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

SPONSOR Keller **ORIGINAL DATE** 01/25/12 **LAST UPDATED** 01/31/12 **HB**

SHORT TITLE Energy Technology Higher Ed Endowment Fund **SB** 21

ANALYST Hartzler-Toon

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	**FY13**		
	$10,410.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**		
	$10,020.0	$10,020.0	Recurring	New Fund – Energy Technology Higher Education Endowment Fund

(Parenthesis ( ) Indicate Revenue Decreases)

- There will be operating budget impacts by the fund administrator. These additional costs could not be determined as the bill does not identify a fund administrator.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Tax and Revenue Department (TRD)
Higher Education Department (HED)
Council of University Presidents (CUP), on behalf of
University of New Mexico (UNM)
New Mexico State University (NMSU)
New Mexico Institute of Mining and Technology (NM Tech)

No Responses Received From
New Mexico Association of Community Colleges
New Mexico Independent Community Colleges

SUMMARY

Synopsis of Bill

The Energy Technology Higher Education Endowment Fund bill appropriates $835.0 thousand monthly, or an estimated $10 million annually, from the net receipts attributable to the gross receipts tax to a new endowment fund created in the State Treasury for the purposes of promoting energy technology higher education and industry incubation, growth, and employment in the state. The bill section requiring the monthly transfer to the endowment fund would be repealed as of July 1, 2016. The bill would also require an annual transfer from the endowment fund to New Mexico's research institutions for 5 percent of the fund's estimated prior year earnings.

FISCAL IMPLICATIONS

The bill requires a monthly distribution of up to $835.0 thousand, or an estimated $10.02 million annually, from the net receipts attributable to the gross receipts tax into the energy technology higher education endowment fund (endowment fund). According to the LFC staff General Fund Recurring Appropriation Outlook for FY14 and FY15, December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations.

The appropriation of an estimated $10.02 million annually to the endowment fund is a recurring expense to the general fund through FY16. Using a simulation model, the TRD estimated that investment income to the endowment fund would be $7.06 million from FY13 to FY16. The total endowment fund, including investment income, would be $47.14 million for these four years; the general fund could lose up to $40.08 million during the same time. Any distributions to the endowment fund, whether from general fund or other sources (including endowment fund earnings), do not revert to the general fund.

Distributions from the endowment fund to institutions would begin July 1, 2015 and annually thereafter, the amount of distributions to institutions would total 5 percent of the value of the endowment fund as of December 31st of the prior calendar year. The distributions would be of equal amount (1/3) specifically to UNM, NMSU, and NM Tech. The funds are restricted for particular purposes and require reporting to the legislature upon completing certain milestones. Relying on the simulation model, the TRD provided a detailed estimate that each institution could receive from the endowment fund:

Estimated Appropriation from Endowment Fund *(in thousands of dollars)*	**FY16**	**FY17**	**FY18**
University of New Mexico	$440.0	$630.0	$760.0
New Mexico State University	$440.0	$630.0	$760.0
New Mexico Institute for Mining and Technology	$440.0	$630.0	$760.0
Total Appropriation	$1,320.0	$1,890.0	$2,280.0

The bill requires UNM, NMSU, and NM Tech to make deposits in the endowment fund equal to 10 percent of the licensing fees or royalties received for research, development, commercialization or patents financed in whole or in part by the disbursement of the fund. The institutions report that this requirement runs afoul of Public Law 96-517, the Patent and Trademark Law Amendments Act (the Bayh-Dole Act), as amended, which restricts earnings from federally-supported research endeavors to the project and appears to disallow royalty payments like the ones described in SB21.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

In addition to the Fiscal Issues described about, the Council of University Presidents (CUP), on behalf of the three beneficiary institutions, state serious concerns with the definition of "energy technologies", the uses for the endowment funds, and the reporting requirements. The most important concern is the likely conflict with federal law over the requirement to transfer licensing revenues to the state (Sect. 2.G) and the limits on the use of earnings generated from federally-sponsored research.

Under SB21, the institutions may use endowment fund distributions for recruiting and retaining teaching faculty, developing and implementing curricula, research and development, and commercializing technology. According to the institutions' interpretation of the Bayh-Dole Act, it is unclear whether the bill's limited uses for funds satisfies the federal laws and regulations related to federally-sponsored research.

Beginning in FY18, after three years of receiving funds from the endowment fund, the institutions shall report to the Legislative Finance Committee on uses of and expenditures from the fund, including the number of teaching faculty recruited and retained, a description of sustainable energy technology courses and programs, a description of collaborative efforts on energy matters, the number of students who complete courses and earn degrees in energy technology programs, description of energy-related research and development. The institutions noted these and other extensive new reporting requirements could be better crafted to measure the state's goals and institutions' performance for funds available under this bill.

ADMINISTRATIVE IMPLICATIONS

The TRD stated that the bill would have a low impact on the information systems team in terms of creating the accounting recipient/s necessary, adjusting regular accounting reports, and establishing a distribution system.

According to the HED, institutions have noted that the licensing revenues provision is unduly burdensome given the small amount of funding used from the endowment fund as compared to other funds used to generate such a project.

TECHNICAL ISSUES

The bill should identify a fund administrator.

The institutions recommended the following provisions be eliminated or amended:

Section 2.B. Revise the definition for "energy technology" to mean "methods that improve energy efficiency by increasing the net benefits per unit of energy produced, research new sources of energy, or that contribute to technologies that create energy efficiencies in storage, transmission or consumption."

Section 2C. Amend language to read "The purposes of the fund are to enable and promote teaching, research, extension of knowledge and economic development for our state through investment in the energy technology capabilities of the university of New Mexico, New Mexico state university and the New Mexico institute of mining and technology."

Section 2E.(1) Strike "teaching" as it describes faculty. We recommend that the word "teaching" be struck. This will insure that the intent of the bill can be met cleanly without argument over the term of craft of what defines a "teaching" faculty. Also, if the intent is to create new technologies through research then elimination of research faculty negates the true intent of the bill.

Section 2 F. Strike **"**sustainable" (line 4), insert "technology" immediately following "energy" (line 4).

Section 2G. Strike provision and insert "Each university shall pay no greater than 10% of any royalties or licensing fees resulting from use of this fund to the energy technology higher education endowment fund. The final amount to be returned will in an amount equal to the percentage of the licensing fees or royalties received for research, development, commercialization or patents based on the pro-rata portion that each project is financed by a disbursement from that fund but in no case shall exceed 10%."

Section 2H. Insert "each" (p. 4, line 12), to read "…mining and technology shall each report to …"

Section 2H. (1) and (2) Strike "teaching" and insert "utilizing the fund" at the end of the sentence.

Section 2H (4) and (5). Strike provisions in entirety.

OTHER SUBSTANTIVE ISSUES

At the request of the Legislature, the HED has developed a performance-based funding formula for colleges and universities. One aspect of the formula to be developed during FY12 and FY13 includes performance metrics for research institutions. This bill complements the state's efforts on performance funding.

Where the Legislative Finance Committee has recommended reviewing all institutional state funding – formula, projects, student aid – to identify opportunities to improve institutional and student performance, there may be opportunities to recognize or incorporate funds and activities described in this bill with broader state objectives.

THT/svb