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

ORIGINAL DATE 02/09/21
SPONSOR HEC **LAST UPDATED** 03/19/21 **HJR** CS/1/aSFC

SHORT TITLE Permanent Fund for Early Childhood, CA **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
-	*	($211,497.0)	($223,850.7)	($236,005.9)	Recurring	Permanent School Fund (component of the Land Grant Permanent Fund)
-	*	$211,497.0	$223,850.7	$236,005.9	Recurring	Common School Fund (a component of the general fund earmarked for public schools)

Parenthesis ( ) indicate revenue decreases
*The provisions of this bill require a constitutional amendment and approval by Congress. For the purpose of this FIR, the fiscal impact estimate assumes the constitutional amendment would be sought during FY22 and changes to the distributions would begin in FY23.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	$150.0 - $200.0		$150.0 - $200.0	Nonrecurring	General Fund

Parenthesis ( ) indicate expenditure decreases

Conflicts with SJR1

SOURCES OF INFORMATION
LFC Files

Responses Received From
State Investment Council (SIC)
Attorney General's Office (NMAG)
Children, Youth and Families Department (CYFD)
State Land Office (SLO)
Early Childhood Education and Care Department (ECEDC)
Public Education Department (PED)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendments to House Education Committee substitute for House Joint Resolution 1 changes the distribution to 1.25 percent and allows for the additional distribution to come only from the permanent school fund. Therefore, the other LGPF beneficiaries will not receive increased distributions. Of the new distribution from the permanent school fund, the amendment specifies 60 percent shall be for the provision of early childhood education and 40 percent shall be for enhanced instruction for students at risk of failure, extending the school year, and public school teacher compensation. The amendment states the additional distribution requires the consent of Congress to become effective.

The amendment also strikes the word "services" on page 4, thereby specifying the early childhood portion of the distribution is to be for early childhood education (rather than early childhood educational services).

By increasing to 1.25 percent, the additional distribution from the permanent school fund is estimated at $211.5 million in FY23 (assuming approval by voters and Congress). Under the amendment's specified percentages, this would provide $126.9 million for early childhood education, $84.6 million for public education as specified in the amendment.

Lastly, the amendment also increases the "safety valve" of the additional distribution, providing that the distribution shall not occur if the five-year average of the fund falls below $17 billion (currently set at $10 billion).

SIC notes that, although Congressional approval is required before portions of the new distribution can be used to fund early childhood education programs, it remains unclear whether this effort might require "redrawing" of beneficiary ownership of state trust land parcels, which would likely result in objections by the current 20 beneficiaries other than common schools.

Synopsis of Original Bill

The House Education Committee substitute for House Joint Resolution 1 seeks to amend Article XII, Section 7 of the New Mexico Constitution to provide an additional 1 percent annual distribution from the land grant permanent fund (LGPF). The proposed amendment stipulates the amount of the additional distribution coming from the permanent school fund (which is the largest component of the land grant permanent fund allocated to support "common schools"), is to be earmarked for early childhood educational (ECE) services. The amendment defines "early childhood educational services" as nonsectarian and nondenominational services for children until they are eligible for kindergarten.

The Constitutional Amendment would only be effective if passed by voters in the next general election (2022) or via a statewide special election held for this purpose.

FISCAL IMPLICATIONS

Earmarking the Additional Permanent School Fund Distribution for Early Childhood Education. The beneficiary of the permanent school fund (the largest component of the LGPF) is designated in the federal Enabling Act of 1910 and the Ferguson Act of 1898 as “common schools”, which is synomous with “public schools”.[1] Statute defines school-aged children as 5-22 years of age; therefore, the Legislature does not make funding available to schools directly for early childhood programs (it is viewed as separate from the K-12 system). Distributions from the permanent school fund flow into the “current school fund” which then flows to the public school fund for distributions for the state equalization guarantee, transportation, and supplemental uses (out-of-state tuition, emergency, and program enrichment). See Attachment 1 for a flow chart of funding for public schools from state trust lands.

The proposed joint resolution earmarks the additional distribution from the permanent school fund for early childhood educational services administered by the state. However, given the current flow of funding, LFC staff cannot identify the statutory authority through which the ECEDC could receive any distributions from the permanent school fund. Currently, the Legislature appropriates funds for early childhood programs to Early Childhood Education and Care Department (ECEDC) and then the Public Education Department (PED) makes a request on behalf of schools for funding from ECECD.

