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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/19

SPONSOR Maestas LAST UPDATED \_\_\_\_\_ HJR 8

SHORT TITLE State Penitentiary & Land Grant Funds, CA SB \_\_\_\_\_

ANALYST Iglesias

### REVENUE (dollars in thousands)

| Estimated Revenue |      |      |      |      | Recurring or Nonrecurring | Fund Affected                                |
|-------------------|------|------|------|------|---------------------------|--|
| FY19              | FY20 | FY21 | FY22 | FY23 |                           |  |
| \$0.0             |      |      |      |      | Recurring                 | Permanent School Fund                        |
| \$0.0             |      |      |      |      | Recurring                 | Penitentiary Permanent Fund                  |
| \$0.0             |      |      |      |      | Recurring                 | General Fund (Common Schools)                |
| \$0.0             |      |      |      |      | Recurring                 | Penitentiary Income Fund (Corrections Dept.) |

Parenthesis ( ) indicate revenue decreases

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY19                      | FY20   | FY21  | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected          |
|--------------|---------------------------|--------|-------|-------------------|---------------------------|------------------------|
| <b>Total</b> | (See Fiscal Implications) |        |       |                   | Recurring                 | Corrections Department |
| <b>Total</b> | \$0.0                     | \$42.0 | \$0.0 | \$42.0            | Recurring                 | Secretary of State     |

Parenthesis ( ) indicate expenditure decreases

Relates to HJR1

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Corrections Department (NMCD)  
 State Investment Council (SIC)  
 Department of Finance and Administration (DFA)  
 State Land Office (SLO)  
 Secretary of State (SOS)  
 New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of Joint Resolution

House Joint Resolution 8 amends the Article 13, Section 1, of the state constitution to change the allowable use of revenues generated from state trust lands currently assigned to the state penitentiary. The proposed constitutional amendment would allow these revenues to be used exclusively for the support and aid of common (public) schools, removing the state penitentiary as the beneficiary of uses of those lands. There is no effective date of this joint resolution. It is assumed the effective date is 90 days after this session ends.

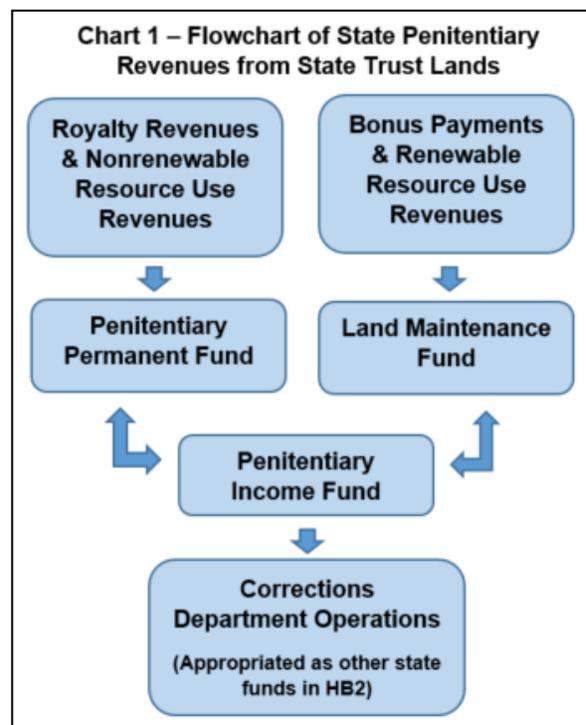
## FISCAL IMPLICATIONS

The fiscal impact of this amendment would likely occur in FY22, assuming voters approve the amendment in the next general election (November 2020) and congressional approval is granted by June 30, 2021. However, depending on whether a special election is called to bring the amendment to voters, and the timing of congressional approval, the changes could begin sooner.

State penitentiaries are currently the beneficiary of two income sources for revenues from trust lands. The first is revenues from the land grant permanent fund (LGPF), which receives revenues from nonrenewable use of trust lands (e.g. royalties from oil and natural gas extraction). Each beneficiary of the LGPF owns a permanent fund to which revenues are deposited, and the collective LGPF is managed and invested by the State Investment Council (SIC). Each year, 5 percent of the five-year average of the LGPF is distributed to beneficiaries. In FY18, \$12.8 million was distributed from the penitentiary permanent fund to the Corrections Department (NMCD).

