

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/SJR 2

52nd Legislature, 2nd Session, 2016

Tracking Number: .203345.3

Short Title: Permanent Funds for Childhood Education, CA

Sponsor(s): Senator Michael Padilla

Analyst: David Craig

Date: February 3, 2016

**SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE JOINT RESOLUTION 2**

Bill Summary:

CS/SJR 2 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 1.0 percent for the purposes of early childhood education for 10 years.

Fiscal Impact:

Senate joint resolutions do not carry appropriations.

The FY17 Legislative Finance Committee Public School Support recommendation includes \$24.5 million in General Fund revenue and \$3.5 million in federal Temporary Assistance for Needy Families (TANF) funds for the public Pre-kindergarten Fund. The executive recommended \$28 million in General Fund revenue.

LESC staff estimate that total FY17 distributions from the LGPF would increase to \$765.6 million, or an increase of \$127.6 million over the 5.0 percent distribution scheduled for FY17 after existing additional distributions expire. This number is derived from the State Investment Council (SIC) estimate of the total distributions for FY17 proposed in the original SJR 2.

Under Section 1-16-13 NMSA 1978 and the Constitution of the State of New Mexico, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. If the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers. SOS estimates the cost per constitutional amendment to be \$104,000 based on 2010 actual expenditures.

At a Glance:

- CS/SJR 2 will increase revenues for current education programs and early childhood education.
- CS/SJR 2 may decrease distributions to LGPF beneficiaries in the future if the balance of the fund decreases because of the additional distributions.

Detailed Bill Provisions:

CS/SJR 2 proposes to amend Article XII, Section 7 of the Constitution of the State of New Mexico to increase annual distributions from the LGPF to:

- add an additional 1.0 percent distribution of the five-year average of the end-of-year market value of the fund to be used for early childhood education services administered by the state as provided by law;
- provide that the additional 1.0 percent distribution takes place in the first fiscal year following the effective date, and for the nine following fiscal years; but
- requires the five-year average ending balance of the LGPF to be at least \$10 billion before additional annual distributions are made.

CS/SJR 2 also:

- defines “early childhood education services” to mean nonsectarian services provided for the benefit of children not yet eligible for kindergarten;
- indicates early childhood education services may be provided by a school district; a charter school; a state contractor; an entity of an Indian nation, tribe or pueblo; the New Mexico School for the Blind and Visually Impaired (NMSBVI) or the New Mexico School for the Deaf (NMSD);
- provides that early childhood education services at NMSBVI or NMSD shall not be provided by a state contractor; and
- continues to allow the Legislature, by a three-fifths’ vote of the members elected to each house, to suspend the additional distributions.

If CS/SJR 2 passes, the amendment proposed by the resolution is to be submitted to the voters for their approval or rejection at the next general election or at any special election prior to that date that is called for that purpose. The proposed amendment will not become effective without the consent of the U.S. Congress.

Substantive Issues:

The chart below compares the total distribution amount of the five-year average balance of the LGPF under current law and the CS/SJR 2 proposal.

| Land Grant Permanent Fund Total Distribution Rate | | | |
|--|--------------------|-----------------|-------------------|
| Fiscal Year | Current Law | CS/SJR 2 | Difference |
| 2016 | 5.5 percent | 5.5 percent | 0 percent |
| 2017 | 5.0 percent | 6.0 percent | 1.0 percent |
| 2018 | 5.0 percent | 6.0 percent | 1.0 percent |
| 2019 | 5.0 percent | 6.0 percent | 1.0 percent |
| 2020 | 5.0 percent | 6.0 percent | 1.0 percent |

SIC indicated in its analysis of the original resolution that although public education receives nearly 85 percent of the distribution from the LGPF, more than half of the LGPF beneficiaries are not educational entities or are entities that have a mission unrelated to early childhood education. CS/SJR 2 places restrictions on the use of this increased funding on public education beneficiaries, requiring that it be spent on early childhood education. CS/SJR 2 increases distributions for all beneficiaries; however, it only directs the increases to be used for early childhood education services for one beneficiary. All other beneficiaries will be able to spend the increased distribution at their discretion.

In addition, SIC noted in its analysis of the original resolution that the corpus of the LGPF: must increase to offset inflation; must increase in anticipation of the inevitable decrease to contributions stemming from a revenue source tied to non-renewable resources, and as the corpus of the LGPF increases, annual distribution amounts increase. The SIC analysis showed that the increased distributions negatively impact measures of inter-generational equity. Additionally, SIC noted the requirement, for the five-year average ending balance of the LGPF to be \$10 billion prior to additional distributions, is unlikely to protect the LGPF in times of duress. For example, if the balance were to drop below \$5.0 billion in 2016, the five-year average balance of the LGPF would still be over \$10 billion.

Prior to 1997, approval of the U.S. Congress was required for any change to distributions from the LGPF. However, in 1997 Congress approved amendments to the federal *Enabling Act of 1910*, one of which specified that future distributions “shall be made as provided in Article 12, Section 7 of the Constitution of the State of New Mexico,” indicating that the U.S. Congress has given authority to the state to change this section of the constitution. Despite this amendment, in 2003 the Attorney General expressed concern that U.S. Congress “may disapprove of the higher distribution rates because the rates may conflict with existing safeguards for trust funds in the *Enabling Act*.” Therefore, the Attorney General recommended requiring Congressional approval in any proposed Constitutional Amendment that seeks to increase the distribution rate of the LGPF.

Related Bills:

SJR 3 *Permanent Fund Annual Distributions, CA*

HJR 10 *Permanent Funds for Early Childhood, CA*