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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>HJR 1</u>	<b>Sponsor</b>	<u>Maestas/Martinez/Thomson</u>
<b>Tracking Number</b>	<u>.218914.1</u>	<b>Committee Referrals</b>	<u>HCEDC/HEC</u>
<b>Short Title</b>	<u>Permanent Fund for Early Childhood, CA</u>		
<b>Analyst</b>	<u>Hoxie</u>	<b>Original Date</b>	<u>1/25/20</u>
		<b>Last Updated</b>	<u>1/27/2021</u>

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**BILL SUMMARY**

Synopsis of Bill

House Joint Resolution 1 (HJR1) amends Article XII, Section 7, of the constitution of the state of New Mexico to increase annual distributions from the land grant permanent fund (LGPF) by 1 percent for all beneficiaries, provided the amount of additional distribution from the permanent school fund, currently reserved for public schools, would be designated for early childhood education services that are nonsectarian, nondenominational, and administered by the state for children until they are eligible for kindergarten. The joint resolution requires the approval of voters at the next statewide general or special election and the consent of the U.S. Congress to become effective.

**FISCAL IMPACT**

House joint resolutions do not carry appropriations.

HJR1 would amend Article XII, Section 7, of the state constitution to increase annual distributions from the LGPF by an additional 1 percent provided the amount of the additional distribution from the permanent school fund would be earmarked for early childhood educational services administered by the state for children prior to kindergarten. The joint resolution proposes an additional 1 percent distribution of the average of year-end market values of the LGPF for the immediately preceding five calendar years. The additional 1 percent distribution, based on State Investment Council (SIC) current estimates, will result in distribution of an additional \$197 million from the LGPF in the first year. Of this amount \$170 million would be earmarked to fund early childhood education services in year one. The remaining \$27 million year one funds would be distributed to the other 20 beneficiaries of the LGPF.

SIC notes that from a long-term, multi-decade perspective, an endowment fund like the LGPF that distributes 5 percent of its corpus will ultimately deliver more money to New Mexico education overall than a fund distributing of 6 percent. This is a result of increased investment gains over time. SIC notes the LGPF would deliver approximately \$4.5 billion additional funds to beneficiaries after 25 years at a 5 percent distribution but would have lost an estimated \$11 billion

in earnings value. While additional distributions from the LGPF would produce more revenue for its beneficiaries in the short term, the additional 1 percent distribution will reduce the amount of funds available for future investment, therefore reducing future distributions. The question for the Legislature to consider is whether the added cost over the long run is an appropriate trade-off for the added benefits HJR1 is expected to deliver in the short run.

**Additional Distribution Suspension.** Language in the New Mexico Constitution, relative to additional annual LGPF distribution, prohibited additional annual distribution from the LGPF if its average year-end market value for the preceding five years was less than \$10 billion. The average year-end market value for the preceding five years, when including the year-end value for 2020, totals about \$18 billion, as shown by the chart below:

Land Grant Permanent Fund Net Assets (2016-2020)	
2016	\$15.2
2017	\$17.3
2018	\$17.1
2019	\$18.6
2020	\$21.6
5-Year Average	\$18

Source: SIC and LESC Analysis

The Legislature should note the \$10 billion threshold to suspend additional distributions may be too low to protect the fund given the average balances over the past five years. To use an extreme example, if the fund dropped to \$500 million in 2021, the five-year average year-end market value of the fund over fiscal years 2017, 2018, 2019, 2020, and 2021 would still be \$15 billion, well above the \$10 billion threshold, and the annual distribution would still be required. The following chart uses actual year-end fund balances for 2017-2020, and an example of \$500 million for 2021:

Land Grant Permanent Fund Net Assets "Safety Valve" Example (2017-2021)	
2017	\$17.3
2018	\$17.1
2019	\$18.6
2020	\$21.6
2021	\$0.5
5-Year Average	\$15

Source: SIC and LESC Analysis

The Legislature may want to consider using an ending balance of \$10 billion for a single year instead of a five-year average to trigger suspension of the annual distribution; alternatively, the Legislature could also consider using a three-year average to trigger suspension of the annual distribution. Given the fact that the current “safety valve” is not activated even with this extreme example, it appears that funds could deteriorate slowly over a long period of time before this provision is enacted to protect the fund.