See the Significant Issues section for additional discussion on this issue.

Impact on the LGPF. The fiscal impact table assumes voters approve the amendment in the next general election (November 2022) and that Congressional approval is granted by July 1, 2022. Therefore, assuming the 6.25 percent distribution from the permanent school fund (SFC amendment) would begin in FY23, LFC staff analysis shows the proposed amendment would deliver about $211.5 million in additional distributions that year to the common school fund (a component of the general fund), which HJR1 (as amended by SFC) seeks to earmark for public education (enhanced instruction for students at risk of failure, extending the school year, and public school teacher compensation) and early childhood education administered by the state. The other 20 beneficiaries of the LGPF would receive no additional distribution. Depending on the timing of potential voter approval of the constitutional amendment, it is possible for additional distributions to begin sooner.

The proposal does not contain a delayed repeal date; therefore, the additional 1.25 percent distribution from the permanent school fund would continue into perpetuity.

Increasing the distribution rate results in more common school fund revenue in the short term, but reduces the total value of the fund. Doing so limits the fund’s ability to grow over time and reduces the general fund distributions in the long term. The following table shows LFC staff’s analysis of the differences in the current 5 percent distribution rate versus the proposed 6.25 percent distribution. The analysis assumes (1) inflows from oil and gas royalties consistent with the consensus revenue forecast’s expected growth in oil and gas value over the next five years and static inflows for five years after that, and (2) a 5.5 percent investment return over the next 10 years then a 7 percent return afterwards consistent with the SIC’s target, on average.

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[1] Attorney General Opinion No. 12-03 states “The Enabling Act uses the term “common schools” which is synonymous with “public schools.” See, e.g., Andrus v. Utah, 446 U.S. 500, 506 (1980) (using the terms “common schools” and “public schools” interchangeably); Board of Education v. Corey, 163 P. 949, 953 (Okla. 1917) (“the phrase ‘common schools’ being synonymous with ‘public schools’”).”

The LFC analysis below shows the increased general fund distribution would average about $230 million for six years; however, the additional distribution would provide diminishing returns over time, as a higher distribution from a smaller corpus yields fewer benefits each year. After 15 years, the additional funding from the increased general fund distribution would be less than $140 million, and the additional funding would decrease by about $15 million each year thereafter. By FY44, the distributions from the smaller corpus would be less than the distributions that would have occurred under current law.

