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F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 1/25/17
SPONSOR Maestas/Martinez **LAST UPDATED** 3/09/17 **HJR** 1/aHJC/aHFL#1

SHORT TITLE Permanent Funds for Early Childhood, CA **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue						Recurring or Nonrecurring	Fund Affected
FY17	**FY18**	**FY19**	**FY20**	**FY21**	**FY22**		
*	*	*	($153,372.7)	($158,329.7)	($163,140.9)	Recurring	LGPF
*	*	*	$39,053.9	$94,071.0	$138,470.7	Recurring	General Fund (Early Childhood)
*	*	*	$91,125.8	$40,316.1	$0.0	Recurring	General Fund (Educational)
*	*	*	$23,193.0	$23,942.6	$24,670.2	Recurring	Other LGPF beneficiaries

Parenthesis ( ) indicate expenditure decreases
* Proposed constitutional amendment requires approval in a general election and will not take effect unless the amendment is approved by the U.S. Congress. Fiscal impact estimates assume the provisions of the amendment will not become effective until FY20.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$0	$50	$0	$50	Nonrecurring	Election Fund

Conflicts with SJR3 and SJR14; related to HJR2, SJR18, SB182, and SB288.

SOURCES OF INFORMATION
LFC Files

Responses Received From
State Investment Council (SIC)
Secretary of State (SOS)
Children, Youth, and Families Department (CYFD)
Department of Finance and Administration (DFA)
Public Education Department (PED)
State Land Office (SLO)
New Mexico Department of Health (DOH)
Office of the Attorney General (OAG)

SUMMARY

Synopsis of House Floor Amendment

The House Floor amendment #1 for HJR 1 adds a sunset date of 2032 for the additional distributions from the land grant permanent fund.

Synopsis of HJC Amendment

The House Judiciary Committee amended HJR 1 to broaden the definition of "early childhood educational services." Under this amendment, such services may be provided by "a school district or an entity of an Indian nation, tribe or pueblo", and various restrictions on the provision of these services are removed.

The amendment removes the provisions that early childhood educational services may be provided by the New Mexico school for the blind and visually impaired or the New Mexico school for the deaf, and further removes the following provisions from the bill:

- Funds be allocated to increase, rather than supplant, early childhood educational services;
- School districts use the allocated funds to strengthen and expand programs in low-income communities first;
- School districts contract only with early childhood educational service providers that have comparable employment standards to that of public schools;
- Preference requirements for contractors;
- Requirements that contractors adopt similar employment standards to that of public schools; and
- Prohibition of contractors to provide early childhood educational services available from the New Mexico school for the blind and visually impaired or the New Mexico school for the deaf.

Synopsis of Original Bill

House Joint Resolution 1 proposes an amendment to Article, XII, Section 7 of the New Mexico Constitution, which governs the distributions from the land grant permanent fund (LGPF). If approved by voters in a statewide referendum, the state constitution would require the LGPF to provide additional yearly distributions of 1 percent from the fund to educational and early childhood educational (ECE) services starting in fiscal year 2020. This would raise the overall LGPF distribution to 6 percent per year. Of the additional 1 percent funding to the permanent school fund, the resolution initially focuses 0.7 percent on education reforms and 0.3 percent ECE, then flipping those percentages in FY21, and in FY22 and thereafter, using the entire 1 percent for ECE programs.

A three-fifths majority in both the House and Senate can vote to suspend the additional distributions, and the additional distribution would be suspended should the five-year LGPF average drop below $12 billion.

The resolution seeks approval of this constitutional amendment by the voters of New Mexico at the next general election or in a special election called for this purpose. Additionally, this resolution would not take effect unless the amendment were approved by the US Congress.

FISCAL IMPLICATIONS

The State Investment Council (SIC) indicates, in the short term under the resolution, additional distributions from the LGPF will produce significantly more revenue to the general fund for public schools and the other LGPF beneficiaries. However, this short-term solution comes at a price, as the additional distribution will lessen future earnings and reduce the significantly greater benefits that a larger fund would produce long-term at the lower distribution rate.

The impact of "cashing-out" of an additional 1 percent per-year of the permanent fund can be affected by investment returns and annual inflows to the permanent fund, which are driven primarily by oil and gas royalties. Put simply, higher revenue inflows to the LGPF and higher than expected investment returns could help mitigate the long-term effects of forsaking investment earnings for an additional drawdown. The opposite holds true as well, where depressed oil/gas prices, coupled with lower investment returns (which are predicted) and a higher spending rate have a much greater potential to negatively impact the health of the endowment long-term. The council's expectation over the next 7-10 years is for both lower-than-historical investment returns (targeting 7 percent), and oil/gas prices substantially below the high-water marks we have seen over the previous decade. Today's LGPF inflows are currently about half or less of where they were in 2014.

