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

ORIGINAL DATE 01/31/12
SPONSOR Miera **LAST UPDATED** **HJR** 21

SHORT TITLE Public School Support Enhancement Fund **SB**

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**		
0	124,564.0			General Fund/ PSSEF
	24,436.0			Other LGPF beneficiaries

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
SLO
SIC
No Response from AGO

SUMMARY

Synopsis of Bill

House Joint Resolution 21 amends Article 12 Section 7 of the state Constitution, increasing annual distributions from the Land Grant Permanent Fund to a new base of 5.8% from FY 2013 forward, while calling for additional distributions totaling 7% for fiscal years 2014-2023.

The additional distributions FY 2014-2016 gradually increase the amount earmarked specifically for early childhood education, targeting children from age's birth to five years old. From FY 2016-2023, 1.5% of the LGPF distribution will specifically be required for early childhood education.

HJR 21 also creates the "Public School Support Enhancement Fund" in the state treasury, as a repository of the annual LGPF distributions, to be combined with legislative appropriations, gifts, grants and donations, for administration by the public education department as outlined by law.

The proposal states that should the 5-year average of the LGPF drop below $5.8 billion, the additional percentage specifically called for to fund early childhood learning (the percentage varies by year) would not be distributed.

If approved by the legislature, the constitutional amendment would be brought to voters in the next general election or at a special election for this purpose.

SIGNIFICANT ISSUES

This increased distribution will deplete the fund over time. Under these assumptions of 6.2% investment return, inflation and growing contributions, the growth rate of the LGPF drops to just above 3%, which results in a very high probability that the Fund will have a lower value in today's dollars in 2031 than it does in 2012. By shrinking the value of the fund in this manner during the next 20 years, children and grandchildren of the future will likely be shortchanged by a lower level of benefits produced by the LGPF.

However, the concept of a perpetual endowment is not in itself "good policy". Julius Rosenwald was President of Sears and Roebuck and major 20th century philanthropist. He wrote that "I am opposed to the permanent or what might be styled the never-ending endowment… Permanent endowment tends to lessen the amount available for immediate needs; and our immediate needs are too plain and too urgent to allow us to do the work of future generations."

In short the decision to deplete an endowment is a policy decision rather than a financial dictum or "best practice". The real question is whether the benefits of the expenditures today will outweigh the benefits of greater income tomorrow.

OTHER SUBSTANTIVE ISSUES

The LGPF was created pursuant to the New Mexico Enabling Act, under which the federal government granted land to the State of New Mexico for specified purposes and required that the land and proceeds derived from the land be held in trust and used only for those specific purposes. The largest part of the land grant was for "common schools," and the common schools permanent fund is the largest of the LGPF. Section 2 of the Enabling Act required that the State consent to the Enabling Act restrictions, incorporate them into the state constitution, and prohibited any change in those restrictions without the consent of Congress. Accordingly, this language was incorporated into the compact between the federal government and the State of New Mexico, set forth as Article 21 of the New Mexico Constitution, with specific reference to the land grant trust fund in Section 9 of Article 21.

(A) Use of common schools funds for early childhood education. It is not clear that the distribution of common schools permanent fund money for early childhood education complies with the Enabling Act requirement that the funds be used for "common schools." Historically, "common schools" has been understood to mean public primary (K-6) and secondary (7-12) schools, and LGPF distributions for common schools have been made for primary and secondary education.

(B) Contracting with private entities, which may be sectarian. It is not clear that the distribution of common schools permanent fund money for contracting with private entities complies with the Enabling Act requirement that the funds be used for "common schools," particularly given the requirement in Section 8 of the Enabling Act that the schools supported "shall forever remain under the exclusive control" of the State. In addition, Section 8 of the Enabling Act prohibits the use of LGPF money "for the support of any sectarian or denominational school." Thus, to the extent that contracts are entered into with sectarian schools or entities, the use of LGPF may violate the Enabling Act.

(C) Distributions in excess of the 5% provided for under the 1997 Enabling Act amendments. In 1996, the NM Constitution was amended to provide that annual distributions from the LGPF would be 5% percent of the average of the year-end market value for the preceding five calendar years. Recognizing that this required an amendment to the Enabling Act, Congress amended the Enabling Act in 1997 to provide that LGPF distributions be made "as provided in Article 12, Section 7 of the New Mexico Constitution," specifically referencing the constitutional amendment that had been made in 1996 to provide for annual distributions of 5% of the 5-year average value. No amendment of the Enabling Act was sought for the additional annual distributions enacted in 2003.

State land Office makes the following argument:

The Enabling Act trust encompasses both the lands and associated natural resources granted by the federal government and the proceeds generated from sales and leases, which are deposited into the LGPF and the maintenance funds. To the extent that funds are generated from sales or extraction of oil, gas and other minerals, those funds should be considered part of the corpus of the trust. Because the trust is perpetual and certain provisions of the Enabling Act require the proceeds of sales and other permanent dispositions of trust assets go into a "permanent inviolable fund," the State's trust responsibility requires that the trust corpus be preserved and that distributions be limited to income and increased value derived from investment of the LGPF.

ANA/lj