Calendar Year		Corresponding Fiscal year	LGPF Value at CY-end at current 5% ($billions)	LGPF Distribution at 5% ($millions)	LGPF Value ($B) at CY-End w/ 6.25% for Perm. School Fund	LGPF Distribution at 6.25% for Perm. Sch.	Difference in LGPF Value ($billions)	Difference in LGPF Distribution ($millions)	Difference in General Fund Distribution ($millions)
2019		2021	$19.724	$836	$19.724	$836	$ -	$ -	$ -
2020		2022	$21.599	$908	$21.599	$908	$ -	$ -	$ -
2021		2023	$22.898	$986	$22.844	$1,197	$ (0.054)	$ 211	$ 182.0
2022		2024	$24.245	$1,055	$24.020	$1,279	$ (0.225)	$ 224	$ 192.5
2023		2025	$25.608	$1,141	$25.083	$1,376	$ (0.524)	$ 236	$ 202.8
2024		2026	$26.980	$1,213	$26.126	$1,454	$ (0.854)	$ 241	$ 205.0
2025		2027	$28.364	$1,281	$27.152	$1,522	$ (1.212)	$ 241	$ 204.9
2026		2028	$29.750	$1,349	$28.158	$1,586	$ (1.592)	$ 237	$ 201.5
2027		2029	$31.141	$1,418	$29.149	$1,649	$ (1.991)	$ 230	$ 195.9
2028		2030	$32.535	$1,488	$30.129	$1,710	$ (2.407)	$ 222	$ 189.1
2029		2031	$33.934	$1,557	$31.096	$1,770	$ (2.837)	$ 213	$ 181.3
2030		2032	$35.336	$1,627	$32.053	$1,830	$ (3.282)	$ 203	$ 172.7
2031		2033	$37.206	$1,702	$33.399	$1,894	$ (3.807)	$ 192	$ 163.4
2032		2034	$39.075	$1,781	$34.722	$1,961	$ (4.353)	$ 180	$ 153.6
2033		2035	$40.940	$1,865	$36.018	$2,033	$ (4.922)	$ 168	$ 142.9
2034		2036	$42.799	$1,954	$37.284	$2,108	$ (5.514)	$ 154	$ 131.5
2035		2037	$44.648	$2,047	$38.516	$2,187	$ (6.131)	$ 140	$ 119.1
2036		2038	$46.484	$2,139	$39.711	$2,263	$ (6.774)	$ 124	$ 105.4
2037		2039	$48.307	$2,232	$40.865	$2,338	$ (7.442)	$ 106	$ 90.3
2038		2040	$50.119	$2,324	$41.983	$2,410	$ (8.136)	$ 87	$ 73.9
2039		2041	$51.920	$2,415	$43.063	$2,481	$ (8.857)	$ 66	$ 56.0
2040		2042	$53.713	$2,505	$44.109	$2,549	$ (9.604)	$ 43	$ 36.7
2041		2043	$55.499	$2,596	$45.122	$2,614	$ (10.377)	$ 19	$ 16.0
2042		2044	$57.281	$2,685	$46.103	$2,678	$ (11.178)	$ (7)	$ (6.2)
2043		2045	$59.060	$2,775	$47.054	$2,740	$ (12.005)	$ (35)	$ (29.9)
2044		2046	$60.837	$2,864	$47.978	$2,799	$ (12.860)	$ (65)	$ (55.0)
2045		2047	$62.616	$2,953	$48.874	$2,857	$ (13.742)	$ (96)	$ (81.5)
2046		2048	$64.397	$3,042	$49.745	$2,913	$ (14.651)	$ (128)	$ (109.4)
2047		2049	$66.182	$3,131	$50.593	$2,968	$ (15.589)	$ (163)	$ (138.7)
2048		2050	$67.972	$3,220	$51.418	$3,021	$ (16.554)	$ (199)	$ (169.4)
2049		2051	$69.769	$3,309	$52.221	$3,073	$ (17.548)	$ (237)	$ (201.5)
2050		2052	$71.597	$3,399	$53.025	$3,123	$ (18.572)	$ (276)	$ (235.0)
2051		2053	$73.457	$3,490	$53.831	$3,173	$ (19.626)	$ (317)	$ (269.9)
2052		2054	$75.350	$3,581	$54.639	$3,222	$ (20.711)	$ (360)	$ (306.1)
2053		2055	$77.279	$3,675	$55.451	$3,271	$ (21.827)	$ (404)	$ (343.6)
2054		2056	$79.243	$3,769	$56.268	$3,320	$ (22.975)	$ (449)	$ (382.3)
2055		2057	$81.245	$3,866	$57.089	$3,369	$ (24.156)	$ (496)	$ (422.4)
2056		2058	$83.284	$3,964	$57.915	$3,419	$ (25.369)	$ (545)	$ (463.8)
2057		2059	$85.362	$4,064	$58.746	$3,469	$ (26.617)	$ (595)	$ (506.6)
2058		2060	$87.480	$4,166	$59.581	$3,519	$ (27.898)	$ (647)	$ (550.7)

Note: assumes increased distribution beginning in FY23

The impact of an additional 1.25 percent distribution can also be swayed substantially by investment returns and annual revenue inflows to the permanent fund, which are driven primarily by oil and gas royalties. Put simply, higher oil and gas inflows to the LGPF and higher than expected investment returns significantly help mitigate the long-term effects of spending additional investment earnings through an increased drawdown. However, the opposite holds true as well, where depressed oil and gas prices, coupled with lower investment returns (which many predict over the next decade), and a higher spending rate have a greater potential to negatively impact the growth of the endowment and distributions from the fund over the long-term.

According to analysis by the State Land Office (SLO) on the original HEC substitute for HJR1, the corpus of the LGPF would be preserved with an additional 1 percent distribution from the fund, with SLO defining "corpus" as the sum of all the inflation-adjusted royalty contributions to the LGPF from SLO since inception of the fund.

State Investment Council staff point out the challenging nature of estimating oil and gas royalty inflows and notes that public energy policy could impact production, and therefore state revenues.

