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- 1) Language is added to make it clear that money in the fund may be used to match federal and private sector grants.
- 2) The types of allowable operating expense is expanded to include furniture, fixtures, vehicles, and heavy equipment,
- 3) The types of reimbursable activities allowable is expanded to include:
 - a) community and economic development projects including maintenance, repair, renovation and construction of infrastructure, building, facilities and parks and the acquisition of real property, and
 - b) natural resource conservation initiatives, including projects related to watershed health, ecological restoration, fuels reduction, range improvements and soil and water conservation.
- 4) Language that would have capped the annual distribution to a land-grant-merced at \$30.0 per fiscal year, except as otherwise appropriated by the legislature, is deleted.

Synopsis of Original Bill

House Bill 36 creates the Land Grant-Merced Assistance Fund to benefit the numerous land grant merced in the state. The fund is provided revenue from the earmark of .05 percent of the “Net receipts attributable to the gross receipts tax.” This would take place as a monthly distribution to the Land Grant-Merced Assistance Fund. In addition, the Fund begins with a \$1.25 million general fund appropriation on July 1, 2019. Money in the fund may be used for the following purposes:

1. Carry out the administrative functions of the land grants, including contracting with technical experts for compliance with state reporting requirements, executing contracts and holding elections;
2. enter into agreements for grants-in-kind;
3. purchase office equipment and supplies; and
4. conduct land surveys, historic research and hydrological studies and collect and analyze other information needed for land use permitting and protection of the lands and waters of a land grant-merced.

There are 31 recognized Land Grant-Merced 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.

Approximately \$1.9 million per year will be distributed by the Local Development Division of DFA prorate to the 31 recognized Land Grant-Merced, with no distribution to any land grant exceeding \$30 thousand per year, unless additional revenue from the fund is separately appropriated by the legislature. The initial distribution in July, 2019 would be funded through a \$1.25 million appropriation from the general fund. Any excess revenue collected in the Fund that is not distributed or appropriated, would revert at the end of the fiscal year.

FISCAL IMPLICATIONS

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. Since the bill includes language that all distributions from the fund must be appropriated by the legislature, it unclear whether a new earmark of gross receipts tax is necessary. The legislature already has the ability to appropriate general fund for the purposes described in the bill.

SIGNIFICANT ISSUES

Minus refunds and specific distributions provided by statute, under the Tax Administration Act, the general fund is the residual beneficiary of the gross receipts from the gross receipts tax. HB 36, however, appears to employ a circular logic, since the distribution itself contributes to a calculation of the “net receipts attributable to the gross receipts tax”. For the purpose of this calculation, the net receipts of the gross receipts tax will be considered before the specific distributions, including the hold harmless food and medical payments and the 1.225 percent state share distribution. In essence, this will be 5.125% of the matched taxable gross receipts from all county and municipal locations but excluding out-of-state locations. It may be more equitable if the municipal 1.225 percent and the hold harmless distributions are deducted before calculating the .05 percent net receipts attributable to the gross receipts tax.

The Tax and Revenue Department notes that the number of land grant-merced 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. The New Mexico Attorney General identified as the agency which shall give yearly notification of which land grant-merced qualify, but is unable to currently give guidance on how many that would be. An annual allocation of up to \$30 thousand for each land grant-merced may induce many inactive or unverified land grant-merceds to seek approval via the courts or other means.

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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 36 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.

TECHNICAL ISSUES

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.

OTHER SUBSTANTIVE ISSUES

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.

The bill does not indicate if the .05 percent tax revenue distributed from the Fund to the Land Grant-Mercedes are subject to reversion.

ALTERNATIVES

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 the each Land Grant-Mercedes.

RB/sb/gb