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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 3/18/15

**SPONSOR** Ortiz y Pino **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Legal Svc. & Scholarship for Underserved **SB** 667

**ANALYST** Malone

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate*			Indeterminate*	Recurring	Community Governance Attorney and Conditional Tuition Waiver Fund
		\$60.0	\$60.0	\$120.0	Recurring	DFA-LGD Operating

(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)

Attorney General's Office (AGO)

#### No Response Received From

University of New Mexico (UNM)

### SUMMARY

#### Synopsis of Bill

Senate Bill 667 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 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 a representative from DFA, the dean of UNM Law School or the dean’s designee, and three members appointed by the governor who are or were previously involved with small political subdivisions. 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 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.

## **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.

According to UNM Law School, the average cost for tuition, fees, and living expenses for a year of law school, assuming in-state tuition, is \$31.6 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 FY16 and would be unlikely in FY17 unless substantial donations or appropriations were made to the fund.

## **SIGNIFICANT ISSUES**

SB 667 draws on similar legislation providing for loans and loan forgiveness to health care

students and public service lawyers.<sup>1</sup> 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 legislations, the bill does explicitly provides for living expenses in addition to educational costs. It does not provide for books.

In statute, there already exists one legal education loan repayment act, the Public Service Law Loan Repayment Act (Sections 21-22f 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, HED, and DFA will all have new administrative duties associated with 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.

DFA notes that Local Government Division (LGD) will administer the contracts and programs provided in this section, but that LGD does not have the expertise to provide the necessary work to establish a Community Governance Attorney Commission. Through this bill the LGD would be required to develop a new program; conduct a solicitation in accordance with the State Procurement Code and applicable rules and regulations; contract with the organization that will provide the service; and provide oversight and contract monitoring of this program. Therefore LGD may require the need for one additional FTE to provide these and other action items (cost reflected in above table as approximately \$60 thousand).

## **DUPLICATION**

This program is somewhat duplicative of the already-existing Public Service Law Loan Repayment Act.

## **TECHNICAL ISSUES**

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<sup>1</sup> See the Medical Student Loan for Service Act, NMSA 1978, §22-22-1 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.

Section 5(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% cap in Section 6 (B), it should be so stated, and some metric for fixing those costs set forth.

### **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.

HED suggests that another alternative is to give any award to existing legal services programs to hire full time attorneys to achieve the objectives of the legislation. (The legislation would allow legal services' attorneys to serve a maximum of one-half time in this program). All of the attorneys at Legal Aid and other legal services programs earn less than \$50,000 per year and are more experienced attorneys. Legal service programs are located throughout the state.

CEM/je/aml