Regarding the trade-off of the additional benefits of an increased distribution now versus a higher distribution from a higher corpus fund later, SIC staff offer the following:

> "From a long-term, multi-decade perspective, there is also an unavoidable conclusion that an endowment fund like the LGPF that distributes 5 percent of its corpus will ultimately deliver more money to NM education overall than a fund distributing 6 percent. This is due to the power of compounding interest, which on a long-term basis will create a larger endowment at the lower spending rate, due to increased investment gains over time. The question as to whether spending an additional amount from the fund today can help satisfy current (and future) needs of New Mexico via creation of greater returns in human capital, remains a matter of public policy, and will likely hinge on execution of an effective plan over time."

Notably, the additional 1.25 percent 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 permanent school fund. 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 public and early childhood education. In other words, leaving the LGPF distribution as is would 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. [Note, this may be of less concern under the proposal as amended by SFC.]

Constitutional Amendment. Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is $150 -$200 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

Distributions as a Percent of the Five-Year Average. It has been discussed that due to the use of a 5-year rolling average to determine what distributions will be for the fiscal year starting six months after the end of year valuation (and ending 18 months after that mark), the 5 percent is in fact "below 5 percent" by the time the percentage of the 5-year rolling average amount is deployed as much as 17 months later. This statement, taken using a snapshot in time, is technically correct – as long as the fund is growing as the LGPF currently is. Should the fund's value be falling over a multi-year period, the reverse would apply, and resulting in a distribution rate higher than 5 percent based on current market values. The following chart provided by SIC below illustrates this historically.

SIC notes that using a 5-year rolling average of the fund value to determine a spending/distribution policy is standard among permanent funds and endowments; and therefore, New Mexico is not an outlier. The average is used to assist policy-makers better plan and avoid significant drops in year-over-year distributions.

Intergenerational Equity. SIC has periodically used an "intergenerational equity index" to assess the long-term health of each of its permanent funds. The index – like long-term projections - is not overly precise and can show volatility at times. It uses a score out of 100 to represent balance between generations. The index is best for identifying trends over time, rather than a specific year's score. In 2019, the LGPF rose to a score of 57/100, indicating a slight overweighting to future generations over current ones. However, in 2020 – pre-pandemic, and boosted by record inflows strong investment returns and lower than historic inflation expectations – the index spiked to 79/100. SIC stated the council will reassess this figure and see whether the trend continues in 2021.

Does Earmarking the Additional Distribution from the Permanent School Fund for Early Childhood Education Create a New Beneficiary? Because the permanent school fund was expressly create for the benefit of "public schools", and the Public School Code defines school-aged children as 5-22 years of age,[2] it could be argued that adding early childhood education as a recipient of the permanent school fund creates a new beneficiary of the trust that would require U.S. congressional approval. *[Note, the SFC amendment to HJR1 requires congressional approval prior to becoming effective.]*

Notably, pre-kindergarten is not part of the Public School Code, but is instead part of the Children's Code (Section 32A-23 NMSA 1978). As discussed in the Fiscal Implications section, although PED administers certain early childhood programs, this funding is received via appropriations to ECEDC rather than other traditional mechanisms of receiving funds for public schools such as distributions from the permanent school fund.

The HEC substitute for HRJ1 does not seek congressional approval to allocate funds from the permanent school fund to early childhood education. However, the Enabling Act of 1910 clearly states that proceeds from sales of state trust lands designated for common schools must be allocated to a "<u>permanent inviolable fund, distributions from which shall be made in accordance with the first paragraph of Section 10 and shall be expended for the support of the common schools within said state</u>." Section 10 of the Act states, "<u>disposition of any said lands, or of any money or thing of value directly or indirectly derived therefrom, *for any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived*, were granted or confirmed, or in any manner contrary to the provisions of this act, *shall be deemed a breach of trust*</u>." Section 10 goes on to state, "<u>…the use of the natural products thereof, *not made in substantial conformity with the provisions of this act*, shall be null and void, any provision of the constitution or laws of the said state to the contrary notwithstanding…</u>".

In its analysis of this bill, the Legislative Education Study Committee (LESC) states that, given the strong language in the Enabling Act and language in the state Constitution, failure to secure congressional approval to divert funds from the common schools to provide early childhood educational services to children until they are eligible for kindergarten may open the state to litigation. *[Note, the SFC amendment to HJR1 requires congressional approval prior to becoming effective.]*

Early Childhood Education and Care Spending. New Mexico's early childhood care and education system begins prenatally and extends through age 8. Benefits of prekindergarten include improved math and reading proficiencies for low-income 4-year-olds, lower special education designation and retention rates, and lessened negative effects of mobility.

