

LFC Requester:

Helen Gaussoin

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x **Amendment**
Correction **Substitute**

Date Prepared: 1/24/2024

Bill No: HB188

Sponsor: Kristina Ortez

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Land Grant Revolving
Land Fund

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$8,000.00	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill (“HB”) 188 would create a new section of the Land Grant Support Act (Sections 49-11-1 to 49-11-15, NMSA 1978) by establishing a non-reverting revolving land fund (the “Fund”) to provide loans to qualified land grants-mercedes to purchase real property. Land acquired through the Fund would be held in trust by a qualified land grant-merced’s board of trustees for the benefit of land grant heirs and would be a non-transferrable asset but may be exchanged for other land of other government entities. The Fund would be administered by the New Mexico land grant council pursuant to rule that establishes an application process and the terms, conditions and rates of interest for loans. However, the bill would require that the rule not establish an interest rate less than two percent or more than four percent; a repayment schedule of less than ten years or more than forty years; or a penalty for early repayment. The bill provides other requirements related to loans made from the Fund including caps on how much an individual land grant may receive from the Fund and a requirement that the New Mexico land grant council accept capital outlay appropriations toward repayment.

HB 188 would also amend the Land Grant Support Act, specifically Section 49-11-6, NMSA 1978 (establishing the land grant-merced assistance fund) by requiring the state treasurer to take into account any qualified land grant-merced’s payment in arrears from the Fund in its distribution from the land grant-merced assistance fund to that land grant-merced. The bill would also amend Section 49-11-6 to provide that if the balance in the assistance fund as of the preceding June 30 exceeds the sum of amounts distributed to qualified land grants-mercedes, the difference shall revert to the land fund rather than the general fund.

Lastly, HB 188 provides for an appropriation of \$8,000,000 from the general fund to the Fund for expenditure in FY 2025 and subsequent fiscal years for the purposes of the Fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be

reported in this section.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

None for this office.

ADMINISTRATIVE IMPLICATIONS

The Guadalupe Hidalgo Treaty Division (the “Division”) of the New Mexico Department of Justice (“DOJ”) provides legal counsel to the New Mexico land grant council. If this bill becomes law, the Division would likely play a role in assisting the New Mexico land grant council in the promulgation of the rule required by this bill. In addition, if the bill becomes law, the New Mexico land grant council will have additional administrative responsibilities as the bill provides that the council shall administer the newly created Fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB125 would create a public bank that would allow the bank to “make, purchase, guarantee or hold loans...to instrumentalities or political subdivisions of the state.” Such actions would be “[s]ubject to the limitations, conditions and restrictions provided by law or policy adopted by the board [of the bank].” In addition to HB188 explicitly providing the authority for the New Mexico land grant council’s administration of the loan program, current law (the Land Grant Support Act) appears to provide the requisite ancillary authority for the council’s administration of the loan program. For example, the Land Grant Support Act allows the council, through its staff or contract agents, to “assist land grants in all areas of land grant fiscal and programmatic management, including planning, economic development and infrastructure development.” 49-11-4(B)(1), NMSA 1978. In addition, the council may “hire staff and contract for services to carry out the purposes of the Land Grant Support Act”. 49-11-3(C), NMSA 1978. While there may not be an inherent conflict between HB188 and HB125 if both bills become law, whether the public bank would be better suited to administer the loan program contemplated under HB188 – and for that matter any other similar state loan programs – and any potential benefit to the state to have state loan programs administered solely by the public bank is an open question. See generally Mortgage Finance Authority Act, Chapter 58, Article 18, NMSA 1978.

TECHNICAL ISSUES

“Real property” is defined in the bill as “land, improvements, water rights, mineral rights and right-of-way easements.” Although the bill provides for the use of a loan from the Fund to purchase real property, the bill places restrictions on transfers of purchased *land* only: “land purchased in whole or in part using money from a loan from the land fund shall be perpetually held in trust by the board of trustees of the purchasing land grant-merced as a nontransferable asset for the benefit of the heirs of the land grant-merced”. Therefore, as an example, water rights as real property could be purchased using money from the land fund either together with land to which those water rights are appurtenant or separately. However, as written, the bill arguably would not require such water rights be held perpetually as a nontransferable asset. If the intent of the bill is to include other real property in its restrictions on transferability, the bill should explicitly state such restrictions.

More generally, the bill provides a definition of “real property” that may not be consistent with

definitions provided in other New Mexico statutes or through judicial interpretation. For example, the Eminent Domain Code (Sections 42A-1-1 through 42A-1-33, NMSA 1978) defines “real property” as “land and any improvements upon or connected with land, and includes an easement or other interest therein”. Section 42A-1-2(K).

OTHER SUBSTANTIVE ISSUES

HB188 would require similar criteria in determining land grant-merced eligibility to receive a loan from the land fund as already provided in current law. Section 48-11-6, NMSA 1978 created the land grant-merced assistance fund in the state treasury from which eligible land grants-mercedes may receive distributions. Section 49-11-2(B), NMSA 1978, defines “land grant” as “a patented community land grant-merced organized and operating as a political subdivision of the state” and requires that only those land grants that are political subdivisions of the state – under Chapter 49, Article 1 or 4, NMSA 1978 – are eligible to receive a distribution from the assistance fund. 49-11-6(F)(1). HB188 provides essentially the same requirement, namely, that only land grants that are patented community land grants-mercedes and are political subdivisions of the state are eligible to receive a loan from the land fund. This requirement of HB188 should eliminate any anti-donation concerns.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.