The second is revenues from the land maintenance fund (LMF), which receives revenues from renewable resource uses of state trust lands (e.g. grazing, rights of way, bonuses paid to acquire oil and gas leases, etc.). The State Land Office (SLO) makes monthly distributions from the LMF to the income funds of trust beneficiaries based on activity occurring on each beneficiary's tracts of land. Due to two large land sales in FY19, the penitentiary income fund received about \$34 million this fiscal year through January; however, this is expected to be an anomaly, and the future distributions are expected to revert to the historical average of about \$1.5 million annually.

The bill reassigns revenues from state trust lands currently benefitting the state penitentiary to instead be used exclusively for the support and aid of public schools. Once approved, this would affect new royalty revenues generated from oil and natural gas extraction from those lands, as well as bonus payments and other revenues for renewable resource uses of those lands.



## House Joint Resolution 8 – Page 3

From FY16 to FY18, annual royalty revenues generated from the penitentiary's trust lands was about \$5.5 million. Rather than being deposited into the penitentiary permanent fund, this amount would be deposited into the permanent school fund, beginning once voters and Congress approve the amendment. Over time, this would result in larger annual distributions to the general fund to support public schools.

However, the bill is silent on the ownership of the current penitentiary permanent fund, which was valued at \$323.1 million at the end of FY18. Under current law, 5 percent of the five-year average of the land grant permanent funds are distributed annually to beneficiaries. Because this amendment does not change the ownership the distribution function of the penitentiary permanent fund, and since there is no companion bill to do this contingent upon approval of this amendment, this resolution is expected to have no impact on the current annual distribution of funds from the penitentiary permanent fund to NMCD. In FY18, the size of this distribution was \$12.8 million. The SIC estimates this distribution will grow to nearly \$16 million by FY22.

The approved amendment would immediately begin sending the state penitentiary's monthly distributions from the LMF to the general fund for public schools. This would include any new bonus payments for oil and gas leases and any other new revenues from renewable resource uses of those lands. However, the amendment is again silent on how to treat any cash balances of the penitentiary income fund. Therefore, it is assumed that without a companion bill to transfer these funds, the existing balance prior to approval of the amendment would remain in the penitentiary income fund to be appropriated to NMCD as under current law.

On approval of the amendment, it is possible that directives by Congress or subsequent legislative action could transfer the ownership of the penitentiary permanent fund to the permanent school fund and/or transfer the cash balances of the penitentiary income fund to the general fund for public schools.

Under Section 1-16-13 NMSA 1978, the Secretary of State (SOS) is required 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. In order to comply with this requirement for the 2018 general election, the SOS printed approximately 129,000 copies of the "Voter Guide" at a total cost of \$26,000. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters. 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 one newspaper in every county in the state.

## **SIGNIFICANT ISSUES**

NMCD indicates state trust land revenues make up nearly half of the \$32 million budget for the state penitentiary. If subsequent legislative action were taken to remove permanent fund distributions from the department's revenues, NMCD would have to seek that funding from the general fund or other sources to replace the lost revenue. The Department of Finance and Administration (DFA) also notes a portion of the revenue for NMCD's operating budget comes from fund balance that originates as revenue from the LGPF distribution. This fund balance will not replenish if this piece of LGPF distribution were to be reassigned to public schools through subsequent legislation.

The SIC analysis of this amendment provides some history and context for other attempts to add or remove land trust beneficiaries, discussing the potential legal, constitutional and technical challenges that may arise when attempting to restructure an over century old agreement to better adapt to modern needs.

The Corrections Department also receives one-seventh of the LGPF distribution dedicated to state charitable, penal, and reformatory institutions. The total amount of this distribution in FY18 was \$5.3 million, and the NMCD portion was about \$756 thousand. This distribution is not affected by the proposed resolution.

#### **ADMINISTRATIVE IMPLICATIONS**

The State Land Office (SLO) would be required to make changes to its tract books, land information system, and revenue processing systems to change the beneficiary designation for 150,000 acres of state trust lands and to direct the revenues from those lands to common schools instead of NMCD. SLO states the agency is capable of making those changes with existing personnel and resources and within the ordinary course of business.