According to the LFC, the state has increased its funding to various ECE programs in recent years, spending more than $450 million in FY21 across childcare assistance, home visiting, Pre-K, K-5 Plus, and early literacy. In addition, Head-Start and Early Head Start receive an additional $70 million direct federal funding for programs bringing early childhood funding to over $500 million, significantly higher than $136 million in FY12. Despite significant barriers to expansion, New Mexico is close to providing sufficient funding to ensure most low-income 4-year-olds receive at least some type of early education through childcare assistance, prekindergarten, or Head Start.

[2] Section 22-1-2(O)

Due to significant expansion of services and a declining birthrate, competition among providers is problematic. Multiple reports over the last several years identified the problem of a growing supply of services for 3- and 4-year-old children from multiple programs, such as prekindergarten, childcare assistance, and Head Start. Ensuring community resources are dedicated to quality is essential; otherwise competition can lead to diminished outcomes. The state's rapid and substantial investment into prekindergarten and childcare has coincided with a drop in Head Start enrollment, leading some programs to lose federal funding. Anecdotal information from Head Start providers indicates chronically under-enrolled programs can potentially lose existing funding and be disqualified from competing for new funding opportunities.

In the last decade, appropriations for the PED administered early childhood education programs have increased over tenfold, from about $5 million in FY07 for prekindergarten and K-5 Plus to $138 million for these two programs and an early reading initiative in FY21.

As of FY21 the newly created Early Childhood Education and Care Department (ECECD) is the lead agency for early intervention programs, including those concerning physical development, communications, adaptive, social and emotional development, and programs such as childcare assistance, prekindergarten, and home-visiting. Previously, many of the programs were administered by other state department such as the Children, Youth and Families Department, Department of Health, and Public Education Department.

PreK Funding. In FY21, 13,386 children were funded to receive prekindergarten services, including extended day services and early prekindergarten for 3-year-olds. Prior to FY16, prekindergarten was only available to 4-year-olds but policymakers expanded services for 3-year-olds to support continued gains in student achievement outcomes, and authorized extended day services. The state has also increased its funding to various early childhood education programs in recent years (see attached funding chart).

Of the total $100 million operating budget for prekindgarten in FY21, $48.8 million goes to public schools and $51.2 million to the network of private providers. It should be noted that while prekindergarten funding is appropriated to ECECD, following the application process, funding for public school prekindergarten is transferred to Public Education Department for disbursement.

Home Visiting Funding. In FY21, ECECD contracted for 3,917 Home Visiting slots statewide. These slots are in addition to the state's pilot for a Medicaid-matched home visiting program. Medicaid-matched home visiting is one the most important early childhood expansion opportunities available to the state. Prior to the pilot, most state home visiting programs were funded from the state general fund, federal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) grant funds, and federal Temporary Assistance for Needy Families grant (TANF) transfers from the Human Services Department. Medicaid-matched home visiting would allow the state to significantly match federal revenue with state funds.

In FY21, state general fund appropriations for Home Visiting are $15.1 million. If the state amended the waiver to include more program models and maximized state general fund with a 1 to 3 federal matching rate, home visiting funding could bring in an additional estimated $40 million in federal funds the state is not currently receiving.

Childcare Assistance Funding. The early days of the pandemic saw childcare attendance drop precipitously, and several hundred providers closed their doors. ECECD responded with emergency measures providing financial incentives for childcare providers who stayed open, including both a differential rate per child, and payments for children coming from closed providers. In addition, the state began paying childcare assistance contracts based on enrollment, not attendance, to help prevent a collapse of the state's childcare industry. While the state was paying based on enrollment, the number of children attending was estimated to be 30 percent of the pre-pandemic level.

These policy changes resulted in significantly increased childcare assistance spending from March to June. However, as of December enrollment in childcare assistance has drop from an average of 20 thousand pre-pandemic per month to 15 thousand, and as low as 13 thousand in October, November, and December resulting on less pending per month overall. If enrollment in childcare assistance does not increase in the remainder of the fiscal year it is likely the program will not expend a significant portion of its operating budget. In addition, the newest federal stimulus package included an additional $82 million for childcare assistance in the State of New Mexico. ECECD is still developing a proposal for these revenues.

