculty members in 2014 (UNM Law School Website, 2016). U.S. News and World Reports ranked it 9th in the nation for clinical training in 2014. It has been ranked in the top ten public law schools in the nation in both 2013 and 2014 in the publication Above the Law. UNM Law School has also been rank as a top 20 Best Value Law School by Pre Law Magazine (2014).

According to the UNM Law School website, tuition and required fees at UNM Law School are currently \$16,490 per year. Living expenses are estimated to be \$15,732 per year.

The Law School may have to develop curriculum for this program, although courses that complement the legislation's purpose are currently offered. The courses include: water law, Spanish for lawyers, natural resources and environmental law, community lawyering, and land use regulations and planning. Developing curricular resources for the specific requirements and expectations of this program could be burdensome on the university.

The waiver established by this legislation is provided as a loan in exchange for service. The amount of the loan is sufficient to cover tuition, fees, and reasonable living expenses for the final year of formal legal education. This final year of study may also include clinical and internship programs and preparation courses for the state bar examination. The waiver is forgiven in whole or in part if the participant renders service as a community governance attorney. If a recipient of a waiver does not become a community governance attorney, the loan is not forgiven. The maximum period for repayment is 10 years.

This legislation establishes a commission composed of five members. Those members would consist of: New Mexico Higher Education Secretary (or designee), the dean of UNM Law School (or designee), and three members appointed by the governor: one member of an acequia,

one previous or current member of a land grant council, and one current or past member of the Colinas infrastructure board and a resident of a colonia. The commission's duties include assisting HED with recommendations on program applicants, establishing rules to implement provisions of the act, soliciting proposals for disbursement from the fund, created, and entering into contracts for expenditure of the fund to provide community governance attorney services for small political subdivisions.

This legislation includes new functions or assignments to the New Mexico Higher Education Department (NMHED). This will require additional study, review and resource assessment to ascertain the total financial impact of this request. The preliminary review indicates an increase in administrative costs to NMHED. This request does not include any additional appropriation to help cover the increased costs.

PERFORMANCE IMPLICATIONS

SB28 does not provide performance measures; however, if funded, the UNM Law School should develop performance measures in coordination with NMHED. Additionally, the UNM Law School will need to be prepared to advise the Commission of suitable candidates and needed curriculum adjustments.

Further, UNM Law School may wish to create a curriculum that includes the practical aspects of operating a law firm. The Law School and the State Bar may wish to create a mentoring program for participants. The Commission may wish to consider incentives to retain the participants in the rural areas after their waiver period has ended.

ADMINISTRATIVE IMPLICATIONS

Several agencies, including UNM Law School, NMHED, and others, will likely have new administrative duties associated with this legislation. The entities involved will need to work together in drafting rules that will achieve the objectives of the legislation. If a supporting appropriation is made to NMHED, governance of the program would likely fall under the purview of the Financial Aid Division, which already operates similar programs. This legislation would require the development of new programs to conduct a solicitation in accordance with the State Procurement Code and applicable rules and regulations, contract with the organizations that will provide the services, and provide oversight and contract monitoring of this program. Additional FTEs will be required to carry out the provisions of this legislation.

The Commission established by this legislation and the UNM Law School will need to develop an objective standard for choosing recipients. The maximum number of participants is limited to two per year.

The New Mexico Higher Education Department will be the administrator for these funds involving receipt, disbursement and tracking to UNM Law School.

Additional staffing may be required to support this program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB28 draws on similar legislation providing for loans and loan forgiveness to health care students and public service lawyers. Similar legislation providing for loans and loan forgiveness generally specify eligibility, contract terms, term of service, repayment, and termination for certain reasons. Similar programs provide greater detail to guide the agency that administers the program. Additionally, the bill does not provide that recipients must serve a complete year in order to receive credit for a year of service (see NMSA 1978, Section 21-22-6(F)). It does not provide for enforcement (see NMSA 1978, Section 21-22(B)-7). It does not provide for cancellation in the event the community governance attorney commission is dissatisfied with providing services (see NMSA 1978, Section 21-22-9). Unlike similar legislations, the bill does explicitly provide for living expenses in addition to educational costs. It does not provide for books.

In statute, there already exists one legal education loan repayment act, the Public Service Law Loan Repayment Act (Sections 21-22f NMSA 1978). The act provides for granting awards to recipients to repay loans obtained for legal education expenses of a participating attorney who engages in public service employment. Public service law employment is defined as employment with: 1) an organization that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services; 2) the public defender department; or 3) a New Mexico district attorney's office.

TECHNICAL ISSUES

SB28 is vague in the requirements of the program. A fair and equitable selection process must be established. The question of when the stipend for living expenses is paid is unclear. Sections 3 (M) and 4 (A)(1) suggest the stipend may apply during the third year of law school. It is unclear if the income cap in Section 4 (F) is intended to negate the entire award or applies only to the portion of the award for living expenses. Section 5(B) requires that UNM law school provide staff and a meeting space for the community governance attorney commission, but no funds are allocated. If this cost is to be considered an administrative expense associated with the program, in addition to the grant of per diem and mileage, and subject to the 5% cap in Section 6 (B), it should be so stated, and some metric for fixing those costs should be set forth.

OTHER SUBSTANTIVE ISSUES

In addition to the matters mentioned above, the Commission may wish to develop incentives to retain the participants in the rural communities at the end of the two-year waiver period. It may be difficult to retain attorneys in the rural communities after the tuition waiver service period expires. Young attorneys from rural areas may need mentors to help them learn the practical difficulties of operating a law firm and such mentors in rural areas may be difficult to locate.

ALTERNATIVES

It may be simpler and more effective to incorporate the intent of this bill into the existing Public Service Law Loan Repayment Act. The definition of public service law could be expanded to include primarily serving small political subdivisions such as acequias, land grant-mercedes, and unincorporated colonias. Another alternative is to give any award to existing legal services

programs to hire full time attorneys to achieve the objectives of the legislation. All of the attorneys at Legal Aid and other legal services programs earn less than \$50,000 per year and are more experienced attorneys. Legal service programs are located throughout the state. It would be beneficial to explore legal services that already exist in New Mexico that provide these types of services already (acequia law) and provide them with equivalent grants to provide these types of services. Northern New Mexico Legal Services is one such organization.