FISCAL IMPACT REPORT

SPONSOR Tallman/ Hochman-Vigil **ORIGINAL DATE** 1/31/19 **LAST UPDATED** **HB**

SHORT TITLE Student Loan Bill of Rights Act **SB** 160

ANALYST Hawker

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**		
Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	$284.5	$284.5	$569.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 172

SOURCES OF INFORMATION
LFC Files
National Conference of State Legislatures
The PEW Charitable Trusts
U.S. Department of Education

Responses Received From
Higher Education Department (HED)
New Mexico Attorney General (NMAG)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 160 enacts the "Student Loan Bill of Rights Act"; provides licensure and regulations for the "student loan servicer" industry; and provides penalties. Persons who are not licensed by the Regulation and Licensing Department (RLD) are prohibited from becoming student loan servicers. Banks and credit unions are exempted from licensing.

SB 160 has an effective date of January 1, 2020.

Section 1 provides the short title, "Student Loan Bill of Rights Act".

Section 2 provides definitions for "servicing", "student loan servicer", "student education loan', and "student loan borrower". A "student loan servicer" is any person responsible for the servicing of student education loans to a "student loan borrower".

Section 3 provides exemptions, banks and credit unions and their wholly owned subsidiaries are exempted.

Section 4 establishes the licensing process, to include application, issuance, and investigation. The Financial Institutions Division (FID) of RLD is tasked with creating the processing fees, establishing continuation and revocation standards. Two nonrefundable fees are established, a $1,000 license fee and an $800 investigation fee.

Sections 5 and 6 outline license expiration, surrender, renewal, suspension, abandonment, transferability, and assignability. There are no abatement fees proposed.

Section 7 requires the student loan servicer to retain specific records; and, if requested by FID, to provide student education loan records within five business days of the request.

Section 8 establishes acts from which student loan servicers are prohibited, to include servicers being prohibited from: defrauding or misleading student loan borrowers, engaging in unfair or deceptive practices, misapplying or recklessly applying student education loan payments.

Sections 9 through 13 outline the enforcement powers of the FID director; judicial enforcement and/or criminal penalties; and compliance with federal law.

Section 14 ensures promulgation of rules necessary for implementation of the SB 160.

Section 15 outlines the duties of the student loan ombudsman and the annual reporting requirements of the FID in the implementation of SB 160.

The ombudsman is tasked in assisting borrowers in understanding their rights and responsibilities in the student loan process. The ombudsman will address student complaints regarding education loans and will seek out resolutions; track data and report on complaints received; and provide information to potential student loan applicants via the internet, higher education institutions, and other avenues. The FID director and the ombudsman are responsible for an annual report that addresses the implementation of the provision in SB 160; the overall effectiveness of the student loan ombudsman position; and actions that support FID in gaining appropriate regulatory control over licensing of student loan servicers.

According to RLD, implementation of SB 160 will have a $284.5 thousand impact on the FID operations.

This bill has not been referred to Senate Finance Committee.

FISCAL IMPLICATIONS

Revenue projections for SB 160 are indeterminate. Student loan servicing companies are currently not required to license or register in New Mexico. The number of servicing companies is unknown.

SB 160 creates a new ombudsman position within FID. In additional to the salary and benefits for and ombudsman, RLD states two examiner analysts will be required to fulfill the requirements of SB 160. Salary and benefits for two examiner/analysts, the ombudsman, and operational expenses are projected to be $284.5 thousand. This would be a recurring expense, which would begin in FY20.

SIGNIFICANT ISSUES

Section 3 exempts banks, credit unions and certain subsidiaries of banks and credit unions from the licensure requirement. SB 160 does not provide exemption for servicers contracted by the United States Department of Education or SallieMae. The U.S. Department of Education has oversight authority over their contracted servicers. SallieMae is sponsored by and regulated by the Federal government. SallieMae would be required to be licensed as a loan servicer in New Mexico.

NMAG notes concerns regarding Section 4.D.3. This provision states that a license <u>shall</u> be issued if the director finds that "the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes and intent of the Student Loan Bill of Rights Act and in a manner commanding the confidence and trust of the community." Concern is expressed that these criteria could be subject to varying interpretations as this standard is vague.

Section 5 of SB 160 creates a two year licensing renewal period. All other financial industries licensed by FID operate on a one year licensing renewal period.

Section 6 requires a separate license for each business location.

RLD notes FID utilizes the Nationwide Multistate Licensing System and Registry (NMLS) for the licensing of mortgage companies, mortgage loan originators and money services businesses (Section 58-21B-3). FID could use the services of NMLS to conduct licensing application and processing activities for the licensing of student loan servicers. Utilization of NMLS for licensing purposes under SB 160 would allow for efficiency and cost savings.

ADMINISTRATIVE IMPLICATIONS

SB 160 creates a new ombudsman position within the FID. This position is responsible for taking and investigating complaints from borrowers, providing information to the public about services, disseminating reports and statistics about student loans, and developing by July 1, 2020 a student loan borrower education course that would be funded through license, renewal, late filing and investigation fees. The director of FID and the ombudsman are required to report annually on the implementation and effectiveness of the provisions in SB 160.

Appeals filed under Rule 1-075 NMRA of decisions related to denial, revocation, or other adverse action against a license issued under the Act would likely require legal resources from NMAG, unless a commission for a designation as a Special Assistant Attorney General was obtained from NMAG. The NMAG Open Government Division would likely assist with representing the director's decision for appeals unless a special commission were obtained.

SB 160 provides criminal penalties for individuals acting as student loan servicers without being licensed under the Act. If the NMAG Special Prosecutions Division were to pursue criminal prosecution, this could require additional resources from NMAG.

DUPLICATION

HB 172 is a duplicate.