Public Education. The SFC amendment to the HEC substitute for HJR1 provides for some of the increased distribution from the permanent school fund to be for the benefit of public schools. On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated Martinez v. New Mexico and Yazzie v. New Mexico education sufficiency lawsuits, and found that New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English language learners, Native American students, and special education students. The court's findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

The Legislature allocates $3.2 billion, or 45 percent of general fund appropriations, to public schools annually, along with about half a billion dollars in federal revenues for public education expenses. According to the U.S. Census Bureau's 2018 Annual Survey of School System Finances, New Mexico ranks fourth in the nation for the share of school revenue attributable to state sources by providing over two-thirds of every dollar to schools for their operations and capital expenses.

Between FY17 and FY20, the Legislature increased recurring public school appropriations by nearly $567 million, or 21 percent, and planned to increase appropriations by another $206 million, or 6.4 percent, in FY21. However, precipitous declines in state revenue forced the Legislature to pair back budget increases, resulting in FY21 public school general fund appropriations that were about flat with FY20 funding levels. Although federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding provided $108 million to help New Mexico schools defray costs related to the Covid-19 health emergency, the transition to remote and hybrid learning highlighted inefficiencies from centralized control and revealed stark disparities in local capacity to deliver educational services to all students.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with Senate Joint Resolution 1, which increases the distribution from the LGPF to provide for teacher salaries and instruction purposes as provided by law.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

Administration of Early Childhood Educational Services. The proposal appears to be in conflict with Section 32A-23-9 NMSA 1978, which requires any money appropriated for pre-kindergarten programs be divided equally between programs administered by the public schools and other programs licensed by the department. Attorney General Opinion No. 12 - 03, dated February 1, 2012, clarifies that <u>any proposed constitutional amendment to increase distributions from the LGPF for early childhood learning programs would only be permissible if the increased distributions were limited to those programs provided by the public schools</u>. However, ECEDC administers a significant portion of the State's early childhood services and those services are delivered through private contractors.

In prior impact analyses of previous versions of this bill, CYFD provided the following statement on the bill's impact on the state's early childhood programs:

> "According to the Attorney General's opinion, the funds from the Land Grant Permanent Fund cannot be used to support private schools (including private early childhood programs) but can be used for early childhood learning programs provided by the public schools. Any distribution made pursuant to this joint resolution could only be used by the Public Education Department for early childhood programs exclusively under the control of the State. The majority of the Public Education Department's early childhood education services is provided through PreKindergarten programs. Therefore, the majority of the appropriations made through the distributions provided by the joint resolution would fund Pre-Kindergarten programs run by the Public Education Department.
>
> It is unclear as to whether these funds could legally be awarded to private providers who are now funded for [prekindergarten] and other early childhood services through [ECEDC]. <u>It is also unclear as to whether these funds could flow to ECECD rather than the PED.</u> Additionally, the 2019 Legislative Education Study Committee staff analysis of this proposal states the amendment's definition of early childhood educational services as nonsectarian and nondenominational, make it appear the intent is to appropriate the additional 1 percent permanent school fund distribution to entities other than public schools for early childhood educational services."

PED also previously reiterated these concerns, stating, "It is unclear as to whether these funds could legally be awarded to private providers who will be funded for NM PreK and other early childhood services through ECECD. It is also unclear as to whether these funds could flow to the proposed Early Education and Care Department rather than the PED."

Additionally, the Legislative Education Study Committee (LESC) staff analysis of similar proposals stated, "Of note is that public schools are the primary beneficiaries of the [permanent school fund] – but not the specific recipients indicated in HJR1. The Legislature may want to consider the legal and fiscal impact of increasing distributions from the [permanent school fund] for services other than public school services.

OTHER SUBSTANTIVE ISSUES

Early Childhood Education. It is important to note that the Early Childhood Education Department (ECECD) administers a significant portion of the state's early childhood services and those services are delivered through private contractors. CYFD states it is unclear how this joint resolution [as introduced] would impact CYFD's and New Mexico's current structure for delivery of early childhood services (see *Technical Issues* section).

Similarly, ECECD notes the bill only mentions that "early childhood educational services that are administered by the state..." and does not specify whether these funds flow through the ECEDC for distribution. This bill defines early childhood educational services as nonsectarian and nondenominational, this implies that the intent is to appropriate the additional 1 percent permanent school fund distribution to entities other than public schools for early childhood educational services.

