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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>SB671/SRCS</u>	<b>Sponsor</b>	<u>SRC</u>
<b>Tracking Number</b>	<u>.214254.3</u>	<b>Committee Referrals</b>	<u>SEC/SFC</u>
<b>Short Title</b>	<u>Permanent Fund for Pre-K</u>		
<b>Analyst</b>	<u>Rogne</u>	<b>Original Date</b>	<u>3/5/2019</u>
		<b>Last Updated</b>	<u>3/7/2019</u>

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**BILL SUMMARY**

Synopsis of Bill

The Senate Rules Committee Substitute for SB671 (SB671/SRCS) would provide for an additional 0.5 percent distribution from the permanent school fund for prekindergarten through the Public Education Department (PED) and the Children, Youth and Families Department (CYFD) to improve children's developmental readiness for elementary school. This bill would require the Legislature to appropriate the additional distribution to PED and CYFD unless the year-end market values of the fund for the immediately preceding five calendar years is less than \$12.5 billion. SB671/SRCS requires the passage of a constitutional amendment and approval by voters at a statewide election and, if necessary, approval of the constitutional amendment by the United States Congress to become effective. SB671/SRCS does not include a constitutional amendment.

**FISCAL IMPACT**

This bill does not contain an appropriation.

While SB671/SRCS attempts to provide for an additional 0.5 percent distribution from the permanent school fund for prekindergarten, this requires a constitutional amendment. Thus, SB671/SRCS does not have a fiscal impact, because SB671/SRCS does nothing without a constitutional amendment. See Technical Issues.

The State Investment Council (SIC) notes that while SB671/SRCS seeks to appropriate an additional 0.5 percent of the permanent school fund's value, this is potentially problematic, as the current annual fiscal year distributions from the land grant permanent fund (LGPF) are determined by a percentage-rate established in the New Mexico Constitution, multiplied by the five-year LGPF average value at the end of each calendar year. SIC notes that the LGPF – and the permanent school fund – are otherwise protected from direct legislative appropriation by law, being strictly limited to the annual distribution of 5 percent of year-end market values of the fund for the immediately preceding five calendar years, as set out in New Mexico's Constitution.

According to SIC, SB671 would deviate from existing fund practices regarding the annual LGPF distributions in two distinct ways. First, the bill seeks to effectively create a new distribution formula for a portion of the LGPF, but not its entirety. By increasing the distribution to the permanent school fund but not the other beneficiaries of the LGPF, SB671 would increase distributions to public schools to 5.5 percent, while the other 20 LGPF beneficiaries would continue to receive 5 percent of the annual 5-year average LGPF value. The practical effect would be that by drawing down the permanent school fund share of the LGPF at a higher rate, the permanent school fund would shrink its percentage of assets on a relative basis over time, while the other 20 beneficiaries' overall shares of the existing LGPF distributions would grow accordingly.

SIC notes that the additional 0.5 percent of the entire LGPF would be approximately \$88.65 million, and the permanent school fund's share would be an estimated \$75.7 million.

SB671/SRCS's passage and the subsequent passage of a constitutional amendment would incur additional one-time costs related to bringing the measure to voters, either in a special election or through a scheduled statewide referendum. 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. Legislative Finance Committee (LFC) staff estimate each constitutional amendment may cost from \$50 thousand to \$100 thousand in printing and advertising costs based on 2016 actual expenditures, the most recent year in which data was available.

## **SUBSTANTIVE ISSUES**

It appears SB671/SRCS may not be legal, as CYFD is not a permanent school fund beneficiary, and could potentially open the State of New Mexico to lawsuits.

