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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/26/11  
**LAST UPDATED** 03/14/11    **HB** \_\_\_\_\_

**SPONSOR**    Sanchez, B.

**SHORT TITLE**    Use of Funds to Assist Certain Land Grants    **SB** 176/aSJC/aHJC

**ANALYST** Hoffmann

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI	N/A	None

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 State Land Office (SLO)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 176 would specify that the Land Grant Council could determine if a land grant is eligible to be a political subdivision of the state. This is consistent with other statutory methods for organizing land grants, and would reserve the confirmation of political subdivision status to the legislative process.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 176 would eliminate the potential conflict with the state constitution's anti-donation clause. The amendment removes the language authorizing state funds to be expended for the "general benefit of all land grants or to provide assistance to grants that are governed as political subdivisions of the state."

#### Synopsis of Original Bill

Senate Bill 176 would amend Section 49-11-1 NMSA 1978 (the Land Grant Support Act) by expanding the definition of "Land grant" by omitting that portion of the definition that defines land grant as "organized and operated as a political subdivision of the state."

This bill seeks to expand the authority of the Land Grant Council and give the council the right to determine if a land grant is a political subdivision of the state or is not. In addition the council would be permitted to give money to both political subdivisions of the state and to land grants that are not political subdivisions of the state.

## **FISCAL IMPLICATIONS**

Senate Bill 176 contains no appropriation. However, there is a potential future fiscal impact from increased funding demands by the creation of new land grants defined as political subdivisions of the state (see SIGNIFICANT ISSUES BELOW).

## **SIGNIFICANT ISSUES**

The Attorney General's Office provided the following background information and concerns about Senate Bill 176. The following disclaimer applies to all of their comments on this bill: "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request."

The general purpose behind the Land Grant Support Act is to establish a land grant support program that provides advice and assistance to land grants and to serve as a liaison between land grants and the federal, state and local governments. The current definition of "land grant"<sup>1</sup> in the Land Grant Support Program Act is consistent with definition of land grant-merced in the Land Grant Act, which was amended in 2004 to designate land grants covered by Section 49-1-1 to 49-1-18 as "political subdivisions of the state." Now, according to the Land Grant Act, "[a]ll land grants-mercedes in the state or land grants-mercedes described in Section 49-1-2 NMSA 1978<sup>2</sup> shall be managed, controlled and governed by their bylaws, by the Treaty of Guadalupe Hidalgo and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978 as political subdivisions of the state." NMSA 1978, § 49-1-1 (2004). This change was significant because it allowed land grants to organize and become eligible for state and federal funding. This designation omits from its coverage land grants organized under other provisions of law. See September 26, 2008 Attorney General Advisory Letter to the Honorable Bernadette M. Sánchez (the law making land grants political subdivisions of the state inapplicable to land grant organized under the general corporation laws of New Mexico).

The amendments proposed to the Land Grant Support Act by Senate Bill 176 raise 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.

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<sup>1</sup> Section 49-11-2 currently reads: "land grant" means "a patented community land grant organized and operating as a political subdivision of the state." § 49-11-2(B) (2009).

<sup>2</sup> Section 49-1-2 makes the Land Grant Act applicable to "all land grants-mercedes confirmed by the congress of the United States or by the court of private land claims or designated as land grants-mercedes in any report or list of land grants prepared by the surveyor general and confirmed by congress, *but shall not apply to any land grant that is now managed or controlled in any manner, other than as provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of any general or special act.*" (emphasis added). Hence, it is not applicable to land grants organized as community land grant corporations under NMSA 1978, Section 49-2-1 et seq., or as domestic corporations under the general corporation laws of the state of New Mexico.

**TECHNICAL ISSUES**

The Attorney General’s Office shared the following technical concern.

The Land Grant Act already designates as “political subdivisions of the state” land grants covered by its provisions. Senate Bill 176 contemplates that the Land Grant Council may determine whether a land grant is a political subdivision of the state, “based on proof that the land grant is in compliance with requisite statutes and rules,” without providing any guidance as to what those requisite statutes and rules might be. Some might argue that the “requisite statutes and rules” are those found in the Land Grant Act, while others may argue that the “requisite statutes and rules” must be found elsewhere in New Mexico laws because there otherwise would be no need for the Land Grant Council to make a separate determination.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

According to the Attorney General’s Office, if this bill is not passed, federal and private funds acquired by the Land Grant Council may be expended only on land grants organized under the Land Grant Act and designated as political subdivisions of the state.

JCH/bym:svb