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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/21

SPONSOR Stefanics LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Land Grant-Merced Assistance Fund SB 85

ANALYST Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
	(\$1,300.0)	(\$1,400.0)	(\$1,400.0)	(\$1,500.0)	Recurring	General Fund
		Possible Reversion – see Fiscal Implications			Recurring	General Fund
	\$1,300.0	\$1,400.0	\$1,400.0	\$1,500.0	Recurring	Land Grant-Merced Assistance Fund

Parenthesis ( ) indicate revenue decreases

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$52.6			\$52.6	Nonrecurring	TRD Operating*

Parenthesis ( ) indicate expenditure decreases

- TRD indicates that funds to implement the provisions of this bill are included in the 2021 TRD operating appropriation.

### SOURCES OF INFORMATION

LFC Files (FIRs for HB36 – 2019 and HB111 – 2020)

Responses Received From  
Taxation and Revenue Department (TRD)

#### Synopsis of Bill

Senate Bill creates a new Land Grant-Merced Assistance Fund, intended to provide annual distributions to the various Land Grant-Mercedes in the state with .05 percent of the net receipts attributable to the gross receipts tax would be distributed to the Land Grant-Merced Assistance

Fund each month. 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 after distributing to all eligible 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 hold-harmless distributions 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, 2021. 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 fund should not be considered a tax expenditure. The diversion, however, is an earmark of general fund, gross receipts tax revenues.

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:

The revenue impact is estimated with the December 2020 Consensus Revenue Estimating Group’s estimates for net gross receipts tax after food and medical hold harmless payments have been subtracted. The bill provides for reversion of unused amounts in the Land Grant-Merced Assistance Fund to the General Fund at the end of each fiscal year; but for purposes of this analysis, it is assumed that all distributed funds will be used and will not revert.

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 7-16.47 NMSA 1978” is somewhat confusing. Both LFC and TRD’s fiscal estimate assumes that the “net receipts attributable to the gross receipts tax” for this purpose is the amount after distributions for the \$485 million attributed to the 1.225 percent distribution to municipalities and distributions of 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 the “net receipts attributable to the gross receipts tax” does not include these named distributions, then the annual distribution amount should be about \$1.6 million rather than the amount calculated by LFC and TRD.

If any of the qualifying Land Grant-Mercedes have annual revenue in excess of \$50 thousand, then there will be a recurring reversion. Neither TRD nor LFC staff 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 2019’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.

HB36 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.

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, the Information and Technology Division reports \$15.5 thousand in staff workload costs and \$32 thousand in contractual service costs related to implementation. The Administrative Services Division (ASD) will work conjunctly with ITD to implement the new distribution as well as establishing the new fund with the Department of Finance and Administration. ASD will have \$5,059 in associated staff workload costs.

<b>Estimated Additional Operating Budget Impact*</b>				<b>R or NR**</b>	<b>Fund(s) or Agency Affected</b>
<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>3 Year Total Cost</b>		
\$5.1	--	--	\$5.1	NR	ASD – staff workload
\$15.5	--	--	\$15.5	NR	ITD – staff workload
\$32.0	--	--	\$32.0	NR	ITD – contractual services

**TECHNICAL ISSUES**

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

The bill should clarify to allow (or specifically exclude) the 1.225 percent municipal state share distribution to be deducted from the calculation base prior to calculating the .05 percent distribution.

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/al/rl