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

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|---|---|---|---|---|---|
| | | **ORIGINAL DATE** | 1/30/17 | | |
| **SPONSOR** | McCamley | **LAST UPDATED** | 1/31/17 | **HJR** | 2 |
| **SHORT TITLE** | Land Grant Fund for Economic Stimulus | | | **SB** | |
| | | | | **ANALYST** | Graeser |

Note on fiscal impacts conventionally reported in the Appropriation, Revenue and Additional Operating Budget Impact tables:

This HJR proposes a constitutional amendment that would have a profound impact on future spending, as well as a profound negative impact on general fund revenues and constitutional beneficiaries (primarily public schools) in the near future from earnings of the land grant permanent fund (LGPF). The proposal would remove $7 billion from the LGPF for appropriations to provide economic stimulus. The earliest this amendment, if successful, would have a fiscal impact would be FY 20, assuming passage of the HJR in the general election of 2018. The Legislature would provide enabling legislation in the 2019 legislative session and make the first appropriations from the fund for economic stimulus effective July 1, 2019.

General fund revenues would not be materially affected until FY 21, because distributions to the general fund are calculated based on the average balance in the LGPF over the previous five years. The removal of $7 billion from the LGPF would moderately decrease general fund revenues in FY21 and quickly escalate to significant general fund losses in later years. (See SLO and SIC attachments to this FIR for more details). The Additional Operating Budget Impact shown is the cost to the secretary of state operating fund for printing and advertising cost specifically attributable to this proposed constitutional amendment.

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

| | FY17 | FY18 | FY19 | 3 Year Total Cost | R or NR ** | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | | | 50.0 | 50.0 | | Secretary of State Operating |

Parenthesis ( ) indicate expenditure decreases

Duplicates, Relates to, Conflicts with, Companion to: HJR-1 proposes a 1% increase in distribution from the LGPF for regular education and early childhood education; SJR-3 proposes a 1.5% additional distribution from the LGPF for early childhood education.

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
State Investment Council (SIC) – attached to this review
Children, Youth and Families Department (CYFD)

Office of State Engineer (OSE)
Attorney General Office (AGO)
State Land Office (SLO) – attached to this review
Economic Development Department (EDD)

## SUMMARY

Synopsis of Bill

House Joint Resolution 2 proposes an amendment to Article XII of the New Mexico Constitution by adding a section to require the withdrawal of seven billion dollars from the Land Grant Permanent Fund (LGPF) and provide by law for distribution for economic stimulus programs over an eight-year period. During the eight-year period, four billion dollars to be provided for infrastructure and energy projects; two billion dollars for research in clean energy and water technologies and technology transfer for such research; and one billion dollars for early childhood services. The distribution from each land grant fund that makes up the permanent fund shall be in the same proportion as the proportion of that fund's market value to the total market. The amendment proposed by this resolution shall be submitted to people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose. To become effective, the amendment would require the consent of the U.S. Congress.

To clarify, the enabling legislation would require the transfer of $7 billion of the corpus of the Land Grant Permanent Fund – roughly half of the FY 2016 ending balance – to a newly created fund to be known as the Land Grant Distribution Fund (LGDF). Earnings in this LGDF could either accrue to the fund or be transferred back to the LGPF or to the general fund and the constitutional beneficiaries.

## FISCAL IMPLICATIONS

Although this constitutional amendment would have profound fiscal consequences, if enacted, for the General Fund, the Land Grant Permanent Fund, the constitutional beneficiaries (listed later) and the state of the state's economy, the immediate consequences are simply an estimated $50.0 thousand in printing and advertising costs of the Secretary of State's office for the constitutional amendment.

"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. The 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."

LFC staff do not consider this proposal as a tax expenditure. Thus, the conventional analysis is inappropriate. On the other hand, the proposal will have profound effects throughout the state and the government.

LFC staff have created a simplified model of the impact of this proposal, considering the new expenditures to be in the nature of venture capital. Although the state, through the authority granted the STPF to invest in economic development opportunities, does not have a good track record of choosing economic development projects that generate a return on that investment, the simplified model assumes that the R & D investments have an internal rate of return (IRR) of 2.5%. In addition, the model assumes that the $7 billion in investment will increase the growth of the state's gross domestic product (GDP) by 0.5% points above the growth forecasted by the Bureau of Business and Economic Research (BBER) at the University of New Mexico. Other assumptions are included in the model.

