LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: **HJR 3** **51st Legislature, 2nd Session, 2014**

Tracking Number: **.194832.1**

Short Title: **Land Grant Fund for Education Reforms, CA**

Sponsor(s): **Representative Jim R. Trujillo**

Analyst: **Kevin Force** **Date:** **February 4, 2014**

Bill Summary:

HJR 3 proposes to amend Article XII, Section 7 of the Constitution of New Mexico to change the annual distribution from the Land Grant Permanent Fund (LGPF).

Specifically, HJR 3 would:

- permanently add an additional 0.5 percent of the five-year average of the end-of-year market value of the fund to implement and maintain educational reforms;
- increase to $10.0 billion (from $5.8 billion) the LGPF "failsafe value," which would suspend increased distributions; and
- permit the Legislature to suspend the additional 0.5 percent upon a three-fifths' vote of both chambers.

If approved by statewide voters, the distribution rate proposed by HJR 3, compared with the current rate, would be as follows:

Land Grant Permanent Fund Distribution Rate			
Fiscal Year	**Current Rate**	**HJR 3**	**Difference**
2014	5.5 percent	5.5 percent	0.0 percent
2015	5.5 percent	5.5 percent	0.0 percent
2016	5.5 percent	5.5 percent	0.0 percent
2017	5.0 percent	5.5 percent	0.5 percent
2018	5.0 percent	5.5 percent	0.5 percent
2019	5.0 percent	5.5 percent	0.5 percent
2020	5.0 percent	5.5 percent	0.5 percent

Fiscal Impact:

HJR 3 does not contain an appropriation.

Under Section 1-16-13 NMSA 1978 and the New Mexico constitution, the Secretary of State (SOS) is required to:

- print samples of the 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; and
- publish the samples once a week for the four weeks preceding the election in which the proposed amendment will be presented to the voters in newspapers in every county in the state.

In 2012, the cost for the 2012 General Election ballots was $46,000 per constitutional amendment. However, if the ballot size increases to where it becomes longer than one page, front and back, the cost of conducting the general election would be increased by such costs as those associated with:

- a longer ballot;
- the additional time required to process individuals as they vote; and
- additional ballot printing systems, to avoid long lines at voting locations.

Fiscal Issues:

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC), distributions from the LGPF would increase as follows:

Fiscal Year	Additional Distribution from LGPF
2017	$64.38 million
2018	$70.14 million
2019	$74.74 million

Further, the FIR notes that:

- the additional distributions would reduce the funds available for investment and reduce further growth in the fund, with the corpus of the fund being diminished by about $368 million by 2020, and by $1.8 billion;
- beginning in FY 24, the amount of the additional distribution proposed by HJR 3 would begin to diminish.

The State Investment Council (SIC), in its analysis of a similar joint resolution (SJR 12), noted that:

- in the short term, additional contributions from the LGPF will produce more revenue to the General Fund and other LGPF beneficiaries, primarily public education;
- in the long term, however, considering fund contributions from the oil and gas revenues, as well as expectations for general inflation and fluctuations in investment income, HJR 3 may increase the risk that the LGPF may fail to deliver the same benefits to the General Fund and other beneficiaries as it does today; and
- assuming the SIC achieves its targeted rate of return (7.5 percent, annual target) and average in-flows from the Land Office, the Land Grant Fund should grow to approximately $15.2 billion at the end of calendar year 2015.

Substantive Issues:

HJR 3 contains no contingency clause requiring Congressional approval to the proposed constitutional amendment. In an advisory letter dated March 6, 2003, the Attorney General expressed reservations about any proposed amendment to the New Mexico constitution that seeks to increase the distribution rate of the LGPF without Congressional approval, including that:

- the Supremacy Clause in Article VI of the US Constitution provides that federal law prevails over conflicting state law;
- any federal law that appears to conflict with New Mexico law may give rise to expensive, lengthy litigation, with no guarantee of a favorable outcome;
- without Congressional consent, the *Enabling Act* may conflict with proposed elevated distribution levels on several grounds:

  - Congress approved the 1996 amendments to the Constitution of New Mexico, which did not appear to endanger the Permanent School Fund;
  - Congress may withhold its approval of higher distribution rates, however, because the rates may conflict with existing safeguards for trust funds in the act;
  - the Congressional law enacted to approve the 1996 amendments was explicitly intended to "protect the permanent trust funds of the State of New Mexico from erosion"; and
  - this express purpose weighs against any theory that New Mexico now has plenary power to expend trust money without seeking Congressional approval; and

- the most prudent course, therefore, is to seek Congressional approval, by requiring that any joint resolution proposing to alter current distribution rates be made contingent upon approval of the US Congress.

