

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/13

SPONSOR Garcia, M.P./Martinez LAST UPDATED \_\_\_\_\_ HB 35

SHORT TITLE Use of Funds by Land Grant Council SB \_\_\_\_\_

ANALYST Daly

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Potential Increase*	Potential Increase*	Potential Increase*		Recurring	General Fund
<b>Total</b>	FYI	\$100.0	\$100.0	\$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

Department of Finance & Administration (DFA)

### SUMMARY

#### Synopsis of Bill

House Bill 35 amends the Land Grant Support Act by expanding the definition of "land grant" to include land grants that are not organized and operating as political subdivisions of the state. The bill also expands the authority of the Land Grant Council, giving it the power to determine if a land grant constitutes a political subdivision of the state upon compliance with requisite statutes and rules. HB 35 also authorizes the expenditure of federal and private funds for the benefit of all land grants or for a specific land grant even if a particular land grant is not a political subdivision of the state.

### FISCAL IMPLICATIONS

The DFA advises there is a potential future fiscal impact from increased funding demands if additional land grants are determined to be political subdivisions of the state by the Land Grant Council.

Additionally, given the new responsibilities assigned to the Land Grant Council under this bill, an additional budgetary impact may be anticipated, as discussed in more detail in Significant Issues, below. The \$100 thousand figure set out in the table above represents a ball-park estimate of that impact.

## **SIGNIFICANT ISSUES**

The DFA points to this constitutional concern:

HB 35 raises concerns about potential violations of N.M. Const. art. IX, 14--the state's anti-donation clause--because it would allow the Land Grant Council to expend public funds and/or resources on privately operated land grants, including land grants operating as domestic corporations under the laws of New Mexico, by making a determination that the land grant is a political subdivision of the state for the sole purpose of receiving public funds from the Land Grant Support program. Furthermore, if land grants are not political subdivisions, they are not required to submit their budgets or quarterly reports to the Department of Finance and Administration (DFA)/Local Government Division (LGD) for approval.

The language of the bill requires that such a determination be based on proof that the land grant is in compliance with requisite statutes and rules, which ultimate determination requires research and legal analysis. Whether the Council receives legal advice through in-house or outside counsel, or through the office of general counsel of DFA, to whom the Council is administratively attached, or through the AGO, additional funding needs are anticipated.

Further, the anti-donation issue may arise again in the context of other existing sections of the Act that are not being amended in HB 35, since the definition of land grants which applies to those sections in which expenditures of state monies and resources are authorized will no longer require the particular land grant be a political subdivision, and there is no requirement that a determination of political subdivision status be made before the actions authorized in those sections are taken. For example, section 49-11-4A allows the Council to accept state funds for the benefit of land grants that are patented community land grant-merced, with no further limitation or restriction.

The AGO notes that, as to the new subsection D that authorizes expenditure of federal funds to land grants that may not be political subdivisions of the state, it is possible that there may be federal prohibitions on certain of those expenditures.

## **ADMINISTRATIVE IMPLICATIONS**

The DFA advises that the Council is administratively attached to the DFA, but the DFA receives no funding to support the Council. HB 35 gives the Council additional authority, but it is unclear how their activities and actions will be monitored or how potential violations of the anti-donation clause will be addressed.