**Other Costs.** HJR1’s passage will incur additional one-time costs related to bringing the measure to voters, either in a special election or through a scheduled statewide referendum. Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, the Secretary of State is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The agency is also required to publish

them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

## SUBSTANTIVE ISSUES

**Background and History of the LGPF.** In anticipation of New Mexico’s pending statehood, the United States transferred 13.4 million acres of federal land to the then-Territory of New Mexico via the *Ferguson Act of 1989* and the *Enabling Act of 1910* to be held in trust for the benefit of “common schools” (public schools) and other identified state institutions. Currently, the LGPF has 21 beneficiaries. See **Attachment A, Land Grant Permanent Fund Balance and Income Distribution for FY20**. Public school districts receive about 85 percent of LGPF distributions through the permanent school fund. The LGPF is funded by income from nonrenewable resources, such as oil and gas revenues that make up over 90 percent of contributions and was designed to provide for future generations when those resources are exhausted. It is one of the largest sovereign wealth funds in the country, with a balance of \$22.6 billion at the end of calendar year 2020. Currently, 5 percent of the LGPF five-year average year-end balance is distributed to 21 beneficiaries based on the tracts of land designated to each beneficiary. In FY20, LGPF distributions totaled \$783 million, with about \$638 million distributed to public schools. The Legislature has contemplated versions of this initiative since 2011.

**Use and Benefit of Additional Distribution.** HJR1 creates distributions for beneficiaries that are not the intended recipients of the public school fund, which may make the state vulnerable to a lawsuit. HJR1 earmarks the additional 1 percent distribution from the permanent school fund for early childhood educational services administered by the state – not specifically by public schools; therefore, HJR1 appears to allow the Legislature to appropriate these funds to nonpublic school recipients. The beneficiaries of the LGPF are delineated in the Enabling Act and Ferguson Act, and therefore would need congressional approval to change. Additionally, HJR1 increases distributions to all beneficiaries and specifies that only the additional distribution from the LGPF through the permanent school fund would be designated for early childhood education services; the additional distribution to the other 20 LGPF beneficiaries would be increased. According to testimony provided to LESC during the interim, the New Mexico School Superintendents Association notes the solvency of the fund is important and that any additional distributions should be preserved for use by K-12 institutions to address prekindergarten expansion.

**Consolidated *Martinez* and *Yazzie* Lawsuit.** The decision in the consolidated *Martinez* and *Yazzie* lawsuit indicated educational services in public schools are insufficiently funded. Of note is that public schools are the primary beneficiaries of the permanent school fund – but not the specific recipients indicated in HJR1. The court noted the state is not fulfilling its constitutional duty to provide a sufficient education to all students. The Legislature may want to consider the legal and fiscal impact of increasing distributions from the permanent school fund for services other than public school services. The state recently petitioned to have the case dismissed based on actions the state has taken to date. However, the court denied the motion to dismiss and authorized discovery to extend through March or May 2021 to ascertain what progress the state has made on sufficiently funding public schools.

**Early Childhood Issues.** HJR1 defines “early childhood education services” as “nonsectarian and nondenominational services for children until they are eligible for kindergarten” that are

administered by the state. In FY21, the Early Childhood Education and Care Department (ECECD) began overseeing all early childhood education and care services. Previously, the responsibility for childhood education and care services was shared by the Children, Youth, and Families Department, Department of Health, and Human Services Department.

