

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

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

Bill Number HJR9 **Sponsor** Maestas/Trujillo, Ch./Herrera
Tracking Number .216994.1 **Committee Referrals** HSEIC/HJC
Short Title No Permanent Funds for State Penitentiary, CA
Analyst Porter **Original Date** 2/6/2020
Last Updated _____

BILL SUMMARY

Synopsis of Joint Resolution

House Joint Resolution 9 (HJR9) proposes to amend Article XIII and Article XIV of the Constitution of New Mexico to remove the state penitentiary's designation as a beneficiary of the land grant permanent fund (LGPF) and send those funds to the public schools.

To become effective, HJR9 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 contain appropriations.

If enacted, HJR9 would result in an additional 1.8 percent distribution to public schools, which, for FY19, would have been approximately \$13.6 million.

Other Costs. The passage of HJR9 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

Despite being referred to in Article XIV of the Constitution of the State of New Mexico, the beneficiaries of the LGPF are established in the *Ferguson Act of 1898* and the *Enabling Act of 1910*, which can only be amended by Congress. Both acts were drafted by the United States Senate and House of Representatives as conditions for New Mexico's statehood. Section 6 of the *Ferguson Act* grants acreage "for the enlargement and maintenance of the territorial penitentiary," and Section 7 of the *Enabling Act* grants acreage "for penitentiaries." Furthermore, the decision

in *Regents of University of New Mexico v. Graham* stated: “*Ferguson Act* and *Enabling Act* are in pari material; they must be read and construed together to determine the policy of Congress.” Therefore, the beneficiaries cannot be changed by an amendment to the Constitution of New Mexico and without authorization of Congress through the amendment of the *Ferguson Act* and the *Enabling Act*.

OTHER SIGNIFICANT ISSUES

Background and History of the Land Grant Permanent Fund. 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* and the *Enabling Act* 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 permanent school fund (PSF), and the New Mexico State Penitentiary receives about 1.5 percent. 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 annually 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.

Consolidated *Martinez* and *Yazzie* Lawsuit. The decision in the consolidated *Martinez* and *Yazzie* lawsuit indicated educational services in public schools are insufficiently funded. 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, House Appropriations and Finance Committee Substitute for House Bills 2 and 3, as approved by the House, would appropriate approximately \$3.9 billion – an increase of approximately \$650 million from FY20.

ALTERNATIVES

The Legislature may wish to consider requesting Congress to amend the *Ferguson Act* and the *Enabling Act* to change the LGPF beneficiaries.

TECHNICAL ISSUES

The LGPF beneficiaries cannot be changed without authorization of Congress through the *Ferguson Act* and the *Enabling Act*.

HJR9 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

RELATED BILLS

Relates to HJR1, Permanent Funds for Early Childhood, CA, which proposes to amend Article XII, Section 7 of the Constitution of the State of New Mexico to increase annual distributions from the LGPF by 1 percent for all beneficiaries, provided that the amount of the additional distribution

from the 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.

SOURCES OF INFORMATION

- LESC Files
- Secretary of State (SOS)

LAP/tb/mc/sgs

**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%	(\$332,174)	\$121,912	\$254,480	\$186,436	\$1,272	\$8,131,956
New Mexico State University	\$71,291,552	0.4%	(\$2,979,994)	\$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%	(\$546,384)	\$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%	(\$13,587,054)	\$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%	(\$747,542,994)	\$882,616,521	\$574,129,598	\$427,085,618	\$3,172,735	\$18,668,018,918

Source: State Investment Council