LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 2nd Session, 2020

Bill Number HJR1/aSRC **Sponsor** Maestas/Martínez, J.

Tracking Number .216257.1 **Committee Referrals** HCEDC/HEC;SRC/SFC

Short Title Permanent Funds for Early Childhood, CA

Original Date 1/21/2020

Analyst Porter **Last Updated** 2/17/2020

BILL SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee Amendment to House Joint Resolution 1 (HJR1/aSRC) reduces the proposed additional annual distribution amount from 1 percentage point to 0.5 percent points and increases the "safety valve" threshold from $10 billion to $17 billion.

Synopsis of Original Joint Resolution

House Joint Resolution 1 (HJR1) proposes to amend 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 percentage point for all beneficiaries, provided that the amount of the additional distribution from the permanent school fund (PSF) be designated for early childhood educational services that are nonsectarian, nondenominational, and administered by the state for children until they are eligible for kindergarten. To become effective, HJR1 requires the approval of voters during the next statewide general or special election and the consent of the United States Congress.

FISCAL IMPACT

House joint resolutions do not carry appropriations.

According to State Investment Council (SIC) estimates, the additional 0.5 percentage point distribution from the LGPF of the average year-end market values for the immediately preceding five calendar years will result in an additional annual distribution to all beneficiaries of about $83.5 million in year one, based on current numbers. Of this amount, $71 million would be distributed from the PSF to fund early childhood educational services administered by the state for children before they enter kindergarten. Other beneficiaries of the LGPF, including institutions of higher education and the constitutional special schools, would receive the remaining $12.5 million. Public schools, also called common schools, would not receive any additional distribution.

In years when the annual distribution is made, the total annual distribution from the LGPF would be 5.5 percent of the annual year-end market value of the fund for the preceding five calendar years. The table below illustrates the distribution for 2019 with both a 5 percent distribution, and an estimation of the 5.5 percent distribution under HJR1/aSRC.

LGPF Distributions under Current Law and HJR1/aSRC

(in millions)

	FY19 Distribution	Estimated Distribution under HJR1/aSRC
Public Schools	$709.5	$709.5
Other Beneficiaries	$125.5	$138.0
Early Childhood Education Services		$71.0
Total	**$835.0**	**$918.5**

Source: SIC and LESC Files

According to SIC, while additional distributions from the LGPF would produce more revenue for its beneficiaries in the short term, the additional .5 percentage point distribution will reduce the amount of funds available for future investment, therefore reducing future distributions. An endowment fund that distributes 5 percent of its corpus will ultimately deliver more money to early childhood educational services overall than a fund distributing 5.5 percent. Therefore, the key question is whether the added cost over the long run is an appropriate trade-off for the added benefits HJR1/aSRC is expected to deliver in the short run.

SIC states that an invested permanent fund dollar will likely double in value in 10 years due to the benefits of compounding interest. Additionally, not adjusting for inflation, the LGPF with a 5 percent distribution rate will double in value by 2033, while the LGPF with a 5.5 percent distribution rate will double in value by 2036.

The additional 0.5 percentage point distribution from the LGPF via the permanent school fund would go to the common school fund prior to being distributed to public schools. The common school fund is not an investment fund; it is a fund within the state treasury. Funds in the common school fund would have much lower interest earnings than if that same amount remained in the PSF. Additionally, similar to other treasury funds, all earned interest would be distributed as unearmarked revenue to the general fund; interest would not accrue to the common school fund. Therefore, any earnings gained while in the common school fund would not necessarily accrue to the benefit of early childhood education. In other words, not increasing the LGPF distribution will have better long-term financial benefits than an increased distribution that sits in the common school fund until the state has the capacity to absorb the additional distribution.

Other Costs. HJR1/aSRC's passage will incur one-time costs for adding a constitutional amendment to the general election process. 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.

SUBSTANTIVE ISSUES

Use and Benefit of Additional Distribution. HJR1/aSRC creates distributions for beneficiaries that are not the intended recipients of the PSF, which may make the state vulnerable to a lawsuit. The additional .5 percentage point distribution through the PSF is for early childhood educational services administered by the state – not specifically by public schools; therefore, HJR1/aSRC appears to allow other entities to receive these funds. The beneficiaries of the LGPF are delineated in the Enabling Act and Ferguson Act, and therefore cannot be changed. Additionally, HJR1/aSRC increases distributions to all beneficiaries and specifies that only the additional distribution from the LGPF through the PSF would be designated for early childhood educational services; the additional distribution to the other 20 LGPF beneficiaries would be increased discretionary revenue.

Additional Distribution Suspension. Current language in the Constitution prohibits an additional annual distribution from the LGPF if its average year-end market value for the preceding five years is less than $10 billion. The average year-end market value over the past preceding five years, when including the preliminary year-end value for 2019, totals about $16.7 billion, as shown by the chart below.

Land Grant Permanent Fund Net Assets
(2015-2018 Actuals, 2019 Projection)
(in billions)

2015	2016	2017	2018	2019	5-year average
$14.4	$15.2	$17.3	$17.1	$19.6	$16.7

Source: SIC and LESC Analysis

If the $10 billion threshold to suspend additional distributions is intended to act as a "safety valve" to trigger suspension of the additional annual distribution, then it may be too low to protect the fund, given the average balances over the past five years. For example, if the fund dropped to $500 million in 2020, the average year-end market value of the fund over the past five years would still be above the $10 billion threshold, and the annual distribution would still be required. The chart below uses an example of $500 million for 2020.

Land Grant Permanent Fund Net Assets
"Safety Valve" Example
(in billions)

2016	2017	2018	2019	2020	5-year Average
$15.2	$17.3	$17.1	$19.6	$0.5	$13.9

Source: SIC and LESC Analysis

In the example above, the "safety valve" to suspend the additional annual distribution was not triggered, which could cause the fund to deteriorate slowly in the long term. HJR1/aSRC increases this threshold to $17 million, which, in the examples above, would prevent the proposed additional 0.5 percent point distribution from being made.

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, Land Grant Permanent Fund Balance and Income Distribution for FY19.** Public school districts receive about 85 percent of LGPF distributions through the PSF. The LGPF is funded by income from non-renewable 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 $19.3 billion as of November 2019. Currently, 5 percent of the LGPF five-year average year-end balance is distributed to 21 beneficiaries based on land ownership. In

FY19, total LGPF distributions were about $747 million, with about $638 million distributed to public schools. The Legislature has contemplated versions of this initiative since 2011.

Early Childhood Issues. HJR1/aSRC defines "early childhood educational services" as "nonsectarian and nondenominational services for children until they are eligible for kindergarten" that are administered by the state. The agencies currently providing early childhood education and care services are: Children, Youth, and Families Department (CYFD); Department of Health (DOH); and, the Human Services Department (HSD); however, these service will be transferred to the Early Childhood Education and Care Department (ECECD), scheduled to open in FY21. The table below shows the early childhood educational services provided by each agency in both FY20 and FY21, and the age range of children served.

Early Childhood Education and Care System

FY20 State Agency	FY21 State Agency	Program	Age Range
CYFD	ECECD	NM Head Start Collaboration Office	prenatal through age 4
CYFD	ECECD	Childcare Assistance	3 weeks through age 13
CYFD	ECECD	Home Visiting	prenatal through age 4
CYFD	ECECD	Prekindergarten	ages 3 through 4
DOH	ECECD	Family, Infant, and Toddlers	birth through age 3
HSD	ECECD	Home Visitng	prenatal through age 4
PED	PED	Prekindergarten	age 4
PED	PED	K-5 Plus	ages 5 through 8
PED	PED	Services for Developmentally Delayed Students	ages 3 through 4

Source: LESC Files

New Mexico has demonstrated a significant investment in early childhood education programs by growing funding from $136 million in FY12 to $438.5 million in FY20; however, LFC notes that due to the rapid growth of these programs, the state has struggled with the coordination and delivery of these services, resulting in minimal changes to the outcomes for children and families, as well as unspent funding. Oversaturation of early childhood educational services can have several negative effects. For example, the state returns federal Head Start dollars and services when students migrate from Head Start to state-funded programs.

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 PSF – but not the specific recipients indicated in HJR1/aSRC. The Legislature may want to consider the legal and fiscal impact of increasing distributions from the PSF for services other than public school services. While the Legislature significantly increased its investment in public education in FY20, public school appropriations in future years will likely need to be increased to achieve necessary outputs. For FY20, funding was increased to $3.25 billion – an increase of $484 million from FY19. For FY21, the executive requested about $3.34 billion and the LFC recommends about $3.46 billion.

TECHNICAL ISSUES

HJR1/aSRC does not specify a deadline for congressional authorization. The Legislature may wish to consider one so that the legislation is acted on in a reasonable time frame.

In an analysis of an identical house joint resolution in 2019, the New Mexico Attorney General suggested moving the definition of "early childhood educational services" in Section 1, Subsection H to Section 1, Subsection B to keep the definitions together.

OTHER SIGNIFICANT ISSUES

Early Childhood Education. The first three years of a child's life are critical for brain development; the brain creates one million connections every second that will establish pathways for future development, according to the Center on the Developing Child at Harvard University. Additionally, children who participate in high-quality early learning programs have better health, social-emotional, and cognitive outcomes than students who do not participate, and early childhood education can reduce the impacts of adverse childhood experiences (ACEs) by providing children with rich social experiences needed to succeed in school. According to Child Trends, a nonpartisan research center, 18 percent of children in New Mexico have experienced three or more ACEs, outpacing the national average of 11 percent.

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. Early childhood educational services encompass a range of programs with differing degree and licensure requirements and these disparities can create an environment in which programs compete for highly-qualified early childhood educational service providers.