The following chart provided by SIC shows the end-year values of the LGPF, as well as projections for LGPF values and distributions for the next dozen years, at both the current 5 percent rate and the 6 percent rate proposed under the resolution. Though the resolution currently does not provide a sunset for the new distribution terms, the 12-year time frame was chosen for a comparison basis, as the 2003 constitutional amendment requiring additional distributions from the LGPF was also 12 years, from FY2005-2016, and resulted in $747 million of additional pay-outs over and above the base 5 percent, to LGPF beneficiaries during that time.

Calendar Year	Corresponding Fiscal Year	($B) LGPF Value Current (5%)	LGPF Distribution @5%	($B) LGPF Value w/HJR1/a (6.0%)	LGPF Distribution @6.0%	Rolling Difference in LGPF Distribution	Rolling Difference in LGPF Value
2018	**2020**	16.68	$766,863,713	16.68	$920,236,456	$153,372,743	
2019	**2021**	17.45	$796,249,788	17.37	$954,579,510	$311,702,465	**($0.076686371)**
2020	**2022**	18.23	$834,565,983	18.00	$997,706,836	$474,843,318	**($0.237675590)**
2021	**2023**	19.04	$873,256,624	18.63	$1,039,163,583	$640,750,277	**($0.414335142)**
2022	**2024**	19.86	$912,636,751	19.26	$1,079,140,302	$807,253,828	**($0.606619503)**
2023	**2025**	20.70	$952,841,351	19.89	$1,117,624,202	$972,036,679	**($0.813468264)**
2024	**2026**	21.55	$993,916,104	20.52	$1,155,430,777	$1,133,551,352	**($1.033613839)**
2025	**2027**	22.43	$1,035,824,647	21.16	$1,193,380,959	$1,291,107,664	**($1.266014729)**
2026	**2028**	23.31	$1,078,546,437	21.80	$1,231,494,650	$1,444,055,877	**($1.510373208)**
2027	**2029**	24.22	$1,122,097,844	22.45	$1,269,833,927	$1,591,791,960	**($1.766820475)**
2028	**2030**	25.14	$1,166,493,441	23.10	$1,308,443,788	$1,733,742,307	**($2.035539595)**
2029	**2031**	26.08	$1,211,747,978	23.76	$1,347,351,430	$1,869,345,759	**($2.316763962)**
2030	**2032**	27.04	$1,257,877,148	24.43	$1,386,569,442	$1,998,038,053	**($2.610764044)**
2031	**2033**	28.01		25.10			**($2.917833111)**

The projection assumes annual inflows of $400 million and investment returns of 7 percent (6.7 percent net), with additional distributions of 1 percent beginning in FY2020. Both are consistent

with SIC expectations during this time frame. The starting value of $16.7B is projected for the end of 2018, which determines the distribution for FY2020.

The model shows that at the higher distribution rate approximately $15.00 billion will be delivered from the LGPF to beneficiaries, versus approximately $13.00 billion at the 5.0% rate over the duration of HJR1/a. Due to reduced compounding of investments over that time however, the LGPF's value will be approximately $2.92 billion less at the end of HJR1/a, compared to if the resolution is not implemented.

SIC provides an updated summary for the resolution as amended by the house floor:

- This total at the 6 percent rate would draw-down $2 billion more than the base rate, or on average, $154 million more per year over 13 years.
- At the end of the resolution as amended by the House Floor, at the 6 percent rate, the LGPF value would be a projected $2.9 billion less than it would have been at the 5 percent rate.
- Projected average annual earnings on $2.9 billion are approximately $195 million per year.
- This $195 million per year in potentially lost earnings would grow with every subsequent year, with the lower corpus value and opportunity costs compounding over each year of positive market returns.
- That $195 million – a nine-figure opportunity cost in lost earnings - would continue to grow annually, and at an accelerating rate.

This calculation does not take into account potential future growth in state population, or the impact of inflation on the real dollar value and benefits of the LGPF. This calculation does not contemplate the impacts of possible major market events or a severely compromised inflow model to the LGPF. The amplifying effects those variables could have – especially when taken into consideration together – greatly increased risk to the fund's long-term health, earning ability, and the risk of much lower distributions long-term.

