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

	ORIGINAL DATE	03/05/19	
SPONSOR Lopez	**LAST UPDATED**	03/07/19	**HB**
SHORT TITLE Permanent Fund For Pre-K			**SB** 671/SRCS
			ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
No Fiscal Impact*					n/a	Permanent School Fund
No Fiscal Impact*					n/a	General Fund

Parenthesis ( ) indicate revenue decreases

*This bill attempts to make a statutory distribution from the permanent school fund (the largest subset of the Land Grant Permanent Fund). However, distributions can only be made through a constitutional amendment; therefore, this bill has no fiscal impact. See significant issues section.

Relates to HJR 1 and SJR 18

SOURCES OF INFORMATION
LFC Files

Responses Received From
State Investment Council (SIC)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

The Senate Rules Committee Substitute for Senate Bill 671 creates a statutory provision to distribute an additional 0.5 percent from the permanent school fund to provide prekindergarten through the Public Education Department (PED) and the Children, Youth and Families Department (CYFD). The bill's effective date is contingent upon the passage of a constitutional amendment allowing for an additional distribution from the permanent school fund for prekindergarten.

FISCAL IMPLICATIONS

Since additional distributions from the permanent school fund can only be made through a constitutional amendment, this bill has no fiscal impact. The bill makes the proposed additional distribution contingent upon the passage of a constitutional amendment; however, no such amendment has been proposed.

Current Early Childhood System Spending is $366 million. The early childhood system consists of a set of interventions ranging from prenatal through elementary school age. During this critical period of development, a number of programs are available to New Mexico families to assist with care, education, and health. These programs are administered with state and federal dollars across at least four state agencies and one federal agency (Early Head Start and Head Start are administered by the Federal Department of Health and Human Services with no state agency pass through).

SIGNIFICANT ISSUES

The permanent school fund is the largest subset of the Land Grant Permanent Fund (LGPF), representing about 85 percent of the fund and valued at $14.9 billion at the end of FY18.

Attempt for Statutory Distributions. This bill attempts to make a statutory distribution from the permanent school fund contingent upon the passage of a constitutional amendment. However, distributions from the permanent fund may only be made in the constitution. If a constitutional amendment increased the distribution from the permanent school fund by 0.5 percent, this bill would be unnecessary – the constitutional amendment itself would increase the distribution. Therefore, the purpose and intent of this legislation is unclear.

It is possible the bill contemplates a constitutional amendment that would allow for statutorily defined distributions from the permanent school fund for prekindergarten, as the bill is contingent upon a non-specific constitutional amendment that allows for "an additional distribution" from the fund for prekindergarten. Therefore, presumably, a constitutional amendment could be introduced to allow for additional distributions as provided by law. However, this would be a significant policy shift that would essentially allow for appropriations from the permanent school fund, which would fundamentally change the nature and permanency of the fund.

State Investment Council staff provide the following discussion on this issue:

> The LGPF - and its components including the Permanent School Fund - is 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, Article 12, Section 7(F). This limitation derives from conditions imposed by the federal government when it gave New Mexico the land and other assets that became Land Grant Permanent Fund. See Enabling Act of 1910, § 10 (Public Laws Chapter 310, Sixty-First Congress, Session II, June 20, 1910) and New Mexico Statehood and Enabling Act Amendments of 1997 (Public Laws 105-37, August 7, 1997).

Specifically, the Enabling Act of 1910, whereby Congress enabled the creation of the State of New Mexico, gave New Mexico land and other assets to be "held in trust, to be disposed of in whole or in part only in the manner [provided by the Enabling Act]." See Enabling Act, § 10. The limitations imposed by Congress in the 1910 grant were intended to assure that the assets were properly used for the public good and preserved for future generations of New Mexicans. In 1997, at New Mexico's request, Congress amended the Enabling Act to give New Mexico more flexibility in using the LGPF. The New Mexico Statehood and Enabling Act Amendments of 1997 (105 P.L. 37) state that distributions from the LGPF "shall be made as provided in Article 12, Section 7 of the Constitution of the State of New Mexico." Accordingly, the only means to change the distributions from the LGPF is to amend New Mexico's Constitution.

