

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 137

50th Legislature, 1st Session, 2011

Tracking Number: .183178.3

Short Title: Continued Educational Assistance Debt Service

Sponsor(s): Representatives Rick Miera, Mimi Stewart, and Sheryl Williams Stapleton

Analyst: Pamela Herman

Date: February 8, 2011

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

HB 137 provides for a reorganization of the NM Educational Assistance Foundation (NMEAF) and the NM Student Loan Guarantee Corporation (NMSLGC), both established pursuant to the *Educational Assistance Act*, by repealing, amending, and enacting sections of the act. The bill:

- repeals six sections of current law that:
 - establish the purpose of the act;
 - authorize state public four-year colleges to create a nonprofit guarantee corporation to insure educational loans made pursuant to the federal *Higher Education Act of 1965*;
 - permit the corporation or the foundation to invest money not required for immediate use;
 - authorize the State Treasurer, with prior approval of the State Board of Finance, to invest a portion of the state Severance Tax Permanent Fund in bonds and educational loan notes authorized by the act;
 - establish disclosure requirements and penalties for conflicts of interest on the part of directors, officers or employees of the corporation or the foundation; and
 - provided for the transfer of certain funds established pursuant to earlier student loan acts to the corporation or the foundation;
- amends the remaining sections of law to:
 - delete language that:
 - ✓ makes any reference to the corporation;
 - ✓ limits the salaries of officers or employees of the foundation to no more than 90 percent of the average of the salaries of state constitutionally created postsecondary institutions;
 - ✓ authorizes the foundation to adopt and publish rules under the *State Rules Act*;
 - ✓ caps reimbursement of expenses of salaried officers and employees to the amounts permitted for salaried state officials;
 - ✓ authorizes the foundation to accept appropriations, revenue sharing, and federal grants;
 - ✓ makes reference to investment of Severance Tax Permanent Fund monies;

- add to the powers of the foundation “other purpose identified by the foundation,”
- amends provisions for the Board of Directors of the foundation to:
 - ✓ provide that, after the effective date of the bill, the existing board shall appoint the successor board and establish four-year staggered terms for its members;
 - ✓ leave the State Treasurer on the board, but otherwise change its composition:
 - *from* six representatives of the constitutionally established four-year postsecondary institutions, one administrator of a private postsecondary institution, and two officers or directors of financial institutions;
 - *to* two members representing postsecondary education, two representing lending institutions, and others as provided in the by-laws; and
 - ✓ delete a provision regarding service by foundation officers and employees on the board of the corporation;

- delete a reference to regulations promulgated pursuant to the act, as regards funds held in trust by bank or trust companies;
- delete a provision for appointment of an auditor if the Board of Directors cannot agree on one;
- delete a requirement that the Financial Industries Division of the Commerce and Industry Department examine the condition of the foundation and the corporation once annually and provide a written report whether they have complied with provisions of the act; and

- enacts new material to provide that repeal of sections or parts of sections of the act does *not* affect:
 - the existence of the foundation, or its activities in relation to bonds issued and outstanding, or the servicing of student loans outstanding, including any special status of the foundation or dispensation granted to it prior to the effective date of the bill; or
 - the existence of the corporation, or its designation as the single nonprofit corporation authorized to provide a statewide educational assistance loan program for purposes of the federal *Higher Education Act of 1965*.

Fiscal Impact:

HB 137 does not contain an appropriation.

Substantive Issues:

According to the Higher Education Department (HED) analysis of HB 137, the federal *Health Care and Education Reconciliation Act of 2009* paid for certain investments in the national higher education system while reducing federal deficits by ending government subsidies previously given to financial institutions that made guaranteed federal student loans.

In New Mexico, the entities affected by the new federal policy are the NM Educational Assistance Foundation (the foundation, or NMEAF) and NM Student Loan Guarantee Corporation (the corporation, or NMSLGC). As of July 1, 2010, loans can no longer be originated under the *Federal Family Education Loan Program*, administered in New Mexico by the corporation and the foundation—the loans must now be obtained directly from the US Department of Education.

According to the corporation, the changes in federal law eliminated the major purpose of itself and the foundation. The corporation states that its ongoing purpose and that of the foundation, as reorganized under the provisions of HB 137, will be to manage the run-off of the outstanding portfolio over the next several years.

The corporation states that passage of HB 137 will:

- repeal major sections of the *Education Assistance Act*;
- replace them with two new sections to preserve the rights of the organizations that existed before the repeal; and
- retain existing sections that ensure that the rights of bondholders are protected.

According to the corporation, this will allow both entities to:

- manage the orderly elimination of the existing *Federal Family Education Loan Program*; and
- explore other opportunities to provide services to New Mexico schools and students.

Background:

NMEAF and NMSLGC were authorized by the New Mexico Legislature in 1981 with the passage of the *Educational Assistance Act*:

- Pursuant to the act, the foundation and corporation were established as 501(c)(3) tax exempt corporations, separate and distinct from the State.
- The purpose of the corporation is to guarantee education loans, and it was designated as the single nonprofit corporation authorized to provide a statewide educational loan program under the federal *Higher Education Act of 1965*.
- The purpose of the foundation is to provide financial assistance for postsecondary education by making or purchasing education loans.
- According to the corporation, no state funding is provided to either entity, and the foundation has no authority to commit state tax resources for the repayment of its bonds.

According to the corporation,

- since 1981, the foundation's total loan volume has been approximately \$2.9 billion;
- in 2010, the foundation's loan volume was over \$258 million in originations and purchases for 37,640 borrowers;
- the corporation's cumulative guarantees total over \$3.0 billion;
- in 2010, the corporation guaranteed \$226.5 million for approximately 49,000 borrowers, over 98 percent of whom were state residents;
- cohort default rates for FY 08 were 2.2 percent for the foundation and 2.8 percent for the corporation, approximately half the average rate nationally; and
- all services needed to administer the programs of the two entities are supported in state by a staff of approximately 150 and an annual operating budget of over \$12.5 million.

Related Bills:

None as of February 8, 2011.