Early Childhood Education and Care Fund. In 2020, the state recognized the value of creating a new endowment when it established a new trust fund, the Early Childhood Education and Care Fund, as well as a new department to administer these programs. The new trust fund will initially distribute $30 million, with subsequent years having a minimum $20 million distribution. While this amount falls short of the $170 million being sought by this bill, it created a long-term asset to act as a revenue engine and funding stabilizer for the state.

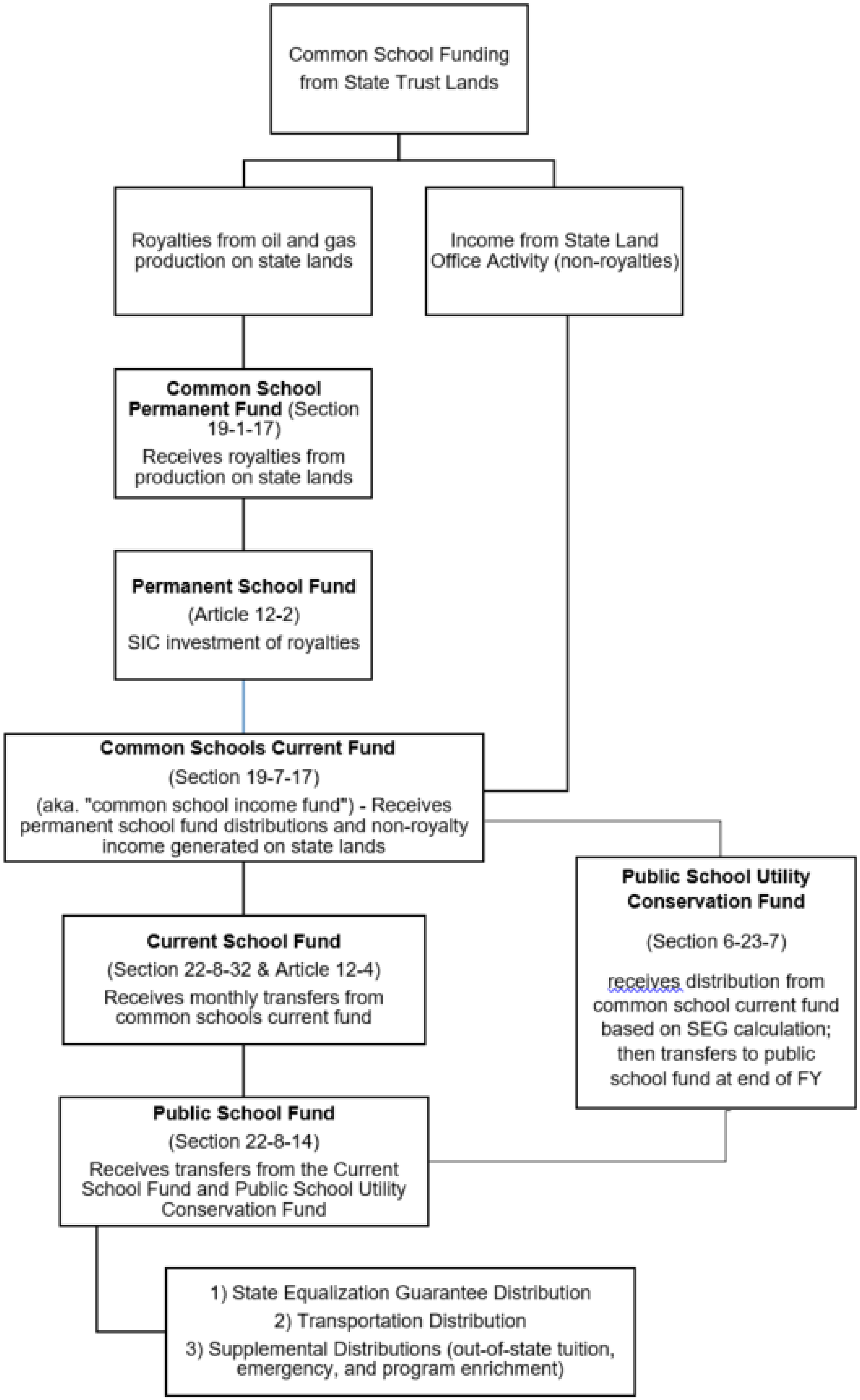
SIC suggests that, if there is concern in the timeliness of building capacity for early childhood education programs, "policy makers should consider a way to keep any excess invested prudently, given how low returns currently are for short-term securities, relative to broader public markets investments. The alternative would be reverting excess funds to the LGPF, delivering them to the [early childhood trust fund] or supplanting existing general fund appropriations with these dollars – which was a concern voiced previously regarding the 2003 amendment and its additional LGPF expenditures."