With these assumptions, the growth of the state's economy could improve dramatically over the baseline. For the purposes of the model, growth of state and local taxes are directly proportional to GDP growth, but historical data shows state tax revenue growth rates have not kept pace with GDP growth rates over the last decade, which could lead to overstating the resulting tax revenues. In summary, the cumulative results of this proposal – assuming all of the assumptions are valid and realized – are as follows:

| Cumulative Results by the end of FY 34 (8-years in the investment mode, 7 years of results; 15-years total) -- ($ millions) | |
|---|---|
| Corpus of the LGPF | -$7,277 |
| Corpus of the LGDF | $0 |
| General Fund Distributions | -$3,563 |
| Constitutional Beneficiary Distributions | -$654 |
| Infrastructure Investment | $4,000 |
| Clean Energy and Water Technologies Investment | $2,000 |
| Early Childhood Education | $1,000 |
| State GDP | $15,170 |
| State Taxes | $7,548 |
| Local Taxes | $5,032 |

In this model, the state GDP grows from $216 billion (nominal) to $231 billion (nominal by the end of FY 2034. This is a total increase of 6.9% over baseline. This would equate to at least 50 thousand jobs by the end of the period. However, investments of this magnitude and creation of these jobs would require closely coordinated efforts among private industry and governmental entities at the state and local level. Unfortunately, the economic development community in New Mexico has a poor track record of working as a cohesive group with unified, targeted messaging. Some economic development groups, including the Economic Development Department, also have a poor track record of working with other state agencies, such as the educational institutions necessary to provide the skill sets these jobs would require.

The early and mid-term decreases in general fund distributions (totaling nearly $3.6 billion) and distributions to the constitutional beneficiaries (exceeding $650 million) would have to be made up from other revenues sources. These additional revenues would exert a significant drag on the economy offsetting the effect of the $7 billion in investment. However, the $7.5 billion in additional state taxes – primarily general fund gross receipts tax, personal income tax and corporate income tax -- would, in aggregate more than replenish the foregone revenue. It is difficult to model the year-by year balance of additional taxes from additional economic activity and the static loss of revenue from the decrease in the corpus of the LGPF.

SIC and SLO have submitted performance analyses of this proposal and these are included as attachments to this review. Note that there are defects in the models. Both models only look at the diversion of corpus to the LGDF, but make no attempt to quantify the possible benefits of this proposal. In addition, the provisions of the HJR are that the transfer would take place in total on the initial date as determined in the enabling legislation. For the purpose of the LFC model, this would be July 1, 2019.

The SIC analysis concludes as follows:

- Distributions for the period directly impacted, FY2019-FY2026, are projected to be $6.86B (billion) at the 5.0 percent rate, or an amount just under the intended additional distributions from HJR2.
- Under HJR2, the additional distribution of $7B would increase the overall distribution to $13.50 billion for the same time period, but that additional distribution would also reduce the base distributions to current LGPF beneficiaries (primarily public schools) by $231 million over 8 years, due to the additional distributions shrinking the fund corpus and its ability to earn during just that time.
- At the end of 8 years and distribution of the additional $7B under HJR2, the permanent funds would have $8.45 billion less in value.
- One-year's average earnings at 7% on $8.45 billion is $566 million. This amount, which would grow every year thereafter due to diminished earnings, is recurring lost opportunity cost, or money you will forsake in exchange for spending additional dollars "early".
- On year nine, after the expiration of HJR2, the permanent funds are projected to distribute $1.036 billion, compared to just $691 million that is projected for a 5.0% distribution in the wake of HJR2, a difference of $345 million in the first year alone.

"So in summary, if enacted, HJR2 and its $7B withdrawal of permanent fund dollars would increase overall LGPF distributions by only $6.64 billion over 8 years. At the end of that time, starting on year 9, projected distributions would be $345 million less per year than if [the amendment] had not reduced the corpus. In addition, the average earning potential of the LGPF would be $566 million lower annually as HJR2 expires. Lastly, the LGPF corpus itself would also be $1.15 billion less at that point compared to when additional distributions began 8 years prior. All of these impacts would grow considerably with each passing year due to diminished earnings." The only source to make up for the distribution reduction is from the general fund.

SLO's analysis reaches similar conclusions:

- A withdrawal of $7 billion dollars will have a negative impact on the distributions to the LGPF beneficiaries as soon as the first eight-year increment is withdrawn. The proposed withdrawal will reduce the amount of money in the LGPF available for investment and the amount the LGPF needs to maintain support for future generations. A withdrawal of $7 billion from the LGPF greatly diminishes the corpus of the LGPF and diminishes the amount of money the LGPF can provide in future years.
- Distributions: The proposed distributions would not benefit the designated beneficiaries of the LGPF; NMSLO internal financial analysis indicates that a $7 billion withdrawal over the next eight years (FY18-FY25) will result in the LGPF beneficiaries receiving approximately

$1.4 billion less in total distributions over the next 10 years and $25.1 billion less in total distributions over the next fifty years. The analysis indicates that the beneficiaries will receive approximately $8.8 million less in FY18, the year the analysis assumes the first withdrawal of $875 million occurs. This reduction in the amount of money the beneficiaries receive from the fund will increase every year thereafter. To keep support to the beneficiaries similar to current levels, general fund or other funding sources would be needed to make up for the diminished distributions coming from the LGPF.