Early Childhood Education and Care System		
FY21 State Agency	Program	Age Range
ECECD	NM Head Start Collaboration Office	prenatal through age 4
ECECD	Childcare Assistance	3 weeks through age 13
ECECD	Home Visiting	prenatal through age 4
ECECD	Prekindergarten	ages 3 through 4
ECECD	Family, Infant, and Toddlers	birth through age 3
ECECD	Home Visiting	prenatal through age 4
PED	Prekindergarten at Public Schools	age 4
PED	K-5 Plus	ages 5 through 8
PED	Services for Developmentally Delayed Students	ages 3 through 4

Source: LFC and LESC Analysis

New Mexico has already demonstrated a significant investment in early childhood education programs by growing funding from \$136 million in FY12 to \$448 million in FY21, an increase of 229 percent. This increase does not include federal funding, which allows New Mexico to serve additional children through early childcare programs. This 229 percent increase, along with \$73 million from federal early childhood Head Start and Early Head Start, allowed the state to serve nearly 80 percent of 4-year-olds in FY20. However, LFC notes the state has struggled with coordination and delivery of these services due to rapid growth. For example, the availability of childcare and prekindergarten for 3- and 4-year-olds is regionally inconsistent, with oversaturation in some communities and a lack of access in others. Oversaturation of early childhood educational services can have several negative effects, including the return of federal Head Start dollars as a result of student migration from Head Start to state-funded programs, such as prekindergarten.

**Early Childhood Workforce Limitations.** Inconsistencies among early childhood professional licensure requirements, education requirements, and compensations pose a challenge as New Mexico consolidates and expands early childhood educational services. Such inconsistencies can create an environment in which programs compete for highly qualified early childhood educational service providers. Expansion of early childhood educational services likely cannot outpace the development of a high-qualified early childhood workforce. Based on HJR 1 language narrowly defining “early childhood educational services” as nonsectarian and nondenominational services for children, funds generated would not be available to use for workforce development.

**TECHNICAL ISSUES**

The Legislature may wish to consider a time limit on congressional action so that the legislation is acted on in a reasonable timeframe because HJR1 does not specify a deadline for congressional authorization.

**OTHER SIGNIFICANT ISSUES**

**Importance of Early Childhood Education.** Substantial evidence demonstrates experiences in early childhood are critical for brain development, and children who participate in high-quality early learning programs have better health, social-emotional, and cognitive outcomes than children who do not participate. Lack of access to high-quality learning opportunities early in life can be a contributing factor to the achievement gap. Research shows some early childhood interventions successfully narrow the achievement gap. Additionally, early childhood education and programs

that extend learning time were a focus of the plaintiffs in the consolidated *Martinez and Yazzie* education sufficiency lawsuit, which noted that quality full-day prekindergarten is necessary to compensate for the late start on learning experienced by many at-risk students – defined in the lawsuit as Native American, English learning, low-income, and special education. This bill would establish a new recurring revenue stream for early childhood education. However, the court’s findings identified shortfalls in areas outside of prekindergarten, including instructional materials, access to technology, summer school, K-3 Plus, smaller class sizes, reading programs, and quality teachers. These other findings are not addressed by HJR1 and creating a new LGPF beneficiary before addressing kindergarten-through-12<sup>th</sup>-grade education findings could pose challenges.

The U.S. Department of Education suggests effective early learning programs provide a return on investment of \$8.60 for every \$1 spent. New Mexico has expanded early childhood education programs over the last 10 years; however, expanding these services cannot outpace the development of a highly-qualified workforce, which is currently very limited.

## **ALTERNATIVES**

The Legislature could consider specifying that the additional 1 percent annual distribution is for public schools – the intended beneficiaries of the permanent school fund. This would result in the distribution going to the intended beneficiaries and not to nondesignated entities, which could otherwise result in legal action.

The Legislature could require all beneficiaries to allocate their additional distribution to early childhood educational services. If the Legislature required an estimated 0.9 to 0.98 percent additional distribution for all LGPF beneficiaries, LESC staff estimates \$170 million would be generated at time of first distributions.