Background:

According to the SIC:

- Nationally, permanent endowments such as the LGPF follow generally accepted distribution and spending policies, the most widely followed of which allows for annual distributions of between 3.0 and 5.0 percent of the corpus of the fund.
- Some state funds prohibit increased distributions altogether; others only allow increases for extreme emergency situations for which other funding is not available.
- As the principal of the LGPF grows, annual distributions will automatically increase – even if the percent distributed remains the same, allowing educational institutions and early childhood programs will benefit from those increased amounts, and share in a much greater benefit as time goes on.
- The principal of the fund must increase in order to offset potential inflationary impact.
- The principal of the fund must increase in anticipation of inevitable (in the LGPF's case) diminished contributions due to the finite nature of our state natural resources.
- Even if the investment returns plus annual contributions to the fund increase, invading the principal arguably is not prudent. As noted, the fund was established in order to assure

intergenerational equity, yet contributions from New Mexico's public lands and their underlying resources will likely decrease over time, as minerals are depleting resources, and the revenues they generate must become part of the principal of the endowment so earnings from those revenues can continue to provide funding for education and other needs in the years after the resources are themselves exhausted.

- If distributions from the permanent funds were increased, the SIC, as fiduciaries for the fund, would be required to accept increased investment risk in order to achieve the returns necessary to permit that level of payout, possibly exposing council members and staff to personal liability.

The last changes to Article XII, Section 7 occurred in 2003, when voters approved a constitutional amendment to:

- increase the annual distribution from the LGPF to the fund's beneficiaries (including public schools) to 5.0 percent from 4.7 percent of the average of the year-end market values of the fund for the immediately preceding five years;
- provide an additional 0.8 percent annual distribution from FY 05 to FY 12 (for a total distribution of 5.8 percent) and an additional 0.5 percent annual distribution from FY 13 to FY 16 (for a total distribution of 5.5 percent) to be used for education reform as provided by law;
- provide that the above additional distributions shall not be made in any fiscal year if the average of the year-end market values of the fund for the immediately preceding five calendar years is less than $5.8 billion;
- authorize the Legislature, by a three-fifths' vote of the members of each house, to suspend any of the above additional distributions; and
- revert the distribution to 5.0 percent in FY 17.

At that time, the increased distribution was considered conservative, and it was not expected to erode the corpus of the fund.[1]

[1] *CONSTITUTIONAL AMENDMENTS PROPOSED BY THE LEGISLATURE IN 2003, 0.03 APPEARING ON THE SEPTEMBER 23, 2003 SPECIAL ELECTION BALLOT, Brief Analysis and Arguments For And Against*, New Mexico Legislative Council Service, June 2003

The LGPF beneficiaries and their respective percent ownership are shown below:

Institutions	Percentage LGPF ownership
Common Schools	83.20
NMMI	3.38
NM School for the Deaf	2.07
School for the Visually Handicapped	2.06
NM State Penitentiary	2.02
UNM	1.60
Public Bldgs. Cap., Inc.	1.17
Water Reservoir	1.15
DHI Miners Hospital	1.04
Char. Penal and Reform	0.91
NMSU	0.50
Improve Rio Grande	0.27
NM State Hospital	0.24
NM Inst. Mining and Technology	0.21
ENMU	0.08
WNMU	0.03
NM Highlands	0.03
Northern NM College	0.02
NM Boys School	0.01
UNM Saline Lands	0.01
Carrie Tingley Hospital	0.00
Total	100.00

Committee Referrals:

HVEC/HAFC

Related Bills:

SJR 4 *Land Grant Fund Care & Investments, CA*
SJR 12 *Land Grant Fund Balance & Education, CA*