- Fund Balance: The internal analysis also indicates that the value of the LGPF will be approximately $16.6 billion dollars less in fifty years due to the withdrawal proposed in HJR2. The analysis assumes the current fund balance is approximately $14.8 billion dollars. Given the assumptions above, the fund balance will not return to this level until FY56 or roughly 40 years from now if HJR2 is enacted, thus highlighting concerns about protection of the corpus of the LGPF.
- The proposed amendment would take roughly half of the money generated from state trust lands and set aside over the 100-year existence of the State of New Mexico as part of a perpetual trust to support public education and other specified beneficiaries and spend it over an 8-year period for other purposes.

**SIGNIFICANT ISSUES**

AGO notes as follows: "…the LGPF derives from the *Enabling Act* grant made specifically to support "common schools," with permanent school fund income historically being used to support schools falling within the traditional definition of "common schools" (i.e., compulsory and universal primary and secondary education). Thus, by directing that the additional distributions be used to provided, for infrastructure and energy projects; for research in clean energy and water technologies and technology transfer for such research; and for early childhood education, the amendment would significantly expand the range of programs to be supported by the original grant."

AGO further notes: "…it should be noted that the Congressional law enacted to approve the 1996 amendments to the Constitution of New Mexico was explicitly intended to "protect the permanent trust funds of the State of New Mexico from erosion." It is unclear if the proposed distribution under HJR2 would endanger the LGPF and if so, would likely be disapproved by the U.S. Congress."

CYFD similarly notes: "… opinion No. 12-03 issued on February 1, 2012, by the Attorney General's office on the use of the Land Grant Permanent Fund 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.
"This joint resolution states that the additional distributions shall be used for early childhood services. 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. Thus, any distribution made pursuant to the amendment must be used by the Public Education Department for early childhood programs exclusively under the control of the State. As the majority of the Public Education Department's early childhood education services is provided through Pre-Kindergarten programs, the majority of the appropriations made through the distributions provided by the proposed amendment would logically fund Pre-Kindergarten programs run by

the Public Education Department. However, NMSA 1978 §32A-23-9 requires that any money appropriated for Pre-Kindergarten programs be divided equally between the Public Education Department and the Children Youth and Families Department."
"There is no mention in the joint resolution whether programs and projects funded by this disbursement over the eight year period will be funded following the expiry of that period."

**CONFLICT**

SJR 3 places before the voters during the next general election, or special election called for this purpose, an amendment to article 12, section 7 of the Constitution of New Mexico. The SJR 3 proposed amendment change is to provide an annual distribution of one and one-half percent of the permanent funds, of which the amount distributed from the permanent school fund shall be used for early childhood education services, as provided by law.

HJR-1 proposes a permanent one percentage point increase to the LGPF distribution formula. This amount would be divided in FY2020 .7% for regular educational purposes and .3% for early childhood education. In FY 2021, .3% for regular education and .7% for early childhood education. From FY 2022 forward, the entire 1% goes to early childhood education.

**TECHNICAL ISSUES**

This House Joint Resolution has two critical numbers: the total initial diversion of $7 Billion and the distributions in equal allotments over eight years – $4 billion or $500 million per year for infrastructure and energy projects, $2 billion or $250 million per year for clean energy and water technologies and the commercialization of these technologies and $125 million per year for early childhood education. These hard and fast numbers leave a number of issues to be decided in the enabling legislation. The most important three are: (1) what happens with any earnings of the LGDF for the eight years that the funds are being allocated 1/8$^{th}$ each year? The LFC model assumes that all earnings of the LGDF would be transferred back to the LGPF. An alternative would be that these earnings (if positive, because the earnings could include negative changes in market value) would be transferred directly to the General Fund, or that the financial returns would be transferred and the change in market value ignored; (2) could the LGDF invest in projects not allowed the LGPF? The LGPF is governed by the "prudent man" rule[1]. One basic idea of this proposal is that the funds take more risk than normal in order to gain more than normal; and (3) would the LGDF invest in speculative equities and demand a risk adjusted return, or an large ownership interest? These and many other issues highlighted in this review would have to be solved in the enabling legislation. To be fair to the voters, most of these issues should be resolved before the November 2018 election.