**Background and History on the Permanent School Fund and the LGPF.** The permanent school fund receives distributions through the LGPF. 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 of 1989* and the *Enabling Act of 1910* to be held in trust for the benefit of "common schools" – hereafter referred to as public schools – and other specifically identified state institutions. Public school districts account for about 85 percent of LGPF distributions through the permanent school fund. Currently, there are 21 beneficiaries that receive LGPF distributions. See **Attachment 1, Land Grant Permanent Fund Balance and Income Distribution for FY18.**

While additional distributions from the permanent school fund would produce more revenue for public schools, the additional distribution will lessen future earnings of the permanent school fund and reduce the increased benefits that a larger fund would produce long-term at a lower distribution rate.

The LGPF is funded by income from non-renewable resources, such as oil and gas revenues that make up over 90 percent of contributions to the fund, and was designed to provide for future generations of New Mexicans when those resources are exhausted. It is one of the largest sovereign wealth funds in the country, with a fund balance of \$17.3 billion as of March 2018. Currently, 5 percent of the LGPF five-year average year-end balance is distributed to 21 beneficiaries based on

land ownership. In FY18, total LGPF distributions were about \$689 million, with about \$587 million distributed to public schools.

**Intended Beneficiaries and Standing to Sue.** SB671/SRCS anticipates the need for a constitutional amendment subject to voter and congressional approval, and this bill would not become effective without these next steps. However, if that transpired, SB671/SRCS would divide the additional 0.5 percent permanent school fund distribution between PED and CYFD for prekindergarten services. CYFD provides prekindergarten in non-public school settings. This may open the state up to a lawsuit from the current beneficiaries of the permanent school fund – public schools – for whom these distributions are intended. It is unclear whether a school district or its board of education or a school aged child, as the intended beneficiaries, would be able to bring a successful lawsuit against the state for allocating a portion of the additional 0.5 percent distribution to an entity other than a public school.

**Early Childhood Issues.** Currently, New Mexico’s early childhood education and care system spans several state agencies: CYFD, the Department of Health, the Human Services Department, and PED. The table below shows the early childhood educational services provided by each agency and the age range of children served.

Early Childhood Education and Care System

State Agency	Program	Age Range
CYFD	Head Start and Early Head Start	prenatal-4
CYFD	Childcare Assistance	3 weeks-13
CYFD	Home Visiting	prenatal-4
CYFD	Prekindergarten	3-4
DOH	Family, Infants, and Toddlers	birth-3
DOH	Women, Infants, and Children	birth-5
HSD	Home Visiting	prenatal-4
PED	Prekindergarten	4
PED	K-3 Plus	5-8
PED	Services for Developmentally Delayed Students	3-4

Source: LFC and LESC Analysis

Although several bills proposing to expand early childhood education in New Mexico have been introduced in the 2019 legislative session, New Mexico has already demonstrated a significant investment in early childhood education programs by growing funding from \$136 million in FY12 to \$309.1 million in FY19, an increase of 125 percent. According to the LFC, New Mexico’s 4-year-old service capacity, when taking into account both state and federal care and education services, is at nearly 90 percent. See **Attachment 2, Early Childhood Service Capacity**. Oversaturation of early childhood educational services can have several negative effects, including the return of federal Head Start dollars as a result of student migration from Head Start to other state-funded programs, such as prekindergarten.

New Mexico has a limited workforce qualified in early childhood education. Early childhood educational services encompass a range of programs with differing degree and licensure requirements for providers. Disparities in workforce qualifications, licensure requirements, and compensation can create an environment in which programs compete for highly-qualified early childhood educational service providers. Expansion of early childhood educational services cannot outpace the development of a highly-qualified early childhood workforce.

**Consolidated *Martinez* and *Yazzie* Lawsuit.** The decision in the consolidated *Martinez* and *Yazzie* lawsuit indicated educational services in public schools are insufficiently funded; yet it is important to note that public schools are the primary beneficiaries of the permanent school fund, so 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, and over which the department has minimal authority. Costs to bring the state into compliance with the consolidated *Martinez* and *Yazzie* lawsuit could be considerable, as a plaintiff group has suggested more than \$1 billion is needed to comply with the court ruling. The court found current public school support to be inadequate, noting, “simply put, the outputs reflect a systemic failure to provide an adequate education as required by the New Mexico Constitution.” This means public school appropriations in future years will likely need to be increased to achieve necessary outputs.