TECHNICAL ISSUES

HED may qualify as a loan servicer pursuant to the definitions within Section 2.

Section 5 establishes the loan servicer licensing year. RLD recommends the loan servicer licensing year be changed to begin on January 1st and end on December 31 to match the NMSL licensing period. To match NMSL, the licensing application period would begin on November 1st with a deadline for submission of the license applications by December 31.

Sections 5 and 10 in SB 160 establish the use of the Uniform Licensing Act, Sections 61-1-1 through 6-1-31 NMSA 1978. Section 14 in SB 160 provides for judicial review of the promulgated rules as found in Section 12-8-8 NMSA 1978. Referring to Section 12-8-8 NMSA 1978 for rule review may be problematic as the Uniform Licensing Act has its own processes for rule review, which is found in Section 61-1-31 NMSA 1978.

OTHER SUBSTANTIVE ISSUES

Student loan servicing companies are largely unregulated and unlicensed by the federal government. In the recent past, the Federal government made some steps towards implementing student loan protections:

- *Joint Principles on Student Loan Servicing* was issued on September 29, 2019 by the U.S. Department of Education, the Department of the Treasury, and the Consumer Financial Protection Bureau.
- *Federal Student Aid Bill of Rights* was unveiled by President Obama on March 10, 2015.
- A series of enhanced protections and customer service standards designed to guide the future of federal student loan servicing practices was outlined by the U.S. Department of Education on July 20, 2016.
- In 2018, the U.S. Senate introduced protections for student loan borrowers in the banking bill, a federal student loan bill of rights.

None of the above actions have resulted in Federal legislation that would comprehensively regulate and license student loan servicing companies. While the Trump administration has stated that regulating loan servicers is a federal responsibility, several states have either enacted a student loan "bill of rights" or created a student loan ombudsman or something similar. These states include California, Connecticut, Illinois, Virginia, Washington and the District of Columbia.

The most recently released data from the U.S. Department of Education on student loan default rates, 2015 data, indicates New Mexico has the second highest default rate among the 50 states with 16.2% of the student loans being in default:
https://www2.ed.gov/offices/OSFAP/defaultmanagement/staterates.pdf

According to NCSL, student loan debt has received increased attention as the number of borrowers, the amounts owed, and the total amount of outstanding debt has increased rapidly. In 2004 student loan debt was $350 billion, in 2018 it was approximately $1.2 trillion. Student loans have transitioned from a federal issue into state-level policy discussions. More information on student loan debt can be found in the NCSL publication: *Hot Topic in Higher Education, Student Loan Debt*
http://www.ncsl.org/Portals/1/Documents/educ/StudentLoanDebtBrief.pdf

VKH/al

FY 2015 Official Cohort Default Rates by State/Territory

Calculated August 18, 2018

State	Number of Schools	Number of Borrowers in Default	Number of Borrowers Entered Repayment	NEW Borrower Default Rate
Alabama	62	10,397	80,350	12.9%
Alaska	8	655	5,204	12.5%
Arizona	97	37,614	286,498	13.1%
Arkansas	71	4,754	42,389	11.2%
California	609	41,186	401,245	10.2%
Colorado	108	12,124	103,743	11.6%
Connecticut	72	5,193	49,138	10.5%
Delaware	17	1,177	12,315	9.5%
District of Columbia	23	3,655	42,753	8.5%
Florida	305	32,492	276,604	11.7%
Georgia	142	16,538	145,203	11.3%
Guam	1	50	523	9.5%
Hawaii	23	972	10,255	9.4%
Idaho	33	2,456	26,244	9.3%
Illinois	252	21,575	209,666	10.2%
Indiana	116	20,978	147,030	14.2%
Iowa	85	11,443	97,805	11.6%
Kansas	81	6,893	57,042	12.0%
Kentucky	89	10,570	73,691	14.3%
Louisiana	86	6,699	60,149	11.1%
Maine	40	2,169	20,516	10.5%
Maryland	81	6,773	69,152	9.7%
Massachusetts	171	6,421	104,466	6.1%
Michigan	140	20,891	170,636	12.2%
Minnesota	106	12,441	152,376	8.1%
Mississippi	43	5,785	40,978	14.1%
Missouri	167	10,477	101,612	10.3%

State	Number of Schools	Number of Borrowers in Default	Number of Borrowers Entered Repayment	NEW Borrower Default Rate
Montana	24	1,272	13,499	9.4%
Nebraska	45	2,485	31,305	7.9%
Nevada	31	3,242	21,170	15.3%
New Hampshire	39	3,489	35,505	9.8%
New Jersey	127	8,883	91,122	9.7%
New Mexico	29	3,551	21,889	16.2%
New York	418	23,544	276,836	8.5%
North Carolina	146	11,427	105,520	10.8%
North Dakota	25	805	12,882	6.2%
Ohio	256	24,122	197,093	12.2%
Oklahoma	81	6,294	51,879	12.1%
Oregon	79	9,647	75,314	12.8%
Pennsylvania	330	20,961	217,521	9.6%
Puerto Rico	54	3,531	35,286	10.0%
Rhode Island	22	1,386	21,298	6.5%
South Carolina	78	4,485	63,298	7.0%
South Dakota	22	2,675	20,692	12.9%
Tennessee	130	9,419	84,415	11.1%
Texas	321	33,280	302,757	10.9%
Utah	55	5,138	61,621	8.3%
Vermont	27	664	11,160	5.9%
Virgin Islands	1	52	394	13.1%
Virginia	123	12,201	128,684	9.4%
Washington	106	7,607	72,718	10.4%
West Virginia	55	8,871	49,906	17.7%
Wisconsin	88	9,090	92,629	9.8%
Wyoming	10	769	6,230	12.3%