SLO counsel expresses:

- The Enabling Act trust is distinct from the State as a whole, and the State must compensate the trust if it takes trust land for general government purposes. *See Lassen v. Arizona Highway Dept.*, 385 U.S. 458, 463 (1967) (interpreting New Mexico-Arizona Enabling Act as requiring the State to pay the trust for the true value of easements taken for public highways because the Enabling Act trust is distinct from the State). To the extent that the Enabling Act beneficiaries have a vested property interest in the LGPF, modification of the trust terms to use LGPF money for other purposes constitutes a taking of the beneficiaries'

[1] The Prudent Man Rule is based on common law stemming from the 1830 Massachusetts court formulation, Harvard College v. Amory The prudent man rule directs trustees "to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent ...
Prudent man rule – Wikipedia https://en.wikipedia.org/wiki/Prudent_man_rule

property without just compensation in violation of the Fifth Amendment. *Cf. Seneca Nation of Indians v. New York*, 206 F.Supp. 2d 448, 533 (W.D.N.Y. 2002) (stating that U.S. taking of state-owned property requires compensation), *aff'd*, 382 F.3d 245 (2d Cir. 2004); *U.S. v. 2902 Acres of Land*, 49 F.Supp. 595, 596 (D. Wyo. 1943) (stating that "there would seem to be no distinction" as to Fifth Amendment standards applied to lands owned by a State or by private parties).

CYFD counsel addresses the requirement of Section 3 of this joint resolution: "… [this section] states that an amendment to the distribution rate provided in N.M. Const. Art. 12, Sect. 7 by the New Mexico Legislature and voters shall not take effect without consent of the United States Congress. This provision may be unnecessary, as 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 (Senate Joint Resolution 6 (2003), House Joint Resolution 16 (2014))."

**OTHER SUBSTANTIVE ISSUES**

SIC has provided a current list of beneficiaries and the percentages of ownership as of December 2016.

| Land Grant Permanent Fund | % of LGPF |
|---|---|
| COMMON SCHOOLS | 84.86% |
| UNIVERSITY OF N.M. | 1.34% |
| UNM SALINE LANDS | 0.04% |
| NM STATE UNIVERSITY | 0.42% |
| WESTERN NM UNIV | 0.02% |
| N.M. HIGHLANDS UNIV | 0.02% |
| N. NM COLLEGE | 0.02% |
| EASTERN NM UNIVERSITY | 0.08% |
| NM INST. MINING & TECH | 0.19% |
| N.M. MILITARY INSTITUTE | 3.07% |
| NM BOYS SCHOOL | 0.01% |
| DHI MINERS HOSPITAL | 0.89% |
| N.M. STATE HOSPITAL | 0.33% |
| NM STATE PENITENTIARY | 1.89% |
| NM SCHOOL FOR THE DEAF | 1.87% |
| SCHOOL FOR BLIND & VISUALLY DISABLED | 1.87% |
| CHARITABLE PENAL & REFORM | 0.79% |
| WATER RESERVOIR | 0.99% |
| IMPROVE RIO GRANDE | 0.22% |
| PUBLIC BUILDINGS | 1.07% |
| CARRIE TINGLEY HOSPITAL | 0.00% |
| | 100.00% |

LG/jle

| Differences from baseline ($ millions) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Corpus of the LGPF | Corpus of the LGDF | General Fund Distributions | Constitutional Beneficiary Distributions | Infrastructure Investment | Clean Energy and Water Technologies Investment | Early Childhood Education | State GDP | State Taxes | Local Taxes |
| FY 20 | -$7,139 | $6,226 | $0 | $0 | $500 | $250 | $125 | $1,020 | $36 | $24 |
| FY 21 | -$7,145 | $5,338 | -$60 | -$11 | $500 | $250 | $125 | $2,094 | $105 | $70 |
| FY 22 | -$7,128 | $4,451 | -$120 | -$22 | $500 | $250 | $125 | $3,216 | $171 | $114 |
| FY 23 | -$7,089 | $3,563 | -$181 | -$33 | $500 | $250 | $125 | $4,396 | $240 | $160 |
| FY 24 | -$7,024 | $2,676 | -$241 | -$44 | $500 | $250 | $125 | $5,632 | $313 | $209 |
| FY 25 | -$6,934 | $1,788 | -$300 | -$55 | $500 | $250 | $125 | $6,929 | $390 | $260 |
| FY 26 | -$6,891 | $900 | -$299 | -$55 | $500 | $250 | $125 | $8,290 | $470 | $313 |
| FY 27 | -$6,899 | $13 | -$297 | -$55 | $500 | $250 | $125 | $9,717 | $554 | $370 |
| FY 28 | -$6,943 | $0 | -$295 | -$54 | $0 | $0 | $0 | $10,559 | $623 | $415 |
| FY 29 | -$6,991 | $0 | -$294 | -$54 | $0 | $0 | $0 | $11,226 | $662 | $442 |
| FY 30 | -$7,044 | $0 | -$293 | -$54 | $0 | $0 | $0 | $11,931 | $704 | $469 |
| FY 31 | -$7,100 | $0 | -$293 | -$54 | $0 | $0 | $0 | $12,676 | $748 | $498 |
| FY 32 | -$7,157 | $0 | -$295 | -$54 | $0 | $0 | $0 | $13,462 | $794 | $529 |
| FY 33 | -$7,216 | $0 | -$297 | -$54 | $0 | $0 | $0 | $14,293 | $843 | $562 |
| FY 34 | -$7,277 | $0 | -$299 | -$55 | $0 | $0 | $0 | $15,170 | $895 | $596 |
| Cumulative | -$7,277 | $0 | -$3,563 | -$654 | $4,000 | $2,000 | $1,000 | $15,170 | $7,548 | $5,032 |