Distributions Based on Current Fund Value. This bill provides for an additional 0.5 percent distribution based on the current value of the fund, unlike other permanent fund distributions that are based on the five-year average of the fund.

Potential for Litigation. Both Section 8 of the Enabling Act of 1910 and Article XII, Section 3 of the New Mexico Constitution prohibit use of land grant permanent funds for any sectarian or private school and require that schools receiving such funds must remain under the exclusive control of the state. New Mexico Attorney General's Office has previously stated the prohibitions of the Enabling Act and the constitution apply to indirect as well as direct land fund grant distributions, such that these prohibitions cannot be avoided by appropriating the funds to a state agency for the purpose of disbursing funds to, or executing contracts with, sectarian or private schools not under the exclusive control of the state.

Attorney General Opinion No. 12 - 03, dated February 1, 2012, clarifies that 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 public schools. However, this bill attempts to provide distributions for use by both PED and CYFD for prekindergarten.

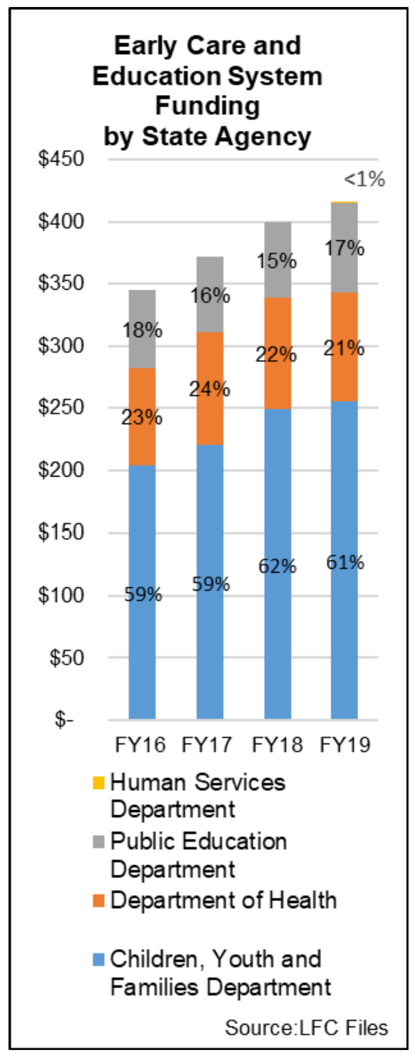
The bill anticipates the need for congressional approval of a constitutional amendment for additional distributions for prekindergarten. It is unclear whether and how such congressional approval would allow for use of permanent school fund distributions by entities other than public schools.

Safety Mechanism. The bill states no additional distributions would be made if the five-year average of the fund is less than $12.5 billion. However, it would be possible for the current value of the fund to be significantly less than $12.5 billion but the five-year average to still allow for the additional distribution.

Prekindergarten Funding. In the last decade, appropriations for the PED early childhood education programs have increased over tenfold, from about $5 million in FY07 for prekindergarten and K-3 Plus to $68 million for these two programs and an early reading initiative. The state has also increased its funding to various early childhood education programs in recent years, most recently allocating $300 million across childcare assistance, home visiting, pre-K, K-3 Plus, and early literacy programs in FY19.

Capacity Gaps and Expansion Barriers. Despite significant, targeted investments by the Legislature in the state's early care and education system, New Mexico struggles to meet the complex needs of at-risk children and families, and the child welfare system remains challenged. The system is not large enough to provide universal services, and a significant number of at-risk families remain underserved or unserved. However, millions of early childhood funding went unspent or was transferred between programs due to low enrollment in FY18. Since FY12, calls to increase funding for early childhood care and education services have been successful; however, most of these dollars have been dedicated to adding more children, resulting in significant constraints on infrastructure and the ability to deliver services.

