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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino/Garcia, M /Maestas Barnes **ORIGINAL DATE** 01/25/17 **LAST UPDATED** 03/13/17 **HB** _____

SHORT TITLE Legal Services for Land Grants & Acequias **SB** 12/aSCONC/aSFC/aHFI#1

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate*			Indeterminate*	Recurring	Community Governance Attorney and Conditional Tuition Waiver Fund

(Parenthesis () Indicate Expenditure Decreases)

*Specific source funding for this program/fund is not identified or appropriated in the bill and could come from a variety of sources.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Higher Education Department (HED)
 Office of the Attorney General (OAG)
 University of New Mexico (UNM)

SUMMARY

Synopsis of HFI#1 Amendment

The House Floor Amendment #1 to SB 12, as amended, clarifies that the community governance attorney services to be provided under the bill are limited to issues regarding the governance of colonias.

Synopsis of SFC Amendments

The Senate Finance Committee amendments to Senate Bill 12, as amended, strikes all of the Senate Conservation Committee amendments, and amends the bill title to replace language "MAKING AN APPROPRIATION" with "CREATING A COMMISSION." These amendments also: 1) expand the definition of acequia to include those that are organized

pursuant to Chapter 73, Article 2, NMSA 1978; 2) require a community governance attorney be employed full-time to benefit from the waiver forgiveness provisions of the program; and 3) rather than being appropriated to HED to carry out the provisions of the bill, money in the new fund created in Section 5 is made subject to appropriation by the legislature.

Synopsis of SCONC Amendments

The Senate Conservation Committee amendments to SB 12 amend the bill title to include language indicating the bill creates a commission. They also amend two provisions of the bill: the definition of acequia is expanded to include those that are organized pursuant to Chapter 73, Article 2, NMSA 1978 and clarifies that a community governance attorney must work full-time to benefit from the waiver forgiveness provisions of the program.

Synopsis of Original Bill

Senate Bill 12 creates the community governance attorney conditional tuition waiver program for third year law students at UNM, establishes the community governance attorney commission, and creates the community governance attorney and conditional tuition waiver fund. The program is designed to support the provision of legal services to culturally unique governmental entities—such as acequias and land grant-mercedes—and low-income residents of unincorporated colonias in New Mexico by providing an incentive, in the form of a waiver, for law students to pursue at least two years as a community governance attorney, defined as “an attorney with a legal practice that is focused on the requirements and challenges faced by small political subdivisions and unincorporated communities, including promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees.”

The waiver, or loan, is provided in an amount sufficient to cover tuition, fees, and reasonable living expenses for the third year of formal legal education and bar review courses commonly taken by law school graduates prior to taking the bar examination. The waiver can also be used for living expenses incurred while participating in clinical programs or internships. The waiver is forgiven 50 percent for each year an individual works as a community governance attorney (total 2 years). If a recipient of a waiver does not become a community governance attorney, the loan is not forgiven and the maximum period for repayment is 10 years.

The commission established is composed of five members, which are the Secretary (or designee) of HED, the dean of UNM Law School or the dean’s designee, and three members appointed by the governor: 1) a member of an acequia; 2) a current or past member of a land grant commission; and 3) a current or past member of a colonias infrastructure board who is a resident of a colonia. The commission’s duties include assisting HED with recommendations on program applicants and 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 these types of small political subdivisions.

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). Balances are non-reverting.

The effective date of this bill is July 1, 2017.

FISCAL IMPLICATIONS

This bill does not contain an appropriation, however funds will be required 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 LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

HED reports, based at least partially on the UNM Law School's website, that the average cost for tuition, fees, and living expenses for a year of law school, assuming in-state tuition, is \$32 thousand. The bill authorizes the issuance of up to two waivers per year. However, because the bill contains no funding, providing waivers or other legal support would almost certainly not take place in FY18 and would be unlikely in FY19 unless substantial donations or appropriations were made to the fund.

SIGNIFICANT ISSUES

DFA reports that, according to the New Mexico Acequia Association, this bill addresses a significant need in New Mexico to support the governance of local, rural communities, specifically colonias, acequias and land grants. Acequias, for example are in need of legal services for water right adjudication, bylaws, liability and risk management, easements and land use law as well as regulation of water transfers. These communities are generally comprised of low income residents that do not have the financial resources available to hire attorneys and therefore they often rely upon the free legal services provided by non-profits such as New Mexico Legal Aid.

SB 12 draws on similar legislation providing for loans and loan forgiveness to health care students and public service lawyers.¹ Similar legislation providing for loans and loan forgiveness generally specify eligibility, contract terms, term of service, repayment, termination for certain reasons, and which agency administers the program with greater detail than SB 667 does. 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); and it does not provide for cancellation in the event the community governance attorney commission is dissatisfied with how the UNM law school or a contracting nonprofit entity is providing services (see NMSA 1978, Section 21-22-9). Unlike similar legislation, the bill does explicitly provide for living expenses in addition to educational costs. It does not provide for books.

¹ See the Medical Student Loan for Service Act, NMSA 1978, §21-22-1 to §21-22-10; the Osteopathic Medical Student Loan for Service Act, NMSA 1978, §21-22A-1 to §21-22A-10; the Nursing Student Loan for Service Act, NMSA 1978 §21-22B-1 to §21-22B-10; the Allied Health Care Student Loan for Service Act, NMSA 1978, §21-22C-1 to §21-22C-10; the Health Professional Loan Repayment Act, NMSA 1978, §21-22D-1 to §21-22D-10; the Teacher Loan for Service Act, NMSA 1978, §21-22E-1 to §21-22E-10; and the Public Service Law Loan Repayment Act, NMSA 1978, § 21-22F-1 to §21-22F-11.

There already exists in statute one legal education loan repayment act, the Public Service Law Loan Repayment Act (Sections 21-22F-1 through 11, 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, which 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.

ADMINISTRATIVE IMPLICATIONS

UNM and HED have new administrative duties under the bill and should work together in drafting rules that will achieve the objectives of the legislation. HED notes that if a supporting appropriation is made to the department, governance of the program will fall under the purview of the Financial Aid Division, which already operates similar programs.

TECHNICAL ISSUES

Section 4(B) requires that UNM law school provide staff and 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, subject to the 5 percent cap in Section 6 (B), it should be so stated, and some metric for fixing those costs set forth.

DFA points to language in Section 5(C) that requires payments “shall be by warrant drawn”, which limits the possibility to make payments by ACH in the future. (Eventually warrants could be eliminated with the use of ACH payments which are more cost effective for the state.)

Additionally, DFA notes that Section C(3) and (4) require the commission solicit proposals for disbursement and enter into contracts. Since the commission does not have staff and can only be compensated for per diem and mileage it may be more appropriate that these duties be assigned to HED with advisement from the commission.

OTHER SUBSTANTIVE ISSUES

HED comments that following the completion of the service obligation required by the tuition waiver program participating attorneys may elect to leave the rural communities. Long term retention rates for this program are unknown.

ALTERNATIVES

It may be simpler and more effective to incorporate the intent of this bill into the existing Public Service Law Loan Repayment Act by expanding the definition of public service to include practicing law primarily serving small political subdivisions such as acequias, land grant-mercedes, and unincorporated colonias.