| LFC Requester: | Daly |
|---|---|

**AGENCY BILL ANALYSIS**
**2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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***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** x **Amendment** ____
**Correction** ____ **Substitute** ____

**Date** 1/18/17
**Bill No**: HJR2

**Sponsor:** Rep. McCamley
**Short Title:** Land Grant Fund for Economic Stimulus, CA

**Agency Code**: 337
**Person Writing** Wollmann
**Phone:** 5052313334 **Email** charlesw@state.nm.us

## SECTION II: FISCAL IMPACT

### APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| FY19 | FY20 | | |
| $875,000 | $875,000 | Recurring for 8 years | LGPF |
| | | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|
| FY19 | FY20 | FY21 | | |
| **($875,000)** | **($875,000)** | **($875,000)** | Recurring for 8 years | LGPF |
| $875,000 | $875,000 | $875,000 | Recurring for 8 years | General Fund |
| | | | | |
| ($6,555) | ($20,067) | ($40,907) | Recurring for 8 years | General Fund |
| ($1,196) | ($6,725) | ($13,709) | Recurring for 8 years | Other LGPF Beneficiaries |

**SECTION III: NARRATIVE**

## BILL SUMMARY

Synopsis: HJR2 seeks to amend Article 12 of the NM Constitution by adding new language requiring withdrawal of $7 billion from the Land Grant Permanent Fund (LGPF) over 8 years, to provide capital for economic stimulus spending.

The proposed distributions from the LGPF would be spent on economic stimulus programs, allocated to infrastructure and energy projects ($4B), applied research in clean energy and water technologies and technology transfer for such research ($2B), and early childhood services ($1B). According to HJR2, the exact methodology of distribution and how that is to be accomplished is to be determined by the legislature, though those details are not outlined via this joint resolution.

The amendment would require the subsequent approval of voters in a statewide election, and would not become effective without the approval of US Congress.

## FISCAL IMPLICATIONS

To calculate the fiscal implications of HJR2, fairly significant assumptions must be made, given the lack of an articulated plan in HJR2 regarding details of deployment and its yearly spending rate. As HJR2 does not contemplate any ramp up or preparation for spending $7B, this analysis assumes equal deployment across all years, in the amount of $875 million per year.

HJR2 similarly does not indicate how the new distribution might interact or override the existing distributions to the 21 Land Grant Permanent Fund beneficiaries, and whether their percentage-based distribution would be calculated prior to or subsequent to the application of the current distribution formula of 5.0% of the fund’s 5-year average annually. Dissimilar from the current annual distribution, the additional distribution per HJR2 would have no relation whatsoever with the value of the LGPF.

The following spreadsheet shows a very basic projection of the LGPF over the next decade, first with average projections based on inflows of $400M per year from the Land Office, the 7.0% gross return targeted by SIC (6.7% net) and distributions at the 5.0% rate. The fourth and fifth columns show what the LGPF value and distributions would be, assuming passage and approval of HJR2, and its annualized drawdown of $875 million:

| CY | LGPF Value ($B) | Distribution (5.0%) | LGPF Value ($B) w/HJR2 | Distribution w/HJR2 | FY |
|---|---|---|---|---|---|
| 2016 | 15.17 | $689,176,060 | 15.17 | $689,176,060 | 2018 |
| 2017 | 15.92 | **$733,873,288** | 15.05 | **$1,600,123,288** | 2019 |
| 2018 | 16.68 | **$766,817,083** | 14.87 | **$1,615,024,583** | 2020 |
| 2019 | 17.45 | **$796,186,052** | 14.66 | **$1,616,569,917** | 2021 |
| 2020 | 18.23 | **$834,484,546** | 14.43 | **$1,616,837,635** | 2022 |
| 2021 | 19.04 | **$873,171,690** | 14.18 | **$1,606,932,258** | 2023 |
| 2022 | 19.86 | **$912,548,845** | 13.92 | **$1,595,630,623** | 2024 |
| 2023 | 20.70 | **$952,750,913** | 13.65 | **$1,583,380,461** | 2025 |
| 2024 | 21.55 | **$993,823,473** | 13.37 | **$1,570,490,223** | 2026 |
| 2025 | 22.47 | $1,036,230,038 | 14.02 | $691,374,957 | 2027 |
| | | | | | |
| **Total FY distributions '19-'26** | | **$6,863,655,890** | | **$13,496,363,945** | |

Based on this data, we would highlight the following observations:

- Distributions for the period directly impacted, FY2019-FY2026, are projected to be $6.86B (billion) at the 5.0% rate, or an amount just under the intended additional distributions from HJR2.
- Under HJR2, the additional distribution of $7B would increase the overall distribution to $13.50 billion for the same time period, but that additional distribution would also reduce the base distributions to current LGPF beneficiaries (primarily public schools) by $231 million over 8 years, due to the additional distributions shrinking the fund corpus and its ability to earn during just that time.
- At the end of 8 years and distribution of the additional $7B under HJR2, the permanent funds would have $8.45 billion less in value.
- One-year's average earnings at 7% on $8.45 billion is $566 million. This amount, which would grow every year thereafter due to diminished earnings, is **recurring lost opportunity cost,** or money you will forsake in exchange for spending additional dollars "early".
- On year nine, after the expiration of HJR2, the permanent funds are projected to distribute $1.036 billion, compared to just $691 million that is projected for a 5.0% distribution in the wake of HJR2, a difference of $345 million in the first year alone.

So in summary, if enacted, HJR2 and its $7B withdrawal of permanent fund dollars would increase overall LGPF distributions by only $6.64 billion over 8 years. At the end of that time, starting on year 9, projected distributions would be $345 million less per year than if you had not invaded the corpus. In addition, the average earning potential of the LGPF would be $566 million lower annually as HJR2 expires. Lastly, the LGPF corpus itself would also be $1.15 billion less at that point compared to when additional distributions began 8 years prior. All of these impacts would grow considerably with each passing year due to diminished earnings.

**SIGNIFICANT ISSUES**

The Land Grant Permanent Fund was established from public land grants from the US Government to New Mexico via the Enabling Act and Fergusson Act, in conjunction with New Mexico's entry into the Union in 1912. The LGPF's 13 million surface acres and 9 million subsurface (mineral) acres administered by the Commissioner of Public Lands, are allocated to 21 beneficiaries, the largest being the common schools with about 85% ownership. Every LGPF acre – and its past and future earnings, royalties and bonuses - is each intractably tied to the specific beneficiaries of the original grant of public lands, and their percentage ownership of the fund.

HJR2 does not acknowledge the existence of these 21 beneficiaries, or justify distributing their assets for matters that are only marginally, if at all, linked to the original intent of the LGPF. Our expectation is that most, if not all of those beneficiaries, who all stand to lose considerable short-term and long-term value, earning power and future income as a result of HJR2, would conclude the additional distributions are unconstitutional. Assuming passage by the legislature, approval by voters in a statewide election, and affirmation by the US Congress, HJR2 would undoubtedly result in years of extensive and expensive litigation by some, if not all of the 21 beneficiaries seeking to protect their shares of the permanent fund.

Given that the common schools "own" 84.9% of the LGPF currently, the case could be made that both current and future generations of public school students would be forsaking hundreds of millions (and later, billions) in school funding to provide for the various economic stimulus envisioned by HJR2.

Below is a current list of beneficiaries and the percentages of ownership as of December 2016.

| **Land Grant Permanent Fund** | **% of LGPF** |
|---|---|
| **COMMON SCHOOLS** | **84.86%** |
| **UNIVERSITY OF N.M.** | **1.34%** |
| **UNM SALINE LANDS** | **0.04%** |
| **NM STATE UNIVERSITY** | **0.42%** |
| **WESTERN NM UNIV** | **0.02%** |
| **N.M. HIGHLANDS UNIV** | **0.02%** |
| **N. NM COLLEGE** | **0.02%** |
| **EASTERN NM UNIVERSITY** | **0.08%** |
| **NM INST. MINING & TECH** | **0.19%** |
| **N.M. MILITARY INSTITUTE** | **3.07%** |
| **NM BOYS SCHOOL** | **0.01%** |
| **DHI MINERS HOSPITAL** | **0.89%** |
| **N.M. STATE HOSPITAL** | **0.33%** |
| **NM STATE PENITENTIARY** | **1.89%** |
| **NM SCHOOL FOR THE DEAF** | **1.87%** |
| **SCHOOL FOR BLIND & VISUALLY DISABLED** | **1.87%** |
| **CHARITABLE PENAL & REFORM** | **0.79%** |
| **WATER RESERVOIR** | **0.99%** |
| **IMPROVE RIO GRANDE** | **0.22%** |
| **PUBLIC BUILDINGS** | **1.07%** |
| **CARRIE TINGLEY HOSPITAL** | **0.00%** |
| | **100.00%** |