ALTERNATIVES

The Legislature may wish to specify that the additional .5 percent point annual distribution is for public schools – the intended beneficiaries of the PSF. This would result in the distribution going to the intended beneficiaries and not to non-designated entities, which could otherwise result in a legal action.

SIC analysis questions whether existing avenues to fund early childhood educational services can be utilized while protecting the current benefits the LGPF already delivers annually to public schools.

HB83 and SB3, Early Childhood Education & Care Fund, would establish the early childhood education and care fund and the early childhood education and care program fund, dedicated to supporting early childhood education and care programs. HB83 and SB3 would fund early childhood initiatives while maintaining the corpus of the land grant permanent fund.

RELATED BILLS

Relates to HB83 and SB3, Early Childhood Education & Care Fund, which establishes the early childhood education and care fund and the early childhood education and care program fund, dedicated to supporting early childhood education and care programs.

Relates to SB18, Renewable Energy Production Tax, which enacts the renewable energy production tax act and imposes a renewable energy production tax generated from renewable energy resources, of which revenue will be distributed to the early childhood program fund, which is created in this bill.

SOURCES OF INFORMATION

- LESC Files
- Children, Youth and Families Department (CYFD)
- State Investment Council (SIC)
- New Mexico Attorney General (NMAG)

LAP/tb/mc/sgs

ATTACHMENT

Land Grant Permanent Fund
Fund Balance and Income Distribution Summary for the Fiscal Year Ended June 30, 2019
(Unaudited)

Institution	July 1, 2018 Beginning Balance	Percent of Fund	Income Distribution	Land Transfer	Capital Gain or Loss	Unrealized Gain or Loss	Income Earnings	Book Value Ending Balance June 30, 2019
Common Schools	$14,941,318,169	85.2%	($638,656,368)	$828,521,384	$490,691,037	$365,814,157	$2,749,081	$15,990,437,460
University of New Mexico	$226,894,512	1.3%	($9,521,957)	$3,143,774	$7,294,303	$5,340,565	$36,411	$233,187,609
UNM Saline Lands	$7,900,027	0.1%	($332,171)	$121,912	$254,480	$186,436	$1,272	$8,131,956
New Mexico State University	$71,291,552	0.4%	($2,979,991)	$384,335	$2,281,324	$1,663,683	$11,068	$72,651,971
Western New Mexico University	$4,199,278	0.0%	($175,883)	$40,200	$134,691	$98,429	$662	$4,297,377
New Mexico Highland University	$4,177,935	0.0%	($174,993)	$40,200	$134,010	$97,934	$659	$4,275,744
Northern New Mexico College	$3,398,840	0.0%	($142,515)	$40,321	$109,158	$79,855	$541	$3,486,199
Eastern New Mexico University	$13,079,529	0.1%	($546,381)	$50,736	$418,233	$304,800	$2,022	$13,308,938
New Mexico Inst. of Mining and Tech.	$32,115,077	0.2%	($1,347,428)	$403,394	$1,032,149	$754,661	$5,132	$32,962,985
New Mexico Military Institute	$529,855,351	3.0%	($22,392,657)	$14,526,531	$17,167,032	$12,609,483	$88,718	$551,854,458
New Mexico Boys School	$912,365	0.0%	($38,036)	$0	$29,106	$21,174	$139	$924,748
DHI Miners Hospital	$149,213,018	0.9%	($6,250,919)	$1,376,560	$4,786,650	$3,492,354	$23,487	$152,641,150
New Mexico State Hospital	$58,723,138	0.3%	($2,501,363)	$2,899,157	$1,921,498	$1,422,011	$10,588	$62,475,029
New Mexico State Penitentiary	$323,112,336	1.8%	($13,587,051)	$5,720,414	$10,411,425	$7,631,447	$52,420	$333,340,992
New Mexico School for the Deaf	$319,541,585	1.8%	($13,439,036)	$6,013,111	$10,298,643	$7,551,010	$52,029	$330,017,341
School for the Visually Handicapped	$318,886,404	1.8%	($13,411,722)	$6,013,147	$10,277,742	$7,535,806	$51,929	$329,353,305
Charitable, Penal, and Reform	$132,515,326	0.8%	($5,543,989)	$983,346	$4,244,784	$3,098,787	$20,734	$135,318,988
Water Reservoir	$166,699,483	1.0%	($6,968,489)	$917,525	$5,334,834	$3,889,607	$25,903	$169,898,862
Improve Rio Grande	$37,231,238	0.2%	($1,556,253)	$190,662	$1,191,291	$868,138	$5,771	$37,930,847
Public Buildings Capital Inc.	$187,262,233	1.1%	($7,966,197)	$11,229,812	$6,109,870	$4,619,942	$34,133	$201,289,793
Carrie Tingley Hospital	$230,043	0.0%	($9,590)	$0	$7,339	$5,339	$35	$233,165
	$17,528,557,437	100.0%	($747,542,991)	$882,616,521	$574,129,598	$427,085,618	$3,172,735	$18,668,018,918

Soure: State Investment Council