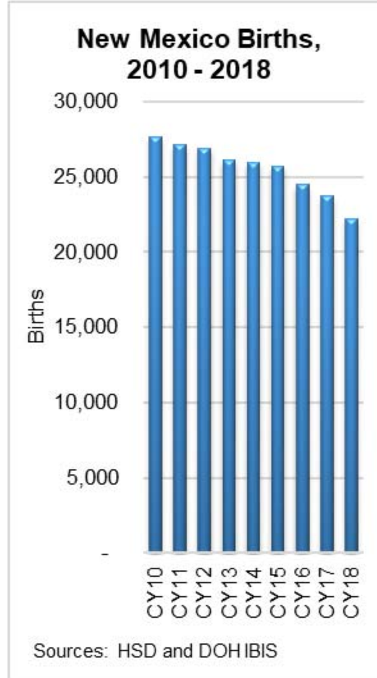
More attention to building provider infrastructure will be necessary for continued growth of early care and education services. Supports to grow providers should include investment in the early care and education workforce, including scholarships to increase credentialed workers, more professional development for the engaged workforce, and wage supplements to stabilize workforce turnover. Growing and stabilizing a qualified workforce is necessary to both helping providers deliver services and improving the quality of services. When an early care and education provider is unable to hire or loses an early childhood worker, services are disrupted at best or never delivered at worst. A recent study, from a consortium of foundations, of the New Mexico early care and education system suggests an additional $11 million phased in over the next five years is necessary to support continued service growth.



Publicly delivered prekindergarten services also face facility and workforce gaps. Under statute, prekindergarten funding and delivery is evenly split between the Public Education Department (PED) and CYFD. Services through PED are delivered by school districts, further strained by teacher shortages and classroom availability. In November 2017, school districts and charter schools reported 637 educator vacancies, of which 476 were teacher vacancies and 158 were education assistant vacancies.

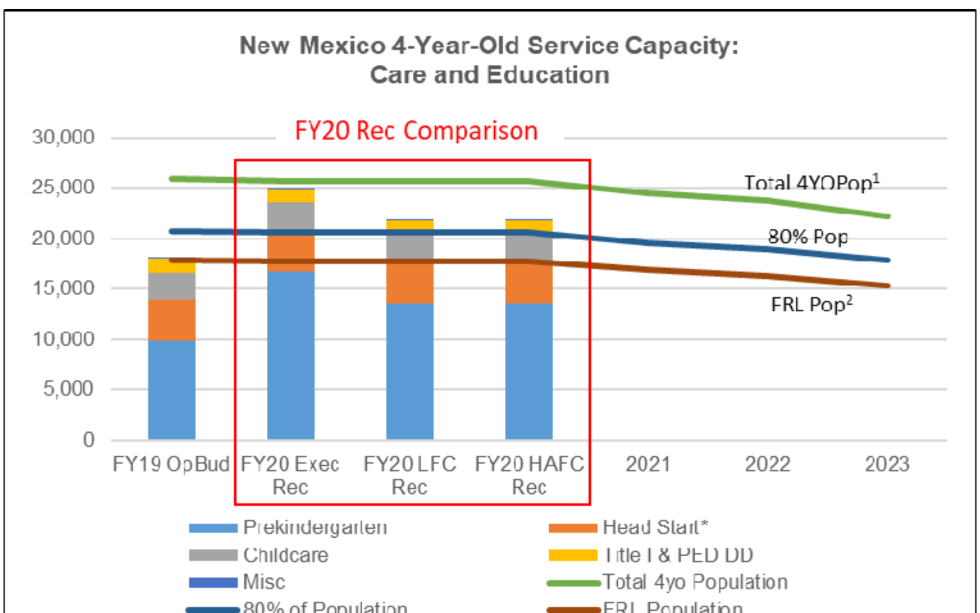
Despite significant barriers to expansion, New Mexico is close to providing sufficient funding to ensure all low-income 4-year-olds receive at least some type of early education through childcare assistance, prekindergarten, or Head Start. Possibly as a result of increased access for 4-year-olds to childcare and prekindergarten, provides the federally funded Head Start program have reported difficulty in enrolling children; however, more study of this is necessary. The state needs to better coordinate programs to prevent oversaturation for one age group while other age groups are underserved. New Mexico should consider more blended learning opportunities for Head Start and prekindergarten to improve quality and maximize federal revenues.