LGPF Beneficiaries. The chart below lists the 21 existing beneficiaries of the LGPF as determined by the federal Enabling Act of 1910 and the Ferguson Act of 1898, and the percentage of the distributions they receive on a monthly basis.

Land Grand Permanent Fund (LGPF) Beneficiaries Percent distribution as of December 1, 2020	
COMMON SCHOOLS	86.247%
UNIVERSITY OF N.M	1.189%
UNM SALINE LANDS	0.041%
N.M. STATE UNIVERSITY	0.364%
WESTERN N.M. UNIVERSITY	0.022%
N.M. HIGHLANDS UNIVERSITY	0.022%
NO. N.M. COLLEGE	0.018%
EASTERN N.M. UNIVERSITY	0.067%
N.M INST. MINING & TECH	0.166%
N.M. MILITARY INSTITUTE	2.832%
N.M. BOYS SCHOOL	0.005%
DHI MINERS HOSPITAL	0.768%
N.M. STATE HOSPITAL	0.330%
N.M. STATE PENITENTIARY	1.709%
N.M. SCHOOL FOR THE DEAF	1.687%
SCH. FOR VISUALLY HAND.	1.683%
CHARITABLE PENAL & REFORM	0.680%
WATER RESERVOIR	0.852%
IMPROVE RIO GRANDE	0.190%
PUBLIC BUILDINGS	1.127%
CARRIE TINGLEY HOSPITAL	0.001%
Total	100%

DI/rl/al

ATTACHMENT 1



ATTACHMENT 2 – LGPF Quick Facts

What is the Land Grant Permanent Fund?

- Established in 1912 through New Mexico's entry into statehood.
- Tied to the federal Enabling Act of 1910, which stipulated that such land grants were to be held in trust for the benefit of the public schools, universities, and other specific beneficiary institutions.
- Oil and gas revenues (rents, royalties, and bonuses) make up over 90 percent of contributions to the fund – 2020 contributions totaled about $918 million.
- One of the largest sovereign wealth funds in the country – currently about $21.6 billion.
- General fund distributions are earmarked for public schools.

Current Distributions from LGPF

Currently, 5 percent of the LGPF five-year average is distributed to 21 beneficiaries of the fund based on land-ownership. The general fund (earmarked for common schools) is the largest fund beneficiary, receiving approximately 85 percent of the distribution. Other beneficiaries include universities, hospitals, and other public institutions. In FY22, LGPF distributions to the general fund will be about $771 million.

Distribution History

- Originally, only interest earnings were distributed to beneficiaries.
- 1996, voters passed a constitutional amendment to raise the distribution amount to 4.7 percent of the five-year average value of the fund.
- 2003, by a slim margin (92.2 thousand for, 92.0 thousand against), voters passed a constitutional amendment to:
  - Raise the annual distribution to 5 percent,
  - Provide an additional distribution of 0.8 percent from FY06 – FY12 (totaling 5.8 percent),
  - Reduce the additional distribution to 0.5 percent from FY13 – FY16 (totaling 5.5 percent),
  - Earmark the general fund portion of the additional distributions to implement educational reforms.
- In FY17, the distribution reverted back to 5 percent.

Important Considerations

LGPF was established and is required by law to benefit public schools and other beneficiaries indefinitely. It is funded by income from non-renewable resources and was designed to provide for future generations of New Mexicans even when those resources are exhausted.

As the fund grows, distributions grow.

- While increasing the distribution rate results in more general fund revenue in the short term, doing so reduces the total value of the fund, limiting the funds' ability to grow and reducing the general fund distributions in the long term.
- If the 2003 amendment to LGPF were never passed, the fund would have been $1.5 billion greater in CY17. For CY17 an additional $1.5 billion would have generated another $223 million in net earnings for the fund.
- ***The "Tipping Point"*** - By 2017, distributions to the general fund were smaller than they would have been if the 2003 amendment had never occurred. If the distribution had never increased from 4.7 percent, the annual general fund distribution would have been about $15 million higher in FY17. The original FIR for this legislation (SJR6, 2013) accurately projected the timing of this tipping point.