**PERFORMANCE IMPLICATIONS**

HJR2's prescribed spending policy – which really has no comparable real world examples from which to draw among peer endowments and sovereign wealth funds – at minimum, puts the LGPF at extreme risk for impairment, especially should we experience a repeat of the 2001/2002 or 2008/2009 financial meltdowns.

As fiduciaries of the LGPF, the SIC would likely look for ways it could increase investment return yields to mitigate the impact of HJR2, including more profitable strategies or leverage on a portfolio-wide basis. The only certainty such steps could ensure however, would be much greater investment volatility, much higher risk, and the additional investment management costs associated with non-traditional investments. Taking on additional financial risk created by HJR2 may be viewed as a necessary evil to potentially minimize damage to the fund, but this step also increases the likelihood that the fund could experience jumbo-sized losses in a negative market downturn.

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SJR3 and HJR1

**TECHNICAL ISSUES**

Without going into the extensive legal and constitutional concerns raised by HJR2, there are also practical considerations regarding planning, deployment and qualifications involving who would benefit from a $7B windfall. Given those details appear to fall under the nebulous "to be determined" category, one would hope additional scope and definitions would be forthcoming prior to deployment, to avoid incidents of fraud, waste or mismanagement.

**OTHER SUBSTANTIVE ISSUES**

HJR 2 may inadvertently help perpetuate the common myth that New Mexico's permanent funds "are just sitting there", and they should be spent rather than being nurtured and cared for as a critical state asset and wealth creation engine. The reality is the permanent funds deliver hundreds of millions of dollars in benefits to the state, its schools and its taxpayers every year, while at the same time growing a nest egg for future generations, who may not have oil and gas revenue to count on like we do. Based on the latest US Census data, the FY18 benefits provided by the LGPF & STPF to New Mexico would require, on average, an additional $1167 per household to replace funding in the absence of the state's permanent endowment.

Over the last decade FY08-FY17, the LGPF has distributed $5.56 billion to its beneficiaries, while the STPF has distributed $1.85 billion to the general fund, for a combined benefit to New Mexico of $7.41 billion. The permanent funds are an established and proven revenue generator for New Mexico, and the state is unlikely to ever again own such a valuable and impactful asset.

**ALTERNATIVES**

Grow the LGPF. Wisely manage the Fund, as well as the very significant benefits it creates for New Mexicans today, while understanding that to remain vital, the Fund must maintain a healthy balance among inflows from oil and gas, investment returns, and the annual distributions to beneficiaries. One cannot escape the fact that the bigger the fund grows, the more total benefits it will generate in the long run, and the more total funding that it makes available, the more options there are for policy makers. While there are undoubtedly a multitude of needs and worthy projects that could be paid for with $7B, the overall concept behind HJR2 seems to lack even a basic business plan and the associated details that one might want to lend credibility to the idea, or at least reduce concerns that a significant portion of the billions it seeks to deploy would not be wasted in a massive feeding frenzy of pork barrel spending.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**The LGPF will distribute billions of dollars over the next decade to the benefit of schools and taxpayers, while maintaining or growing its corpus, in preparation for the day when oil and gas revenue is diminished or gone, and all that remains will be this fund and the benefits it provides to every man woman and child in the state.**

**AMENDMENTS**

| LFC Requester: | Marty Daly |
|---|---|

**AGENCY BILL ANALYSIS**
**2017 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** X **Amendment** ____
**Correction** ___ **Substitute** ____

**Date** Jan. 11, 2017
**Bill No**: HJR 2

**Sponsor:** Rep. Bill McCamley
**Short Title:** LAND GRANT FUND FOR ECONOMIC STIMULUS, CA

**Agency Code**: 539 – State Land Office
**Person Writing** Laura Riley/Jack Sullivan
**Phone:** 827-8039 **Email** jsullivan@slo.state.nmm.us

## SECTION II: FISCAL IMPACT

### APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| FY17 | FY18 | | |
| -0- | -0- | n/a | n/a |
| -0- | -0- | n/a | n/a |

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|
| FY17 | FY18 | FY19 | | |
| **-0-** | **-0-** | **-0-** | n/a | n/a |
| -0- | -0- | -0- | n/a | n/a |

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | -0- | -0- | -0- | -0- | n/a | n/a |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

## BILL SUMMARY

Synopsis:

This resolution proposes to amend the New Mexico Constitution to direct that the legislature "provide by law" for the withdrawal of $7 billion from the Land Grant Permanent Fund (LGPF) over an 8-year period to be used for the following kinds of economic stimulus programs:

- $4 billion for infrastructure and energy projects;
- $2 billion for applied research and clean energy and water technologies and technology transfer for such research; and
- $1 billion for early childhood services.