## **TECHNICAL ISSUES**

Even if passed by the Legislature, SB671/SRCS would not be implemented until a constitutional amendment was passed and approved by voters and, if necessary, approved by the United States Congress. This means that, on its own, SB671/SRCS has no effect.

While page 1, line 17 requires an additional 0.5 percent distribution from the permanent school fund, page 2, lines 7 through 8 allows for “an additional distribution from the permanent school fund” but does not specify how much. This means the additional distribution from the permanent school fund could be any amount up to 0.5 percent, but the Legislature would still be required to appropriate an additional 0.5 percent to PED and CYFD for prekindergarten, unless the average year-end market values of the fund for the immediately preceding five calendar years is less than \$12.5 billion.

## **OTHER SIGNIFICANT ISSUES**

Substantial evidence demonstrates experiences in early childhood are critical for brain development, and children who participate in high-quality early learning programs have better health, social-emotional, and cognitive outcomes than students who do not participate. Recent advances in neuroscience have shown early childhood years also provide the foundation for literacy skills. The U.S. Department of Education suggests effective early learning programs, including high-quality prekindergarten, provide a return on investment of \$8.60 for every \$1 spent. New Mexico has focused on expanding early childhood education programs over the last 10 years, despite two economic downturns; however, improving access to high-quality early childhood education programs remains a critical policy issue.

The National Conference of State Legislatures international study of world-class educational systems, *No Time to Lose*, identified four common elements for educational success, the first of which is students come to school ready to learn, with extra support given to struggling students so all students have the opportunity to achieve high standards. The first three years of a child’s life are critical for brain development; during this time the brain creates 1 million connections every second that will establish pathways for future development, according to the Center on the Developing Child at Harvard University. When children have adverse childhood experiences (ACEs) or do not have adequate opportunities to create these connections, their future educational achievement and life outcomes are negatively impacted. According to Child Trends, a nonpartisan research center, 18 percent of children in New Mexico experienced three or more ACEs, outpacing the national average of 11 percent. However, early childhood education can reduce the impacts of ACEs by providing children with rich social experiences needed to succeed in school.

**SOURCES OF INFORMATION**

- LESC Files
- State Investment Council (SIC)

**MCR/mc**

**Land Grant Permanent Fund**  
**FUND BALANCE AND INCOME DISTRIBUTION SUMMARY FOR THE FISCAL YEAR ENDED JUNE 30, 2018**  
(Unaudited)