The state's birth rate is steadily declining which is impacting need and capacity. New Mexico's 22,249 births in 2018 is a decrease of 20 percent (5,428) compared to the number of births in 2010. In 2018, every county in the state had fewer births compared to 2015 with some county's having 69 percent fewer births than three years prior. The declining population will impact overall need and should be considered when building additional capacity. Need and capacity considerations will be particularly important for the four and five-year-old population as other age categories do not have the same current depth of service coverage.



Absent changes in trends of people with children moving into the state of New Mexico, it is highly likely that the decreasing number of children in New Mexico could also create additional capacity in downstream public services including public schools, and higher education, along with entitlement programs such as Medicaid. There may be opportunities for cost savings in these areas where number of births has declined by significant amounts.

LFC staff have analyzed anticipated service coverage for four-year-olds for both the FY20 LFC reccomendation and the FY20 executive reccomendation. The main difference among these funding reccomendations is for prekindergarten. Both reccomendations include significant increases. Assuming no service decreases in other categories, both recomendations would ensure slots for over 80 percent of the four year old population in FY20. However, the shrinking four-year-old population could result in excess capacity in the coming years assuming funding levels remain consistent or continue to rise. [1]



Source: LFC Files, DOH
Notes: Represents funded slots not acounting for children enrolled in multiple services or seasonality.
Children accessing more than one service is <1,100
[1] Reflects a long-term trend of declining births in the state. There were 20% fewer births in 2018 compared to 2010 totals
[2] Estimated from free/reduced lunch participaton rates in New Mexico public schools (185 percent of federal poverty level)
*Includes American Indian Head Start Programs (slots)=605
Misc=City of Albuquerque and City of Santa Fe funded slots

---

[1] Capacity considerations should also include stacking or braiding of services where a child receives wrap around services. For example, a child could participate in a part day prekindergarten program and receive childcare services from the same provider. LFC analysis indicates fewer than 1,100 children currently receive stacked services among childcare, prekindergarten, and Head Start programs.

Return on Investment. The long-term returns from early interventions vary. The Perry Preschool Project, which studied the impact of high-quality early education on low-income minority preschoolers in Michigan, estimated $7 saved for every $1 invested due to lower education and welfare expenditures and gains in economic engagement; however, early results in New Mexico are closer to $2 for every $1 invested. The returns in New Mexico may be lower because a majority of early childhood programs are independently operated, the system has grown rapidly, and program standards have often changed. Further, program quality can vary widely. As the early care and education system in New Mexico grows in funding and access, attention to consistent, high-quality services is paramount to growing returns on investment.

TECHNICAL ISSUES

According to SIC staff, this bill states "an additional one-half percent shall be distributed from the permanent school fund to provide pre-kindergarten…" but does not say such a distribution would be made annually or on a repetitive basis – though we understand that was likely the intent of the sponsor. While the bill says an additional distribution may be suspended in any year the 5-year market value of the fund drops below the $12.5 billion level, thereby implying the distributions would be recurring, the specific language of the bill as written only calls for a one-time withdrawal (Section 1).

OTHER SIGNIFICANT ISSUES

SIC staff provided the following additional discussion:

> [This bill] 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 Land Grant Permanent Fund, but not its entirety. By increasing the distribution to the school permanent fund but not the other beneficiaries of the LGPF, [this bill] would increase distributions to schools to 5.5 percent, while the other 20 LGPF beneficiaries would continue to receive 5 percent of the annual five-year average LGPF value. That does not mean those other beneficiaries would be directly impacted in a negative way however. The practical effect would be that by drawing down its share of the LGPF at a higher rate, the school permanent 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. While the language in [this bill] avoids previous concerns over increasing LGPF distributions with a specific earmarked intent (as the 2003 amendment did for increasing funding for educational reform to non-educational LGPF beneficiaries), it does complicate the current distribution formula as well existing forward-looking fund projection models.
>
> The second way [this bill] would differ from current distribution methodology is by calling for a 0.5 percent increase in distribution based on the current value of the fund, rather than on a five-year rolling average fund value.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Both executive and legislative budget proposals for the General Appropriation Act included early childhood program funding.

ALTERNATIVES

Early childhood educational programs would continue to be phased in on a basis of sustained growth in the program through the General Appropriation Act. Future permanent fund beneficiaries will continue to receive additional monies, as distributions grow as the size of the fund grows.

DI/al/gb