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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/2020

SPONSOR Garcia, Mp LAST UPDATED \_\_\_\_\_ HB 111

SHORT TITLE Land Grant-Merced Assistance Fund SB \_\_\_\_\_

ANALYST Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
	(\$2,600.0)	(\$2,600.0)	(\$2,700.0)	(\$2,700.0)	Recurring	General Fund
		Possible Reversion – see Fiscal Implications			Recurring	General Fund
	\$2,600.0	\$2,600.0	\$2,700.0	\$2,700.0	Recurring	Land Grant-Merced Assistance Fund

Parenthesis ( ) indicate revenue decreases

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

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$21.0	\$0.0	\$0.0	\$21.0	Nonrecurring	TRD operating

Parenthesis ( ) indicate expenditure decreases

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

New Mexico Attorney General (NMAG)

#### No Response Received

Department of Finance, Local Government Division (DFA/LGD)

### SUMMARY

#### Synopsis of Bill

House Bill 111 creates a new Land Grant-Merced Assistance Fund, intended to provide annual distributions to the various land grant-mercedes in the state. The distributions would be made to all of the land grant-mercedes based on their previous year's audited revenue. The total amount of the fund, divided by the total number of land grant-mercedes creates a "full distribution

amount”. Distributions could be reduced based on the amount of previous year’s audited revenue, pursuant to the following table:

If revenue is:	Distribution would be:
Less than \$50,000	100% of full distribution
\$50,000 to \$250,000	75% of full distribution
\$250,000 to \$500,000	50% of full distribution
Over \$500,000	25% of full distribution

Amounts remaining in the Land Grant-Merced Assistance Fund attributable to individual land grant-mercedes would revert to the general fund.

The State Auditor would be responsible for certifying to DFA the land grant-mercedes that are in compliance with the audit act. It is not certain where or how land grant-mercedes are recognized for the purpose of sharing in this assistance fund. Distributions would be administered by the Department of Finance. The fund’s revenue source is specified to be 0.05 percent of the net receipts attributable to gross receipts tax after the distributions for the offset for the food deduction and health care practitioner service deduction for municipalities (7-1-6.46) and counties (7-1-6.47) have been made.

The effective date of this bill is July 1, 2020. There is no delayed repeal date but LFC recommends adding one.

## FISCAL IMPLICATIONS

Land grant-mercedes are political subdivisions of the state. Thus, this diversion of general funds should not be considered a tax expenditure.

There are 31 recognized Land Grant-Mercedes with a total of 3,863,557 acres. This does not include the 121,594 acres of the Tome Land Grant in Valencia County (eventually Rio Communities), which was initially sold in 1968 to a land developer nor the Atrisco Land Grant which was sold about 10 years ago by Westland Development Corporation to SunCal and is currently owned by a bank that seeks to develop the planned Santolina Planned Community. The Atrisco Grant is not recognized by the legislature.

TRD discusses the methodology of the estimate:

Beginning with forecasts for gross receipts tax (GRT) revenue, the overall net GRT receipts were estimated using the state versus total GRT receipts ratio, and the distributions for local food and medical offsets subtracted out. The 0.05 percent was then applied for the appropriation to the new assistance fund. Although the number of land grant-mercedes that would qualify is unknown, it is assumed for this impact that all monies allocated to the assistance fund are distributed (see below comment in Technical Issues).

LFC staff notes that the specification “five-hundredths percent of the net receipts attributable to the gross receipts tax after distributions have been made pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978” is somewhat confusing. TRD’s estimate apparently considered local option gross receipts tax collections within the definition of “gross receipts tax” for this purpose. Another interpretation is that the “gross receipts tax” for this purpose is the amount before deduction of \$485 million attributed to the 1.225 percent distribution to municipalities plus about

\$38 million in other transfers to the aviation fund, retiree health care, state building bond fund, energy efficiency fund and including or excluding \$4.8 million in administrative fees deducted from local option gross receipts taxes. If this is a correct interpretation, then the annual distribution amount should be about \$1.6 million rather than the amount calculated by TRD. If the 1.225 percent municipal state share were also allowed as a deduction, the distribution amount to the Land Grant-Merced fund would be about \$1.4 million.

If any of the qualifying land grant-mercedes have annual revenue in excess of \$50 thousand, then there will be a recurring reversion. LFC staff do not have data on revenues currently received by the currently recognized 31 land grant-mercedes. See TRD's note below as to the number of land grant-mercedes that may currently or subsequently qualify for a distribution.

### **SIGNIFICANT ISSUES**

TRD notes the following policy issues: this earmark will provide the advantage of recurring revenue source for the Land Grant Merced Assistance Fund without the need for future appropriations creating reliable funding source for this program. This earmark will have the disadvantage of reducing the legislature's budgetary flexibility of the broad appropriation needs of the general fund in future years.

Currently, the gross receipts tax revenue stream has a number of both percentage-based earmarks, formulaic earmarks, and fixed dollar earmarks before the remainder reaches the general fund. This percentage-based earmark does not increase the volatility of the general fund revenue (unlike fixed earmarks) and will share equally in the volatility of the state's overall gross receipts Tax revenue stream.

DFA has not responded to request to provide input into this bill. For last year's HB36, DFA submitted a number of comments. These are included here.

DFA notes that the Guadalupe Hidalgo treaty division of the office of the Attorney General would provide information for each land grant-merced that qualifies as a political subdivision of the state to the Local Government Division (LGD) of DFA. According to staff from that division they currently do not have information of this type to provide.

DFA indicates that the bill would require LGD to develop a new program, conduct a solicitation in accordance with the Procurement Code, contract with each Land Grant-Merced, and oversee and monitor contracts. LGD may require the need for one additional FTE to administer the new program. Each year, several programs and appropriations are proposed to be administered through LGD. DFA is concerned with LGD's ability to meet its critical statutory duties and its overall mission if its resources are redirected towards numerous small special projects.

HB 36 duplicates a number of the functions of the Land Grant Council which is funded each year through an appropriation to DFA in the GAA. In FY19, the Land Grant Council received a general fund appropriation of \$221 thousand. The LFC recommendation for FY20 is \$296.9, an increase of 33.8 percent. The Executive recommendation of \$775 thousand for FY20 more than triples the current funding level for the Council.

Since the Land Grant-Mercedes are governmental subdivisions (quoted in the bill as

pursuant to the provisions of Chapter 49 NMSA 1978), it is unclear whether they would be subject to the provisions of the State Budget Act, the State Audit Act, or the provisions of other statutes covering governmental entities or subdivisions.

HB36 states that monies in the fund must be appropriated by the legislature. Language in the bill suggests, however, that the distribution is formula driven and would not necessarily require a separate appropriation in the General Appropriation Act.

There is also a potential issue with the timing of reversions. In this type of program (E.g. Small Cities Assistance funds, Small County Assistance funds, etc.), the distributions are made in May or June so that the reversion is in sync with the balances in the fund. In HB36, the distributions are made in July and the specific instruction is that after the distributions are made, the reversion is to be calculated.

It is unclear whether all the recognized Land Grant-Mercedes have an administrative entity that is capable of receiving and dispersing funds and accounting for such funds in accordance with generally accepted accounting principles and procedures.

It is unclear whether the Tome grant heirs or the Atrisco Grant heirs would be eligible for distributions from the fund.

The bill does not indicate if the .05 percent tax revenue distributed from the fund to the Land Grant-Mercedes are subject to reversion.

Rather than earmarking funds as a distribution from the receipts of the gross receipts tax, continue to provide general fund appropriations through the Land Grant Council which can then disburse available funding to Land Grant-Mercedes based on more complete analysis and evaluation of funding priorities and the specific needs of each Land Grant-Mercedes.

## **ADMINISTRATIVE IMPLICATIONS**

TRD notes the following administrative impact, "...there is a moderate impact to the Information Technology Division, with costs of implementation shown in the table on page 1. These costs will be absorbed by current staff resources."

## **TECHNICAL ISSUES**

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

It might be appropriate to allow the 1.225 percent municipal state share distribution to be deducted from the calculation base prior to calculating the .05 percent distribution.

Further specificity in determining the calculation base is warranted.

Although the State Auditor would be responsible for certifying to DFA the land grant-mercedes that are in compliance with the audit act, it is not certain where or how land grant-mercedes are recognized for the purpose of sharing in this assistance fund.

**OTHER SUBSTANTIVE ISSUES**

TRD notes the following: The number of land grant-mercedes which qualify as a political subdivision of the state as required in the bill is unknown. Estimates range from as few as 23, to 101 that have original documentation (and an additional 53 with unofficial documentation), and possibly over 700 more via oral tradition.

LFC also notes that 31 land grant-mercedes are recognized by the legislature.

LG/sb/rl