The constitutional amendment would not be effective without consent of the U.S. Congress.

## FISCAL IMPLICATIONS

The internal financial analysis used the following assumptions:

- Distribution Rates: The model uses 5.0% as the distribution rate.
- SLO Contributions: The model uses $500 million as the estimate of annual NMSLO contributions to the LGPF.
- 6.5% Rate of Investment Return at the SIC.
- Beginning LGPF market value at the start of FY17 assumed to be $14.8 billion.
- $875 million withdrawn every year for the next eight years (FY18 – FY25) for a total withdrawn of $7 billion ($7,000,000,000 / 8 = $875,000,000).

A withdrawal of $7 billion dollars will have a negative impact on the distributions to the LGPF beneficiaries as soon as the first eight-year increment is withdrawn. The proposed withdrawal will reduce the amount of money in the LGPF available for investment and the amount the LGPF needs to maintain support for future generations. A withdrawal of $7 billion from the LGPF greatly diminishes the corpus of the LGPF and diminishes the amount of money the LGPF can provide in future years.

Distributions: Putting aside the fact that the proposed distributions would not benefit the designated beneficiaries of the LGPF, NMSLO internal financial analysis indicates that a $7 billion withdrawal over the next eight years (FY18-FY25) will result in the LGPF beneficiaries receiving approximately $1.4 billion less in total distributions over the next 10 years and $25.1 billion less in total distributions over the next fifty years. The analysis indicates that the beneficiaries will receive approximately $8.8 million less in FY18, the year the analysis assumes the first withdrawal of $875,000,000 occurs. This reduction in the amount of money the beneficiaries receive from the fund will increase every year thereafter. To keep support to the beneficiaries similar to current levels, general fund or other funding sources would be needed to make up for the diminished distributions coming from the LGPF.

Fund Balance: The internal analysis also indicates that the value of the LGPF will be approximately $16.6 billion dollars less in fifty years due to the withdrawal proposed in HJR2. The analysis assumes the current fund balance is approximately $14.8 billion dollars. Given the assumptions above, the fund balance will not return to this level until FY56 or roughly 40 years from now if HJR2 is enacted, thus highlighting concerns about protection of the corpus of the LGPF.

**SIGNIFICANT ISSUES**

The proposed amendment would take roughly half of the money generated from state trust lands and set aside over the 100-year existence of the State of New Mexico as part of a perpetual trust to support public education and other specified beneficiaries and spend it over an 8-year period for other purposes.

The Enabling Act trust is distinct from the State as a whole, and the State must compensate the trust if it takes trust land for general government purposes. *See Lassen v. Arizona Highway Dept.*, 385 U.S. 458, 463 (1967) (interpreting New Mexico-Arizona Enabling Act as requiring the State to pay the trust for the true value of easements taken for public highways because the Enabling Act trust is distinct from the State). To the extent that the Enabling Act beneficiaries have a vested property interest in the LGPF, modification of the trust terms to use LGPF money for other purposes constitutes a taking of the beneficiaries' property without just compensation in violation of the Fifth Amendment. *Cf. Seneca Nation of Indians v. New York*, 206 F.Supp. 2d 448, 533 (W.D.N.Y. 2002) (stating that U.S. taking of state-owned property requires compensation), *aff'd*, 382 F.3d 245 (2d Cir. 2004); *U.S. v. 2902 Acres of Land*, 49 F.Supp. 595, 596 (D. Wyo. 1943) (stating that "there would seem to be no distinction" as to Fifth Amendment standards applied to lands owned by a State or by private parties).

**PERFORMANCE IMPLICATIONS**

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with HJR 1 (PERMANENT FUNDS FOR EARLY CHILDHOOD, CA) and SJR 3 (PERMANENT FUNDS FOR EARLY CHILDHOOD, CA)

**TECHNICAL ISSUES**

The general requirement that the withdrawn funds be used for "economic stimulus programs" conflicts with the specific requirement that some of the withdrawn funds be used for "early childhood services," as such services are not provided as part of any kind of "economic stimulus."

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS**