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

SPONSOR Maestas/Trujillo, C./ Herrera **ORIGINAL DATE** 2/6/2020 **LAST UPDATED** 2/13/2020 **HJR** 9

SHORT TITLE No Permanent Fund for State Penitentiary, CA **SB**

ANALYST Rabin/Iglesias

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**		
$0.0	See Fiscal Implications		Recurring	Permanent School Fund
$0.0			Recurring	Penitentiary Permanent Fund
$0.0			Recurring	General Fund (Common Schools)
$0.0			Recurring	Penitentiary Income Fund (Corrections Dept.)

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$0.0	See Fiscal Implications			Recurring	General Fund (Corrections Department)
Total	$0.0	$125.0 to $150.0	$0.0	$0.0	Nonrecurring	General Fund (Secretary of State)

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Corrections Department (NMCD)
Secretary of State (SOS)
Administration Office of the Courts (AOC)
Attorney General's Office (NMAG)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Joint Resolution 9 amends the Article 13, Section 1, of the state constitution to change the allowable use of revenues generated from state trust lands currently assigned to the state penitentiary. The proposed constitutional amendment would allow these revenues to be used exclusively for the support and aid of common (public) schools, removing the state penitentiary as the beneficiary of uses of those lands. There is no effective date of this joint resolution. It is assumed the effective date is 90 days after this session ends.

Although HJR9 does not explicitly state that congressional approval is required for this constitutional amendment to take effect, the Attorney General's Office (NMAG) states that some of the provisions within HJR9 strongly appear to require Congress' prior approval to be constitutional (see Significant Issues, below).

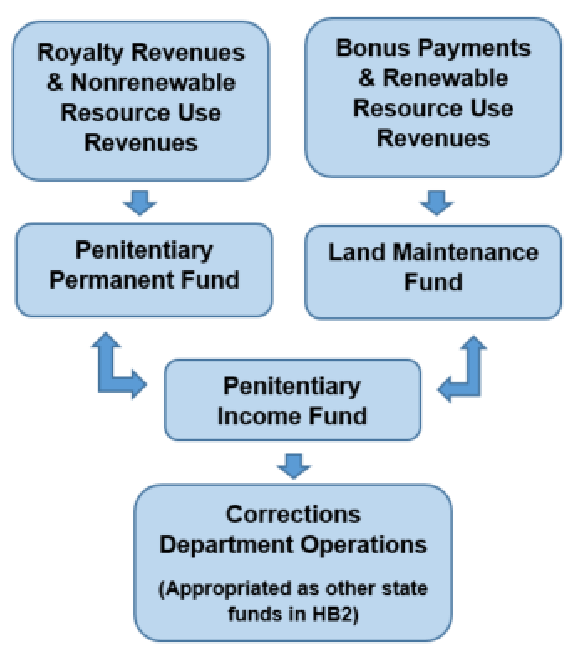
FISCAL IMPLICATIONS

The fiscal impact of this amendment would likely occur in FY22, assuming voters approve the amendment in the next general election (November 2020) and congressional approval is granted by June 30, 2021. However, depending on whether a special election is called to bring the amendment to voters, and the timing of congressional approval, the changes could begin sooner.

State penitentiaries are currently the beneficiary of two income sources for revenues from trust lands. The first is revenues from the land grant permanent fund (LGPF), which receives revenues from nonrenewable use of trust lands (e.g. royalties from oil and natural gas extraction). Each beneficiary of the LGPF owns a permanent fund to which revenues are deposited, and the collective LGPF is managed and invested by the State Investment Council (SIC). Each year, 5 percent of the five-year average of the LGPF is distributed to beneficiaries. In FY19, $13.6 million was distributed from the penitentiary permanent fund to the Corrections Department (NMCD).

The second is revenues from the land maintenance fund (LMF), which receives revenues from renewable resource uses of state trust lands (e.g. grazing, rights of way, bonuses paid to acquire oil and gas leases, etc.). The State Land Office (SLO) makes monthly distributions from the LMF to the income funds of trust beneficiaries based on activity occurring on each beneficiary's tracts of land. Due to two large land sales in FY19, the penitentiary income fund received about $34.3 million; however, this is expected to be an anomaly, and the future distributions are expected to revert to about $1.2 million annually in FY20 and FY21.

Chart 1 – Flowchart of State Penitentiary Revenues from State Trust Lands



The bill reassigns revenues from state trust lands currently benefitting the state penitentiary to instead be used exclusively for the support and aid of public schools. Once approved, this would affect new royalty revenues generated from oil and natural gas extraction from those lands, as well as bonus payments and other revenues for renewable resource uses of those lands.