SIC notes other points of consideration:

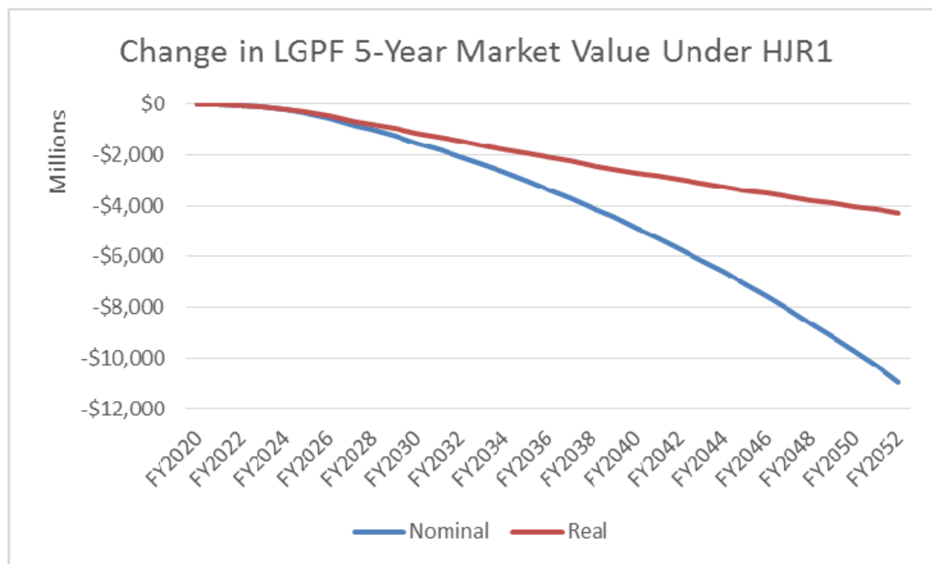
- At 6 percent, the LGPF would deliver an additional $2 billion to beneficiaries over the resolution's 13-year term.
- The projected $2 billion is 2.7-times bigger than the excess amount drawn down from the permanent fund by the previous constitutional amendment of 2003 ($747 million) over the same time period.
- Like the 2003 amendment, the resolution does not include any restrictions against using its additional distributions to supplant the current general fund allocations to ECE, thereby freeing up those replaced dollars for non-ECE or non-educational programs.
- Reduced value of the corpus results in diminished capacity to participate in positive investment return environments, while increasing volatility overall to the LGPF's yearly benefits. The smaller the fund, the smaller the benefits, and the lesser the fund's ability to recover from negative returns through subsequent positive investment performance.

The scale of the resolution as amended is similar to the 2003 constitutional amendment given the relative sizes of the LGPF then and now. RVK analysis has previously projected that, had the

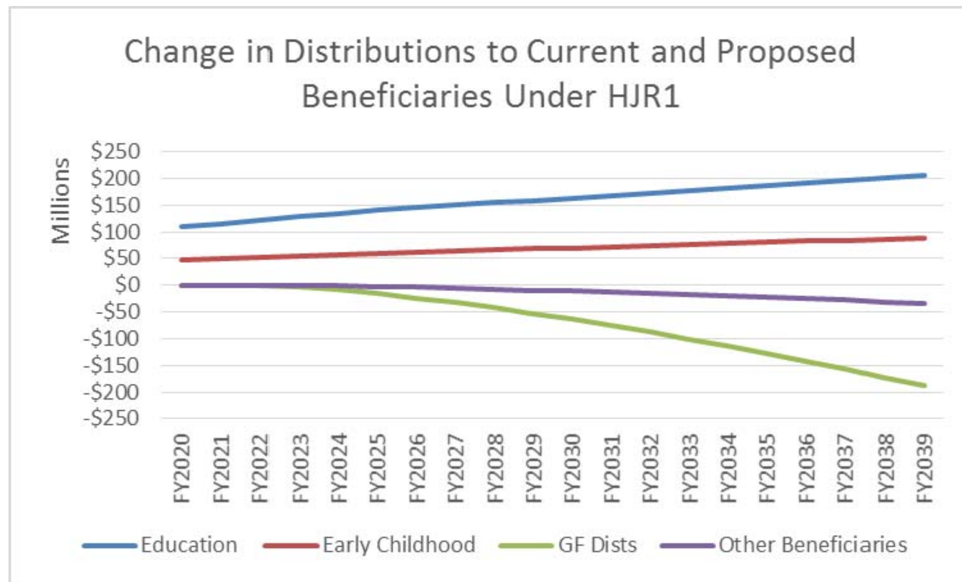
2003 amendment never been passed, that the LGPF value would have been $1.25 billion more than it was after the amendment's temporary distributions sunset in 2016. It's notable that had the LGPF been $1.25 billion larger during calendar year 2016, it would have earned approximately 7.4 percent net of fees, or an additional $92 million.

The Department of Finance and Administration (DFA) projects that by 2044, the fund will have distributed a cumulative additional $3.1 billion to beneficiaries at the cost of nearly $7 billion in market value. It is around this time that DFA projects a "tipping point" will occur. After this point, the amount distributed by the fund under the 6 percent distribution no longer exceeds the amount that would have been distributed at the 5 percent level had the corpus not been disturbed. From this point forward, the effect on the distributions from the fund is increasingly negative. The result is that although the fund would distribute additional money in the short and medium term, it eventually would distribute less money to the beneficiaries and result in a much smaller corpus.

