FISCAL IMPACT REPORT

		LAST UPATED	
SPONSOR	Rodriguez	**ORIGINAL DATE**	02/07/23
SHORT TITLE	Permanent Fund for Education Implementation	**BILL NUMBER**	Senate Bill 129
		ANALYST	Faubion

REVENUE*
(dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
See Fiscal Implications				

Parentheses ( ) indicate revenue increases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
Office of the Attorney General (NMAG)
State Investment Council (SIC)
State Treasurer's Office (STO)
State Land Office (SLO)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill Senate Bill 129

Senate Bill 129 creates an account in the treasury to deposit the land grant permanent school fund distribution for early childhood education pursuant to the 2022 constitutional amendment. The portion of the distribution for early childhood education will be distributed to the new early childhood education current fund for legislative appropriation. Distributions are anticipated to begin in FY24.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

In the 2022 general election, voters approved a constitutional amendment (CA1) to increase the distribution from the permanent school fund—the largest component of the land grant permanent fund (LGPF)—from 5 percent of the five-year average to 6.25 percent. The additional distribution will flow to the general fund, earmarked at 60 percent for early childhood education and 40 percent for public school initiatives and teacher salaries. The portion of the increased distribution for public education will adhere to the current process for public school funds distributed from the land grant permanent school fund. Under this bill, the portion of the distribution for early childhood education will be distributed to a new account, the early childhood education current fund, within the general fund for legislative appropriation for its stated purpose. As such, the additional distributions, estimated at more than $230 million in FY24, are included in the general fund estimate. This bill has no fiscal impact because it is simply identifying the flow of the distribution already approved by voters. The funds would otherwise flow into the common school current fund, also a general fund account.

Current unofficial amounts from the State Investment Council (SIC) show the LGPF value as of December 31, 2022, at $25.8 billion, with the school permanent fund 87.407 percent of that amount, or $22.5 billion. That would mean the LGPF total distribution for FY24 would be $1.39 billion with $240.2 million being specific to CA1 ($144.1 million of that for early childhood education and $96.1 million for public education).

SIGNIFICANT ISSUES

This bill serves to outline the path of the early childhood education portion of the new land grant permanent fund distribution so that it can be appropriated through the Legislature for its intended purpose. In the absence of this bill, there is no specified account for the funds to flow into, creating possible statutory ambiguity in how the funds can be appropriated.

However, all three agencies responsible for executing the functions of the LGPF—DFA, SLO, and SIC—share the opinion that the purpose of CA1 can be executed without legislation through administrative means and existing appropriative procedures. As the constitutional amendment did not create a new beneficiary of the LGPF but rather earmarked an additional distribution to an existing beneficiary, proper appropriation of the earmarked funds can be achieved through the General Appropriation Act. While the agencies will need to track the amount of money that should be appropriated to the purposes outlined in CA1, this does not require a new statutory fund or other statutory changes.

The Department of Finance (DFA) notes the following (emphasis added):

> *The creation of the funds and distribution language being added to 19-1-17 does not appear to be necessary, as these funds could be appropriated in the General Appropriation Act for the purposes permitted by the newly amended Article XII, Section 7.*
>
> If not enacted, the 40 percent of the 1.25 percent additional distribution to public schools would not be appropriated directly to the public education reform fund, and the additional 60 percent for early education would not be appropriated to the early education current fund. *The additional distribution would flow through the general fund, as is status quo. The legislature could then appropriate these funds for the purposes outlined in the constitutional amendment accordingly without needing a change to statute.*

The State Investment Council (SIC) notes the following (emphasis added):

> While the State Land Office (SLO) and State Investment Council (SIC) both contribute to the monthly process of accounting for new dollars (income/land transfers) flowing into and out of the LGPF, distributions to LGPF beneficiaries are made by the SIC, working

with the Department of Finance and Administration and the State Treasurer's Office. In the case of the new CA1 distributions however, there is not a categorically "new" beneficiary being created for the LGPF, but rather a subset of an existing beneficiary, the school permanent fund, that will draw an increased additional rate of distribution (1.25 percent) from the LGPF's largest component – with some specific earmarks being attached to that additional outflow. It is the specific uses that the new CA1 dollars will be required to be spent toward that there must be separate accounts established to ensure these CA1 reform dollars are not intermingled with or somehow supplant other education or common school dollars that do not have a specific earmarks or restrictions on use.

While we agree for these reasons that it is critical to separate these new distribution dollars from the base distribution of 5 percent that still goes to all the LGPF beneficiaries, it is uncertain whether the mechanism for this additional CA1 distribution should be accounted for in the enabling law rather than as an administrative accounting treatment using separate suspense accounts housed at the state treasury, as is the LGPF.

The State Land Office (SLO) notes the following (emphasis added):

The bill does not effectuate the intent of CA1 by modifying the funds pertaining to the flow of revenue from the State Land Office to the Land Grant Permanent Fund (LGPF) rather than focusing on distributions out to beneficiary institutions from the LGPF, which is managed by the State Investment Council.

State Land Office earnings that do not permanently deplete a resource, such as agricultural and renewable income, are transferred monthly by the State Land Office to the respective beneficiary institutions (Land Maintenance Fund). Earnings that are derived from sources that permanently deplete a resource, such as oil and gas royalties, are transferred to the State Investment Council where they are held and invested as part of the Land Grant Permanent Fund. The SIC, in conjunction with the Department of Finance and Administration and the State Treasurer's Office, makes distributions from the LGPF in accordance with Article 12, Section 7 of the New Mexico.

CA1 changed the distribution rate and stipulated specific uses as it pertains to LGPF distributions related to the common schools beneficiary, an existing beneficiary. However, the effect of the constitutional amendment is not to change the funds into which the State Land Office deposits revenues from leasing and selling state trust lands. Instead, the effect is on distributions out of the LGPF, which is the subject matter of a different statutory section, specifically, Section 19-1-20, which incorporates the constitutional provision simply by reference:

§ 19-1-20. Transfers and distributions of funds for schools and institutions

. . .

B. The secretary of finance and administration shall make distributions from the land grant permanent funds enumerated in Section 19-1-17 NMSA 1978 in the amount authorized by and calculated pursuant to the provisions of Article 12, Section 7 of the constitution of New Mexico.

C. One-twelfth of the total amount authorized to be distributed in a fiscal year pursuant to Article 12, Section 7 of the constitution of New Mexico shall be distributed each month to the beneficiaries enumerated in Section 19-1-17 NMSA 1978. Each beneficiary shall receive that portion of the monthly distribution to which it is entitled pursuant to law.

By incorporating aspects of distributions out of the LGPF into a statutory section and regime pertaining to State Land Office contributions to the LGPF, the bill would likely cause a disruption of existing State Land Office processes, which do not need to be changed in order to effectuate the changes in the way the SIC distributes money out of the LGPF as outlined in CA1. This would unnecessarily disrupt existing State Land Office financial and accounting practices and create various administrative burdens.

JF/rl/hg