

BOND REVIEW, INC.
1610 LYRIA RD NW
ALBUQUERQUE, NM 87114-4132
(505) 899-8328
(505) 899-4257 (FAX)
info@bondreview.com

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Analysis of Upcoming Constitutional Amendments 1 & 2

On September 23, 2003
New Mexico voters will be asked to
amend the State constitution through two separate amendments.

The text of these
amendments can be found at

<http://www.sos.state.nm.us/Election/ElectionInfo.htm>

another informative pros and cons can be found at

<http://legis.state.nm.us/lcsdocs/prosandcons2003.pdf>

Amendment 1

Amendment 1 would create a public education department headed by a cabinet-level “secretary of public education” who would be appointed by the governor [the current superintendent is appointed by the “board of education”] and confirmed by the state senate. The amendment requires that the appointed secretary be an “experienced educator” but the term is not defined and is seemingly a minor change from the current constitutional requirement of an “experienced educational administrator” that applies to the superintendent of public instruction.

Amendment 1 also proposes a ten member elected public education commission with staggered four-year terms initially made up of the ten elected members on the current board of education. This proposed structure is in contrast to the current 15-member state board of education of 10 elected and 5 appointed members. If an elected commissioner moves outside their district, their term ends immediately and the governor would appoint a replacement [this structure is the same as the current board of education.] The current 5 appointed state board of education members would NOT be part of the new commission. Neither would the current superintendent of public instruction necessarily become the new secretary of public education.

Current legislation that addresses the “state department of public education” or the “state board of education” would seemingly become moot and laws addressing such would not necessarily apply to the new entities “public education department” or “public education commission.” So, any legislation referring to the old structure will need to be revised. The duties and power of the public education commission are undefined.

Analysis

Bond Review contacted the appointed members of the current board of education to get their views on Amendment 1. To date, 3 of the 5 have granted interviews and those 3 were personally in favor of Amendment 1. Their sentiments were that the current education department with over 45% of the state budget is too independent and tends to be out of sync with the rest of state government.

There is little organized opposition to Amendment 1. The few entities (see below) that are opposed are concerned about the unseen legislation that needs to be implemented to make Amendment 1 work. The LESC Ad Hoc Subcommittee on Governance of Public Schools is undertaking the project of drafting the needed proposed new legislation but final results have not been released.

Amendment 1 consolidates an enormous amount of power and funding directly under the governor’s control and the election is scheduled for a date where turnout will be light. No constitutional amendment elections have ever been attempted other than on the regular November state election dates¹.

Current New Mexico Governor Richardson has shown unusual zeal in replacing personnel, even against protests, with those of his own choosing on the numerous commissions, panels and boards throughout the state. It has been reported, Governor Richardson requires a pre-signed letter of resignation before making appointments². So there is some concern, with respect to Lord Acton's warning, "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men." We don't want Governor Richardson to become a bad man and taxpayers should always be concerned about giving too much power to any one individual. Conversely, why shouldn't the elected governor control the state's largest expenditure?

Judging by the type of campaign for Amendment 1, the bulk of financial support in favor of Amendment 1 seems to be coming from the education lobby (The exact funding sources will be disclosed later this month.), which is not normally a friend of taxpayers unless given continual increases in funding without much taxpayer interference.

Bond Review's Recommendation on Amendment 1

Bond Review takes **NO POSITION** on Amendment 1 because it is really more a structure issue than a fiscal issue. Proponent's claim that Amendment 1 will "cut the bureaucracy" is probably overstated and the strong education lobby support for Amendment 1 should be unsettling for taxpayers.

The significant funding "for" and the negligible funding "against" Amendment 1, makes it very likely Amendment 1 will pass.

If you think a governor can handle the extra power **and** that a governor can bring the education establishment into sync with the rest of state government, then vote yes.

If you would rather see the enabling legislation first and are distrustful of this unusual election timing, then vote no.