INSTITUTIONS	July 1, 2017 BEGINNING BAL	% OF FUND	INCOME DISTRIBUTION	LAND TRANSFER	CAPITAL G/L	UNREALIZED G/L	INCOME EARNINGS	BOOK VALUE ENDING BAL June 30, 2018
COMMON SCHOOLS	\$13,829,968,010.28	85.01%	(\$586,560,648.91)	\$545,761,722.27	\$950,344,525.62	\$201,848,804.82	(\$44,245.18)	\$14,941,318,168.90
UNIVERSITY OF N.M.	\$214,912,359.31	1.32%	(\$9,029,524.74)	\$3,211,546.25	\$14,688,063.93	\$3,114,251.36	(\$2,183.83)	226,894,512.28
UNM SALINE LANDS	\$7,292,624.17	0.04%	(\$311,792.25)	\$306,157.00	\$503,806.54	\$109,239.74	(\$8.55)	7,900,026.65
NM STATE UNIVERSITY	\$68,102,132.74	0.42%	(\$2,852,237.89)	\$409,902.15	\$4,645,914.40	\$986,738.26	(\$897.66)	71,291,552.00
WESTERN NM UNIV	\$3,996,269.76	0.02%	(\$167,638.54)	\$39,862.00	\$272,873.16	\$57,959.02	(\$47.71)	4,199,277.69
N.M. HIGHLANDS UNIV	\$3,975,763.28	0.02%	(\$166,782.01)	\$39,862.00	\$271,476.44	\$57,662.59	(\$47.40)	4,177,934.90
NO. NM COLLEGE	\$3,227,086.29	0.02%	(\$135,512.96)	\$39,978.00	\$220,484.30	\$46,840.32	(\$36.17)	3,398,839.78
EASTERN NM UNIVERSITY	\$12,462,212.73	0.08%	(\$522,694.35)	\$108,422.00	\$850,878.20	\$180,863.15	(\$152.70)	13,079,529.03
NM INST. MINING & TECH	\$30,462,790.13	0.19%	(\$1,280,670.65)	\$406,959.00	\$2,082,683.16	\$443,652.57	(\$337.60)	32,115,076.61
N.M. MILITARY INSTITUTE	\$494,634,711.08	3.04%	(\$20,876,844.35)	\$15,033,137.00	\$33,890,874.05	\$7,176,097.38	(\$2,624.11)	529,855,351.05
NM BOYS SCHOOL	\$876,612.91	0.01%	(\$36,614.75)	\$0.00	\$59,708.00	\$12,672.14	(\$13.13)	912,365.17
DHI MINERS HOSPITAL	\$142,356,387.40	0.88%	(\$5,965,501.59)	\$1,044,744.00	\$9,714,493.45	\$2,064,702.44	(\$1,808.07)	149,213,017.63
N.M. STATE HOSPITAL	\$54,203,241.22	0.33%	(\$2,302,493.97)	\$2,304,682.00	\$3,727,966.06	\$789,802.21	(\$59.20)	58,723,138.32
NM STATE PENITENTIARY	\$305,241,922.36	1.88%	(\$12,842,777.41)	\$5,403,494.00	\$20,878,786.46	\$4,433,821.47	(\$2,910.63)	323,112,336.25
NM SCHOOL FOR THE DEAF	\$301,934,648.03	1.86%	(\$12,699,833.04)	\$5,276,800.28	\$20,648,507.56	\$4,384,392.15	(\$2,930.14)	319,541,584.84
SCH. FOR VISUALLY HAND.	\$301,302,062.78	1.85%	(\$12,673,476.00)	\$5,279,988.81	\$20,605,480.99	\$4,375,266.48	(\$2,919.53)	318,886,403.53
CHAR. PENAL & REFORM	\$126,323,698.80	0.78%	(\$5,295,140.30)	\$1,035,817.36	\$8,621,966.40	\$1,830,554.36	(\$1,570.85)	132,515,325.77
WATER RESERVOIR	\$159,090,616.82	0.98%	(\$6,664,822.04)	\$1,116,551.90	\$10,854,704.52	\$2,304,461.74	(\$2,030.42)	166,699,482.52
IMPROVE RIO GRANDE	\$35,593,009.12	0.22%	(\$1,490,234.06)	\$185,893.00	\$2,427,704.38	\$515,340.53	(\$475.42)	37,231,237.55
PUBLIC BLDGS. CAP. INC.	\$172,530,783.07	1.06%	(\$7,306,251.17)	\$7,694,108.50	\$11,844,836.97	\$2,499,064.77	(\$308.81)	187,262,233.33
CARRIE TINGLEY HOSPITAL	\$221,028.34	0.00%	(\$9,232.02)	\$0.00	\$15,054.77	\$3,195.15	(\$3.30)	230,042.94
	\$16,268,707,970.62	100%	(\$689,190,723.00)	\$594,699,627.52	\$1,117,170,789.36	\$237,235,382.65	(\$65,610.41)	\$17,528,557,436.74

Source: State Investment Council

### Early Childhood Service Capacity

