

LFC Requester:	Malone, Caroline
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 **Amendment**
Correction **Substitute**

Date February 23, 2015
Bill No: SB 667

Sponsor: Sen. Gerald Ortiz y Pino
Short Title: Legal Services & Scholarship for Underserved

Agency Code: Attorney General's Office
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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 Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: Senate Bill 667 would create a scholarship program for third year law students at the University of New Mexico, providing for a loan (defined as a “waiver”) 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 loan could also be used for living expenses incurred while participating in clinical programs or internships.

The loan would be forgiven at the rate of 50% per year if the recipient is employed, with a salary of not more than \$50,000 per year, 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 the promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees.”

The Bill specifically contemplates that the legal services would be provided to acequias, colonias and land grant-mercedes.

If the recipient is not so employed, the loan becomes payable over a ten-year period, with the first payment due six months after completion or discontinuance of the legal educational program. Interest on the loan accrues at the rate of 18% if the student does not serve as a community governance attorney; 7% in all other cases. The Bill is silent with respect to whether interest as well as principal would be forgiven in the event any portion of the loan is forgiven.

Section 5 of the Bill creates a “community governance attorney commission” composed of the secretary of DFA, the dean of the UNM law school and three members appointed by the governor, one of whom shall be a member of an acequia, one who is or has been a member of a land grant council, and one a resident of a colonia who is or has been a member of the colonias infrastructure board. The Commission would be charged with making recommendations on loan applicants and disbursing funds from the “community governance attorney and conditional tuition waiver fund” created in Section 6 for contracts with UNM law school or nonprofit organizations providing fee legal services to low-income New Mexicans.

The contracts would provide for funding up to one-half of a full-time community governance attorney position with non-profit providers of services that have secured funding for the other 50% from nonstate funds. The Bill would prohibit the use of money disbursed for the

community governance attorney for lobbying, or filing suit against the State.

The community governance attorney and conditional tuition waiver fund would be held by the state treasurer and consist of all money appropriated, donated or otherwise accruing to the fund, including loan payments and penalties. Expenditures from the fund would be only for student loans, contracting for community governance attorneys, and (with a 5% cap) the administrative costs of administering the program.

FISCAL IMPLICATIONS

There are no direct fiscal implications for this office

SIGNIFICANT ISSUES:

SB 667 draws on similar legislation providing for loans and loan forgiveness to health care students and public service lawyers: 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.

The New Mexico Constitution, Article IX, Section 14 (C) provides an exception to the anti-donation clause for students of the healing arts who contract with the state to practice their profession for a period of years within areas of the State designated by law, but does not contain a similar provision for students of the law. SB 667, since it provides for grants to non-governmental nonprofit entities, might be found unconstitutional. It might also be found unconstitutional under Article IV, Section 32, which prohibits the remission, release or diminution of any debt owed to or owned by the State.

SB 667 draws heavily from the medical student loan acts, but expands on them to explicitly provide for living expenses in addition to educational costs. It does not provide for books. It provides for less than the medical student loan acts, in that: it does not provide that recipients must serve a complete year in order to receive credit for a year of service, *see* NMSA 1978, §21-22-6(F); it does not provide for enforcement, *see* NMSA 1978, §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, §21-22-9.

It is not clear whether the New Mexico Taxation and Revenue Department is to treat any loan forgiveness as income subject to taxation. The Bill does not provide for an award of costs and attorney's fees in the event enforcement or collection action is required.

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.

It is not clear whether the funding of one-half of a full-time community governance

attorney position in Section 5(C)(4) includes employer costs such as health care, employment taxes, the employers' portion of FICA taxes, workers' compensation and the like, or merely salary.

Section 3(D) defines a "community governance attorney" as one whose "...legal practice is focused on the requirements and challenges faced by small political subdivisions and incorporated communities, including promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees," but does not provide any metric for defining what "focused" means. While the funding mechanism in Section 5 appears to contemplate that the community governance attorney will hold a full-time position, it does not specifically require that. It also does not limit the employment of community governance attorneys to recipients of the student loan.

In addition, if the community governance attorney is to be employed by a non-profit entity whose mission is to provide legal services to low-income New Mexicans, conflicts of interest between the governmental entity whose interests are being advanced by the attorney and the low-income New Mexicans otherwise served by the nonprofit are inevitable. These conflicts may create ethical issues and bring the community governance attorney into conflict with one or more of the Rules of Professional Conduct adopted by the New Mexico Supreme Court, *see* 16-107 & 16-111 NMRA.

Section 5(E) prohibits use of money disbursed to UNM law school or "nonprofit organizations whose mission is to provide a range of free legal services to low-income New Mexicans" for lobbying or suing the state (but apparently not its political subdivisions). However, cash is fungible, and any funding from the State frees up money from other sources for lobbying and bringing suit against the State. Absent statutory or contractual limitations on the receiving entity's actions or a strictly enforced conflicts wall between the community governance attorney and other staffers, direct or indirect violations of the limitations on the attorney's actions are quite possible.

PERFORMANCE IMPLICATIONS

There are no performance implications for this office.

ADMINISTRATIVE IMPLICATIONS

There are no administrative implications for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None at this time.

TECHNICAL ISSUES

None at this time.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.