DFA provides the following graph to illustrate the change in the 5-year market value of the fund under the resolution relative to current law:



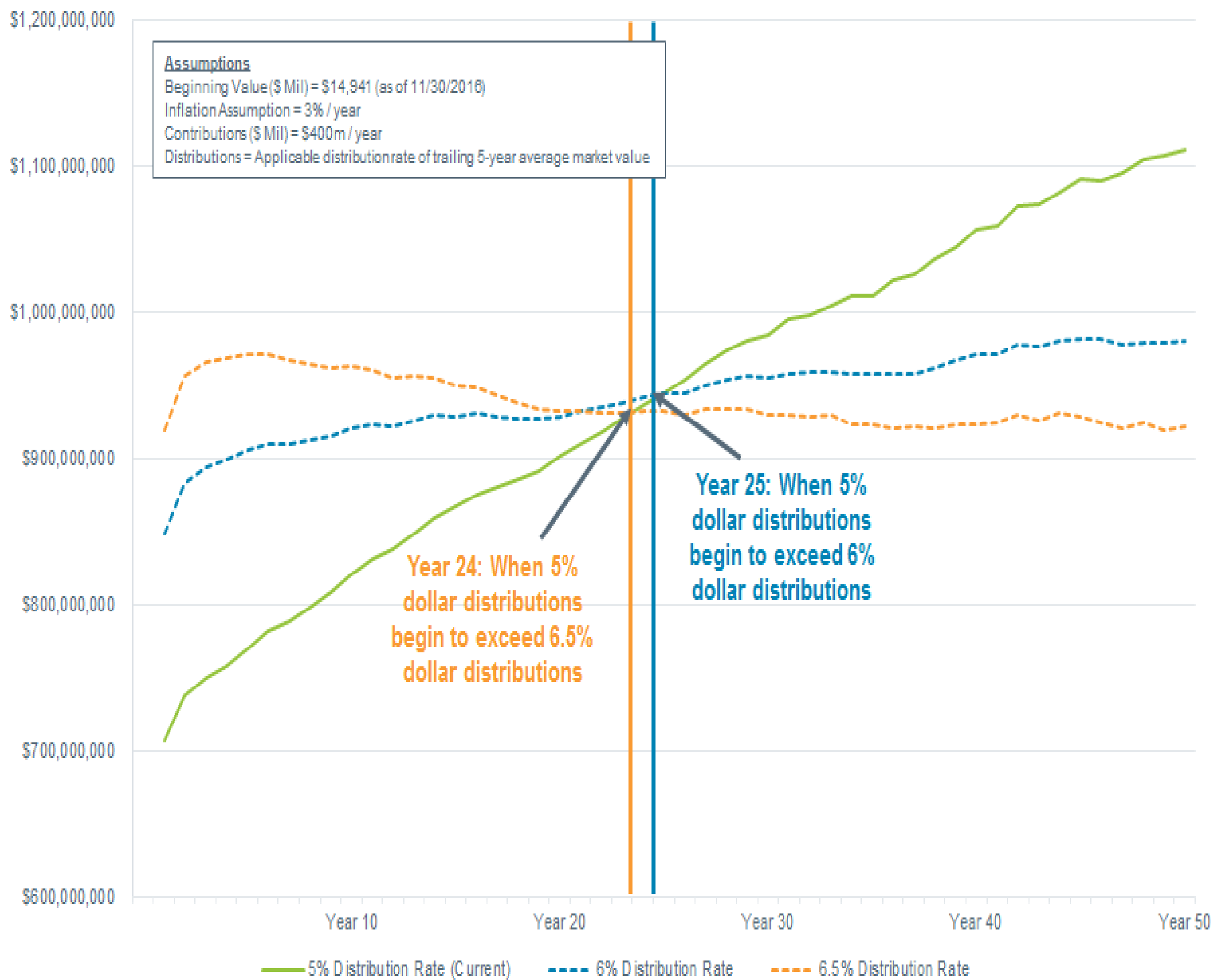
DFA adds, as drafted, it appears the legislation intends to hold harmless the general fund and other current LGPF beneficiaries from the earmarked distributions to education and early childhood education programs. However, due to the decrease in the corpus of the fund, current LGPF beneficiaries will begin to see a reduction in distributions as early as FY2022. Within 10 years, the estimated impact to general fund is a cumulative loss of $181 million or $18 million annually, whereas the other beneficiaries would lose a cumulative $32 million in distributions over the same time period. DFA provides the following graphic to illustrate this point:



Based on these projections, it could be argued that while increasing LGPF distributions certainly would benefit one generation, those additional dollars would be delivered at the expense of subsequent generations, who may face equal or greater challenges and uncertain needs.