#### **OTHER SUBSTANTIVE ISSUES**

Section 19-1-17 NMSA 1978 creates various funds for state trust land beneficiaries, including a “penitentiary income fund” and “penitentiary permanent fund.” There is currently no companion bill to alter the function of these funds (see *Fiscal Implications* section for discussion of the impact). Depending on the intent of the legislation, if this amendment is passed and approved by voters and Congress, state statute may also have to be amended.

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Attachment

Chart – State Penitentiary Distributions by Source, FY14 to FY20

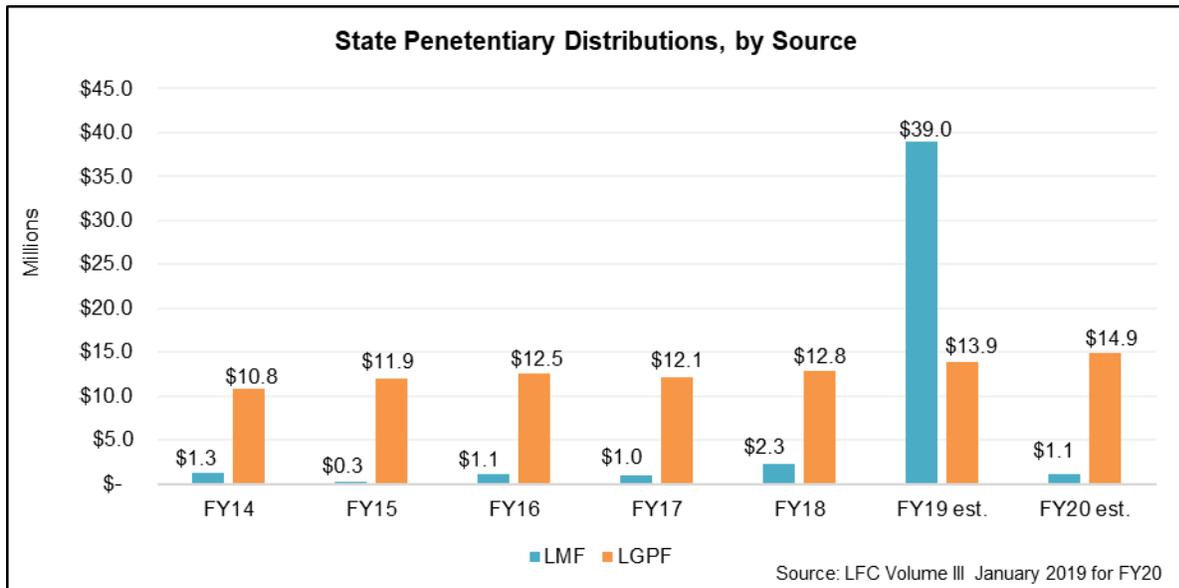


Table – Land Grant Permanent Fund Percent Ownership

| Land Grant Permanent Fund (LGPF) Beneficiaries |               |
|--|---------------|
| Percent distribution as of December 1, 2018    |               |
| COMMON SCHOOLS                                 | 85.420%       |
| UNIVERSITY OF N.M                              | 1.275%        |
| UNM SALINE LANDS                               | 0.044%        |
| N.M. STATE UNIVERSITY                          | 0.399%        |
| WESTERN N.M. UNIVERSITY                        | 0.024%        |
| N.M. HIGHLANDS UNIVERSITY                      | 0.023%        |
| NO. N.M. COLLEGE                               | 0.019%        |
| EASTERN N.M. UNIVERSITY                        | 0.073%        |
| N.M INST. MINING & TECH                        | 0.180%        |
| N.M. MILITARY INSTITUTE                        | 3.000%        |
| N.M. BOYS SCHOOL                               | 0.005%        |
| DHI MINERS HOSPITAL                            | 0.837%        |
| N.M. STATE HOSPITAL                            | 0.334%        |
| <b>N.M. STATE PENITENTIARY</b>                 | <b>1.820%</b> |
| N.M. SCHOOL FOR THE DEAF                       | 1.799%        |
| SCH. FOR VISUALLY HAND.                        | 1.796%        |
| CHAR. PENAL & REFORM                           | 0.742%        |
| WATER RESERVOIR                                | 0.933%        |
| IMPROVE RIO GRANDE                             | 0.208%        |
| PUBLIC BLDGS. CAP. INC.                        | 1.064%        |
| CARRIE TINGLEY HOSPITAL                        | 0.001%        |
| Total  | 100%          |