## **SOURCES OF INFORMATION**

- LESC Files
- LFC Files
- Office of Attorney General
- Children, Youth, and Families Department
- State Land Office
- State Investment Council

**EH/mb**

**LAND GRANT PERMANENT FUND**  
**FUND BALANCE AND INCOME DISTRIBUTION SUMMARY FOR THE FISCAL YEAR ENDED June 30, 2020**  
**Unaudited --Through 6/30/20**

	July 1, 2019		INCOME	Net Earnings and	ENDING BAL	
INSTITUTIONS	BEGINNING BAL	% OF FUND	DISTRIBUTION	Contributions	June 30, 2020	% OF FUND
COMMON SCHOOLS	\$15,990,437,459.75	85.657%	(\$673,464,813.74)	\$1,031,937,983.84	\$16,348,910,629.81	86.127%
UNIVERSITY OF N.M.	\$233,187,609.23	1.249%	(\$9,629,654.90)	\$4,667,724.76	228,225,679.09	1.202%
UNM SALINE LANDS	\$8,131,955.87	0.044%	(\$334,269.02)	\$77,099.04	7,874,785.89	0.041%
NM STATE UNIVERSITY	\$72,651,971.33	0.389%	(\$2,979,812.64)	\$359,384.38	70,031,543.07	0.369%
WESTERN NM UNIV	\$4,297,376.77	0.023%	(\$176,625.95)	\$40,597.92	4,161,348.74	0.022%
N.M. HIGHLANDS UNIV	\$4,275,744.34	0.023%	(\$175,740.18)	\$40,560.10	4,140,564.26	0.022%
NO. NM COLLEGE	\$3,486,199.02	0.019%	(\$143,412.40)	\$39,264.40	3,382,051.02	0.018%
EASTERN NM	\$13,308,937.98	0.071%	(\$545,433.72)	\$48,259.86	12,811,764.12	0.067%
NM INST. MINING &	\$32,962,985.43	0.177%	(\$1,354,463.88)	\$297,073.63	31,905,595.18	0.168%
N.M. MILITARY	\$551,854,458.21	2.956%	(\$22,850,357.37)	\$13,731,493.89	542,735,594.73	2.859%
NM BOYS SCHOOL	\$924,747.83	0.005%	(\$37,865.57)	\$1,617.70	888,499.96	0.005%
DHI MINERS HOSPITAL	\$152,641,149.55	0.818%	(\$6,269,788.23)	\$1,246,674.85	147,618,036.17	0.778%
N.M. STATE HOSPITAL	\$62,475,028.94	0.335%	(\$2,627,216.94)	\$3,378,778.63	63,226,590.63	0.333%
NM STATE	\$333,340,991.85	1.786%	(\$13,784,275.89)	\$8,023,133.31	327,579,849.27	1.726%
NM SCHOOL FOR THE	\$330,017,341.40	1.768%	(\$13,636,919.47)	\$6,847,213.17	323,227,635.10	1.703%
SCH. FOR VISUALLY	\$329,353,304.88	1.764%	(\$13,609,784.47)	\$6,848,582.05	322,592,102.46	1.699%
CHAR. PENAL &	\$135,318,988.39	0.725%	(\$5,556,064.34)	\$980,331.06	130,743,255.11	0.689%
WATER RESERVOIR	\$169,898,862.06	0.910%	(\$6,968,761.94)	\$888,459.36	163,818,559.48	0.863%
IMPROVE RIO GRANDE	\$37,930,847.03	0.203%	(\$1,556,192.09)	\$216,513.67	36,591,168.61	0.193%
PUBLIC BLDGS. CAP.	\$201,289,793.36	1.078%	(\$8,538,919.86)	\$18,804,606.73	211,555,480.23	1.114%
CARRIE TINGLEY	\$233,165.09	0.001%	(\$9,547.40)	\$407.88	\$224,025.57	0.001%
	<b>\$18,668,018,918.31</b>	<b>100%</b>	<b>(\$784,249,920)</b>		<b>\$18,982,244,758.50</b>	<b>100%</b>

Source: SIC