An internal analysis by the New Mexico State Land Office (SLO) indicates that if all analytical variables other than the distribution rate were held constant, comparing a 5 percent distribution (under current law) to a 5 percent distribution until FY2020 and a 6 percent distribution thereafter (HJR1), the beneficiaries would receive approximately $1.2 billion more in total distributions during the next ten years and would receive approximately $3 billion less in total distributions over the next fifty years. The SLO analysis, which uses an estimated $500M in annual SLO contributions to the LGPF and a 6.5 percent investment rate of return, indicates that the beneficiaries will start to see a reduction in funds distributed within 28 years if the resolution is enacted and approved. SLO's internal analysis also indicates that the value of the fund will be approximately $24.4 billion dollars higher in fifty years if current distribution rates remain in place as compared to those proposed in this resolution.

RVK, which acts as an independent fiduciary and investment advisor to the SIC, has also projected a long-term impact on the LGPF, based on a 5 percent, 6 percent, and 6.5 percent distribution (SJR3). Visually, this highlights what has previously been referred to as the "tipping point", where the fund with the higher-spending policy is eventually caught and overtaken by the fund with a lower spending rate. At 6 percent, RVK predicts the short-term benefit, or tipping point, to be 25 years out. At 6.5 percent, the additional benefit is eclipsed in year 24, as highlighted in the graphic on the following page.



Election Costs. Section 1-16-13 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. LFC staff estimate each constitutional amendment may cost up to fifty thousand dollars ($50,000) in printing and advertising costs based on 2016 actual expenditures.

SIGNIFICANT ISSUES

Distribution Issues. A 2003 constitutional amendment provided for 0.8 percent additional distribution of the LGPF from FY06 through FY12, and a 0.5 percent additional distribution from FY13 through FY16. The 2003 constitutional amendment required that the additional distribution from the permanent school fund be used to implement educational reforms. While

the proposed amendment would make the additional 1 percent distribution permanent, the House Floor amendment adds a sunset date of FY32.

CYFD points out opinion No. 12-03 issued on February 1, 2012 by the Attorney General's office on the use of the LGPF for private early childhood programs, finds that the New Mexico Constitution and Enabling Act do not support the use of land grant permanent funds for private or sectarian schools, but does support the use of land grant permanent funds for early childhood services exclusively under the control of the state.

CYFD adds,

> *"This joint resolution states that the additional distributions shall be used for early childhood education services administered by the state, as provided by law. As clarified in the AG's opinion, the funds from the Land Grant Permanent Fund cannot be used to support private schools (including private early childhood programs) but can be used for early childhood learning programs provided by the public schools. Any distribution made pursuant to the amendment could only be used by the Public Education Department for early childhood programs exclusively under the control of the State. The majority of the Public Education Department's early childhood education services is provided through Pre-Kindergarten programs. Therefore, the majority of the appropriations made through the distributions provided by the proposed amendment would fund Pre-Kindergarten programs run by the Public Education Department."*

Further, CYFD states, "This is in direct contradiction to the statutory provision at NMSA 1978, § 32A-23-9 requiring that any money appropriated for Pre-Kindergarten programs be divided equally between the Public Education Department and the Children Youth and Families Department."

Putting the concern into perspective, the New Mexico Department of Health (DOH) states:

- *School districts generally do not operate programs for children between birth and age three and their families and therefore do not have experience and expertise in serving this population.*
- *Home visiting, the Family Infant Toddler (FIT) Program, and child care services are primarily operated by private (non-profit and for-profit) community providers. These private providers would potentially have to contract with multiple school districts. In one region of the state there is a FIT provider agency that would need to have contracts with 13 school districts and in another case one school district would need to contract with 12 FIT providers.*
- *The resolution states that private community providers would need to have employment standards that are comparable to the public school. It is unclear what standards this is referring to, but this could potentially prevent private community provider agencies from receiving these funds if they could not meet these standards, leading to gaps in services.*
- *The resolution does not include how the decision would be made regarding how much funding each school district will receive.*

- *The resolution removes the role of the current state departments (Public Education; Children, Youth and Families; and Health) in planning for and making decisions about where funding for early childhood / early learning services will be allocated.*

Section 1.H.4 of NMSA 1978, §32A-23-9 sets forth school district preference requirements for contractors. CYFD administers a significant part of the State's early childhood services that are delivered through private contractors. It is unclear how this joint resolution would affect CYFD's current structure for delivery of early childhood services considering opinion No. 12-03 issued on February 1, 2012 by the Attorney General's office, as stated above.

There are additional legal concerns regarding private community providers being able to utilize the funds at all (see technical issues).

Investment Issues. SIC provides the below investment performance data for the LGPF, as of 12/31/16:

	1 Year	3 years	5 years	10 years	15 years	20 years
Land Grant Permanent Fund Returns - % net of fees	7.37	4.63	8.73	4.90	5.87	6.70

According to SIC, while the one-year and five-year annualized investment returns slightly exceed SIC's annual return target of 7 percent, the council anticipates the next decade may be one of both volatility and depressed investment returns. Longer-term returns, which include one or both of the major global investment crises experienced this century, are still struggling to achieve SIC's long-term target of 7 percent. Like many institutional investors, SIC has reduced its return expectations in the past few years.

Early Childhood Issues. Volume I of the LFC Report for Fiscal Year 2018 discusses in detail the increased funding commitment to early childhood education. New Mexico continues to show leadership in increased investment in early care and education. Despite significant focus on early childhood programs, New Mexico is among the three lowest-ranked states in the Annie E. Casey Foundation's annual *Kids Count Data Book*, which ranks states according to 16 child well-being measures, primarily because of the large number of children in need of services.

Early childhood funding has grown by more than 80 percent since FY12. However, improved leadership, coordination, and oversight are needed. By investing in early childhood programs, taxpayers may save more over time through decreased juvenile delinquency, criminal activity and educational remediation. Strategic investments, along with careful attention to implementation and monitoring performance, could improve the social and cognitive skills of children, with benefits extending throughout a child's life.

PERFORMANCE IMPLICATIONS

PED states it is unclear whether the demand for such early childhood programs exists to spend such a large amount of new funds. The New Mexico PreK Program (Children's Code, 32A-23-1-8) provides *voluntary* pre-kindergarten services to four-year-old children in the state. The program shall address the total developmental needs of preschool children including physical,

cognitive, social and emotional needs and, also, health care, nutrition, safety and multicultural sensitivity.

In FY2017, $22.9 million was allocated to 54 school districts, 14 of which are served through two regional education cooperatives, and 6 state charter schools to serve 5,248 four-year olds in 233 classrooms at 144 school sites, with 1,348 children receiving extended-day services. In FY17, districts and charters were allowed to adjust the number of children served at particular school sites, and the number of children served in extended-day classrooms to address community need.

ADMINISTRATIVE IMPLICATIONS

PED states, if the agency charged with ensuring the deployment of the additional funds meet the qualifications and true intent of the legislation, the department would require additional personnel in the Literacy and Early Childhood, Procurement, and Fiscal Grants Management bureaus to support, monitor and fund additional early childhood programs.

DOH points out the FIT Program would have to update rules and contracts to include that FIT provider agencies must apply for these contracts with school districts and disclose and report funding received to avoid duplication.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SJR3, which seeks to raise the base distribution rate of the LGPF to 6.5 percent for the purpose of funding early childhood education programs.

Conflicts with SJR14, which seeks to raise the base distribution rate of the LGPF from the permanent school fund to 6 percent, while all remaining beneficiaries' distributions will remain at 5 percent, for the purpose of funding early childhood education programs.

Relates to HJR2, which seeks to withdraw $7 billion from the LGPF for infrastructure, renewable energy, and early childhood programs.

Relates to SJR18, which seeks to increase the distribution from the STPF for the purpose of funding early childhood education programs.

Relates to SB182, which seeks to create a new permanent fund from federal disposal land assets with ECE being the sole beneficiary.

Relates to SB288, which seeks to impose and oil and gas emergency school surtax and create an early childhood education fund with ECE as one of two beneficiaries of the surtax.

TECHNICAL ISSUES

Distribution. SIC raises concerns regarding the resolution's intend to earmark additional distributions for early childhood education programs, though many of the beneficiaries have no connection to ECE measures. While the largest LGPF beneficiary, public education, may be able to annually deploy the lion's share of an additional $156 million for statewide quality early

learning programs, more than half of the LGPF beneficiaries listed below are either not educational facilities or have a mission unrelated to early childhood education.

However, the language of the resolution appears to increase the distribution to all beneficiaries, and require only that the additional distributions from the permanent school fund be used for educational programs and early childhood educational services.

The Office of the Attorney General (AGO) weighs in on the distribution issues, stating the Attorney General Opinion No. 12-03, dated February 1, 2012, directly addresses many of the issues raised by SJR 3. OAG provides the following statements below:

- *An examination of the potential barrier posed by the anti-donation clause of the state constitution to direct or indirect assistance to sectarian or private schools is not required in light of [this resolution], because the Enabling Act of 1910 and the corresponding provisions of the constitution directly prohibit the state from using money from the LGPF for private or sectarian entities.*
- *Unless Congress amends the Enabling Act, the Legislature has no authority to propose amendments to the constitution or enact laws that add a private or sectarian entity to the roster of designated land grant beneficiaries.*
- *Any proposed constitutional amendment to increase distributions from the Land Grant Permanent Fund for early childhood learning programs would only be permissible if the increased distributions were limited to those programs provided by the public schools.*
- *The land grant permanent funds are derived from the lands granted to the state by Congress in the Enabling Act and are therefore subject to the terms of the act.*
- *The prohibitions of the Enabling Act and the constitution apply to indirect as well as direct land fund grant distributions:*
    - *These prohibitions cannot be avoided by appropriating the funds to a state agency for the purpose of disbursing funds to, or executing contracts with, sectarian or private schools not under the exclusive control of the state.*
    - *Such a scheme would be "an artificial attempt to circumvent the prohibitions of the act and the state constitution. Regardless of the number of intervening entities, the transaction would still amount to the use of permanent fund money or the support of private or sectarian schools contrary to the prohibitions of the Enabling Act and the constitution."*
- *The distribution of LGPF funds to a private or sectarian entity would require amendments to both the Enabling Act and the state constitution, after which both the act and the constitution would have to be amended to allow for an additional beneficiary.*
- *In 1996, New Mexico voters adopted amendments to Article XII, Section 7 of the constitution, which were approved by Congress with amendments to the act, stating, "distributions from the trust fund shall be made according to Article XII, Section 7."*
- *Thus, it appears that changes to how the funds are distributed may be made as long as it is accomplished by amendments to Section 7 and the funds are used for purposes permitted by the Enabling Act.*

OAG notes the HJC amendment's elimination of the references in the original bill to "contractors" addresses a concern raised in the AGO's analysis of the original version of this resolution. As noted above, allocation of permanent fund monies is restricted, and must remain under control of the State.

Safety Valve. According to SIC, this resolution includes an asset value "safety valve" intended to protect the fund from the burden of additional distributions during times of financial stress. The valve is designed to stop the additional 1 percent distribution should the five-year average of the fund drop below $12 billion at calendar end of any given year.

The construction of the LGPF distributions are based on a five-year fund average with the goal of steadying pay-outs in a smooth, consistent manner, to better accommodate legislative advance planning. However, the safety valve sought to protect the fund in this joint resolution does not account for that, as the LGPF could technically go to $0 in 2017, and the five-year average would still not hit the $12 billion trigger. An alternate technical safety-valve might better be tripped when the current LGPF corpus value itself drops below $12 billion or some similar appropriate value.

It be noted, if the proposed amendment were implemented and the safety valve was triggered, the general fund would face a nearly $140 million deficit for early childhood education that fiscal year, which could require the Legislature to move funds from reserves or make cuts to this or other programs in response.

OTHER SUBSTANTIVE ISSUES

According to DFA,

> *"The LGPF was established and is required by law to benefit public schools and other beneficiaries indefinitely. It is not and was never intended to be a "rainy day" fund. It is funded by income from non-renewable natural resources and was designed to provide a steady revenue source for future generations of New Mexicans even after those resources are exhausted. As a result, the fund was established with a 4.7 percent distribution rate, a rate that would allow the LGPF corpus to grow at a pace that would exceed distributions and inflation."*

The LGPF is a permanent endowment fund. SIC indicates that, nationally, peer endowments follow generally accepted distribution policies/spending policies. The most widely followed policy allows annual distributions of between 3-5 percent of the corpus/principal of the fund. As the principal of the LGPF grows, annual distributions will automatically increase – even if the percent distributed remains the same. Educational institutions & early childhood programs will benefit from those increased amounts, and share in a much greater benefit as time goes on.
This is what happened between FY17 and FY18, when the LGPF distribution rose from $638 million, to $689 million, a $50+ million increase year over year, with both years at the 5 percent rate.

The royalties collected from mining and other activity on state trust land are distributed to the land grant permanent fund. SLO states, "It is often mentioned that the LGPF was designed to exist as a funding source for times when the oil and gas reserves that created the fund through

royalty payments are depleted." If the eventual decline of oil and natural gas are factored into the analysis, the long-term effects of this resolution on the corpus of the fund are exacerbated.

Additionally, SIC points out the 2003 constitutional amendment requiring additional distributions to be put toward education reform was never approved by the US Congress, despite an opinion from the New Mexico attorney general at the time, indicating such changes would require congressional blessing. The resolution does require the consent of the U.S. Congress prior to enactment.

CYFD believes it is unclear is that congressional approval is required. The department states,

> *"It is CYFD's belief that Congress previously provided New Mexico with the authority to set future distribution rates from the Land Grant Permanent Fund. Specifically, the New Mexico's Enabling Act was amended by Congress in 1997 to provide that "[d]istributions from the trust funds shall be made as provided in Article 12, Section 7 of the Constitution of the State of New Mexico." New Mexico Statehood and Enabling Act Amendments of 1997, S. 430, Public Law 105-37 (Aug. 7, 1997). The New Mexico legislature and voters have previously approved two constitutional amendments to Article 12, Section 7, without congressional approval, based on Public Law 105-37. See Senate Joint Resolution 6 (2003) and House Joint Resolution 16 (2014)."*

ALTERNATIVES

SIC indicates the vast majority of other states with permanent funds, as well as similar university endowments are taking a more conservative approach to fund spending policies:

- Annual distributions by domestic sovereign wealth funds:
    - Alabama: 5 percent of rolling 3-year average
    - Alaska: statutory formula, approximately 5 percent; principal may not be spent
    - Arizona: 2.5 percent
    - Idaho: 4 percent
    - Montana: 2.2 percent
    - North Dakota Legacy Fund: distributions may begin in June 2017
    - Wyoming: 5 percent
    - Texas Permanent School Fund: 3.3 percent;
    - Utah: interest & dividends only

Alaska is the largest of the US permanent funds at $53 billion – they write checks to their citizens based on earnings, but have sought to cap annual distributions at 5 percent or less. Wyoming, which has more than $19 billion in various permanent endowment funds, has a current distribution policy of 5 percent. The Texas Permanent School Fund with more than $30 billion, only expended 3.3 percent in FY16. Arizona voters in 2012 by a narrow 51-to-49 percent margin, increased their distributions to 2.5 percent for their relatively young $4B endowment. And the North Dakota Legacy Fund – created a few years ago with their significant oil/gas windfall – will not distribute any dollars until mid-2017 at the earliest, following exhaustive study and planning by lawmakers.

International sovereign wealth funds also have varying rates of spending, often predicated on the size of their fund, the amount of natural resources available in their country, and the long-term

goals of their government. The largest fund in the world belongs to Norway, which has a 4 percent spending rule. Norway announced in January 2016 that they would not be dipping into their fund or increasing distributions in reaction to plummeting global oil/gas prices, but would instead rely on free cash-flow produced by their massive $780 billion fund to prop up budgetary needs. Norway has grown its permanent fund to such a degree that it effectively stabilizes the country's economy and its budgeting process, even during times of fiscal crisis.

University endowments are also similar to the LGPF, as they raise money, receive gifts, and see significant inflows every year, combining to strike a balance with their distributions. Most endowments average distributions of below 5 percent. Below are a handful of such endowments with recent spending rates, according to the most recent report from the National Association of College and University Business Officers (NACUBO):

- University endowments:
  - University of Texas: 3.5 to 5.5 percent
  - Yale: 5 percent of market value average
  - Stanford: 5.25 percent with a previous year adjustment
  - University of Pennsylvania: 4.7 percent of 3-yr average
  - Columbia: 4.5 percent of market value average
  - Texas A&M: capped at 5 percent of rolling average
  - Washington: 3 to 5.5 percent based on 5-year average

NACUBO reported the average spending policy/distribution rate of more than 700 US universities was 4.2 percent.

Does the bill meet the Legislative Finance Committee tax policy principles?
1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

DI/al/jle/sb/jle

APPENDIX

LAND GRANT PERMANENT FUND
FUND BALANCE AND INCOME DISTRIBUTION
Un-audited

INSTITUTIONS	January 1, 2017 BEGINNING BAL	% OF FUND
COMMON SCHOOLS	$12,877,298,118.78	84.878401%
UNIVERSITY OF N.M.	$202,278,980.00	1.333286%
UNM SALINE LANDS	$6,786,545.47	0.044732%
NM STATE UNIVERSITY	$64,291,707.02	0.423767%
WESTERN NM UNIV	$3,766,185.29	0.024824%
N.M. HIGHLANDS UNIV	$3,746,758.88	0.024696%
NO. NM COLLEGE	$3,037,459.17	0.020021%
EASTERN NM UNIVERSITY	$11,728,677.91	0.077307%
NM INST. MINING & TECH	$28,641,032.21	0.188782%
N.M. MILITARY INSTITUTE	$465,472,748.12	3.068080%
NM BOYS SCHOOL	$830,441.13	0.005474%
DHI MINERS HOSPITAL	$134,207,601.63	0.884605%
N.M. STATE HOSPITAL	$50,292,346.95	0.331493%
NM STATE PENITENTIARY	$286,947,852.42	1.891365%
NM SCHOOL FOR THE DEAF	$283,906,590.47	1.871319%
SCH. FOR VISUALLY HAND.	$283,304,963.50	1.867354%
CHAR. PENAL & REFORM	$119,234,030.18	0.785910%
WATER RESERVOIR	$150,216,338.28	0.990124%
IMPROVE RIO GRANDE	$33,607,280.26	0.221516%
PUBLIC BLDGS. CAP. INC.	$161,661,460.26	1.065563%
CARRIE TINGLEY HOSPITAL	$209,386.54	0.001380%
	$15,171,466,504.47	100.000000%