From FY17 to FY19, annual royalty revenues generated from the penitentiary's trust lands were about $5.2 million. Rather than being deposited into the penitentiary permanent fund, this amount would be deposited into the permanent school fund, beginning once voters and Congress approve the amendment. Over time, this would result in larger annual distributions to the general fund to support public schools.

However, the bill is silent on the ownership of the current penitentiary permanent fund, which was valued at $333.3 million at the end of FY19. Under current law, 5 percent of the five-year average of the land grant permanent funds are distributed annually to beneficiaries. Because this amendment does not change the ownership the distribution function of the penitentiary permanent fund, and since there is no companion bill to do this contingent upon approval of this amendment, this resolution is expected to have no impact on the current annual distribution of funds from the penitentiary permanent fund to NMCD. In FY19, the size of this distribution was $13.6 million. In its analysis of a similar joint resolution during the 2019 session (House Joint Resolution 8), SIC estimated that this distribution would grow to nearly $16 million by FY22.

The approved amendment would immediately begin sending the state penitentiary's monthly distributions from the LMF to the general fund for public schools. This would include any new bonus payments for oil and gas leases and any other new revenues from renewable resource uses of those lands. However, the amendment is again silent on how to treat any cash balances of the penitentiary income fund. Therefore, it is assumed that without a companion bill to transfer these funds, the existing balance prior to approval of the amendment would remain in the penitentiary income fund to be appropriated to NMCD as under current law.

On approval of the amendment, it is possible that directives by Congress or subsequent legislative action could transfer the ownership of the penitentiary permanent fund to the permanent school fund and/or transfer the cash balances of the penitentiary income fund to the general fund for public schools.

NMCD is projected to receive $16 million in state trust land revenues in FY20 and $16.4 million in FY21. In its analysis of HJR8 in 2019, NMCD noted that this funding made up about half of the $32 million budget for the state penitentiary. If subsequent legislative action were taken to remove permanent fund distributions from the department's revenues, NMCD would have to seek that funding from the general fund or other sources to replace the lost revenue. The Department of Finance and Administration also noted in its analysis of HJR8 in 2019 that a portion of the revenue for NMCD's operating budget comes from fund balance that originates as revenue from the LGPF distribution. This fund balance will not replenish if this piece of LGPF distribution were to be reassigned to public schools through subsequent legislation.

NMCD also receives one-seventh of the LGPF distribution dedicated to state charitable, penal, and reformatory institutions. The total amount of this distribution in FY19 was $5.5 million, and the NMCD portion was about $792 thousand. This distribution is not affected by the proposed resolution.

Under Section 1-16-4 NMSA 1978, the Secretary of State (SOS) is required to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to ten 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. The estimated cost per constitutional amendment is $125 thousand - $150 thousand, depending upon the number and length of the constitutional amendments, number of registered voters, and whether additional ballot printing systems are needed.

SIGNIFICANT ISSUES

NMAG states that Section 1(B)(2) of HJR 9 provides that "the [100,000] acres originally granted for penitentiaries by the [New Mexico Enabling Act]" "shall not be used for its original purpose[.]" Article 19, Section 4 of the New Mexico Constitution provides that any amendments to Article 21 of the Constitution must be first approved by Congress ("When the United States shall consent thereto . . ."). Article 21, Section 9, in turn, governs lands granted to the state through the Enabling Act, and states that "[t]he state and its people consent to . . . the terms and conditions upon which said grants and confirmations were made[.]" Therefore, NMAG concludes that Section 1(B)(2) of HJR9 strongly appears to require Congress' prior approval to be constitutional.

ADMINISTRATIVE IMPLICATIONS

The State Land Office (SLO) would be required to make changes to its tract books, land information system, and revenue processing systems to change the beneficiary designation for 150,000 acres of state trust lands and to direct the revenues from those lands to common schools instead of NMCD. In its analysis of HJR8 during the 2019 session, SLO stated the agency is capable of making those changes with existing personnel and resources and within the ordinary course of business.

OTHER SUBSTANTIVE ISSUES

Section 19-1-17 NMSA 1978 creates various funds for state trust land beneficiaries, including a "penitentiary income fund" and "penitentiary permanent fund." There is currently no companion bill to alter the function of these funds (see Fiscal Implications, above, for discussion of the impact). Depending on the intent of the legislation, if this amendment is passed and approved by voters and Congress, state statute may also have to be amended.

ER/sb/al