Those "For" Amendment 1

NM Citizens for Accountability & Reform in Education (NM CAREs)

<http://www.yesonland2.com> and from their web site:

Governor Bill Richardson
U.S. Senator Pete Domenici
U.S. Senator Jeff Bingaman
Lt. Governor Diane Denish
Former Governor Garrey Carruthers
U.S. Representative Tom Udall
Former U.S. Representative Manuel Lujan
Former N.M. Republican Party Chair Edward Lujan
New Mexico Parent Teacher Association (PTA)
Association of Commerce and Industry (ACI)
N.M. School Boards Association
N.M. Coalition of School Administrators
Strengthening Quality in Schools
Governor's Business Executives for Education
Greater Albuquerque Chamber of Commerce
Albuquerque Hispano Chamber of Commerce

N.M. Association of School Business Officials
N.M. Federation of Educational Employees – AFT
Middle Rio Grande Business and Educational Collaborative
Hobbs Chamber of Commerce
Albuquerque Economic Forum
Association of College Presidents
N.M. Retail Association
Santa Fe Chamber of Commerce
N.M. Superintendents Association
Independent Insurance Agents of N.M.
N.M. Voters Services Coalition
National Education Association (NEA)
National Education Association - New Mexico
AARP (The American Association of Retired Persons)
Association of Community College Officials
Dekker, Perich & Sabitini
N.M. Association of Community Colleges
N.M. Business Roundtable for Educational Excellence
N.M. Coalition of Charter Schools
Rio Rancho Chamber of Commerce
New Mexico Coalition Against Domestic Violence
Rio Rancho Economic Development Corp.
Socorro Consolidated Schools
Golden Apple Foundation of New Mexico
National Association for the Advancement of Colored People (NAACP)-Albuquerque Branch
Hispano Roundtable of New Mexico
Northern New Mexico Network
National Association of Industrial and Office Properties (NAIOP)
Presbyterian Health Plan
Southeastern NM Education Resource Collaborative (SNMERC)
Ed Corley Automotive Group
Independent Community Bankers Association of NM
New Mexico Bankers Association
American Federation of Teachers (AFL-CIO)
All Indian Pueblo Council
NM Professional Fire Fighters Association
NM Realtors Association
Valencia County Hispano Chamber of Commerce
Municipal League of New Mexico

The Republican Party – New Mexico

Those “Against” Amendment 1

Christian Association of Parent Educators – New Mexico (CAPE-NM)

<http://www.nmfamilycouncil.org/elections/cape.htm>

see also

<http://home.earthlink.net/~mberman60/>

Footnotes

¹ From talk given by Patrick Lyons, Commissioner of Public Lands, August 2003

² <http://albuquerque.bizjournals.com/albuquerque/stories/2003/03/24/story4.html>

Amendment 2

Amendment 2 would raise the annual payout percentage from the Land Grant Permanent Fund from 4.7% to 5% using a calendar 5-year moving average of the Fund beginning fiscal year 2004. Additionally, a supplemental .8% would be added to the annual payout for fiscal years 2005-2012, decreasing to .5% for fiscal years 2013-2016. A vote of 60% of both houses could suspend the supplemental increase, as would the calendar year 5-year moving average of the Fund falling below \$5.8 Billion.

Background from the New Mexico Legislative Council Service (publication location on title page):

Under the Ferguson Act of 1898 and the Enabling Act for New Mexico, which was passed by congress in 1910, New Mexico was given more than nine million surface acres of land and more than 13 million subsurface acres of mineral interests.

These public lands were granted to New Mexico specifically to be held in trust for the purpose of providing funding for public education and other essential public services. There are 21 named beneficiaries of the land grant permanent fund, with the public schools being the largest. The 20 other trust beneficiaries include all of the four-year higher education institutions and other state institutions, such as the school for the visually handicapped, school for the deaf, penitentiaries and state hospital.

The commissioner of public lands manages New Mexico's trust lands, leasing them for mineral exploration, development and production, grazing and other commercial purposes, as well as selling property, as the commissioner deems beneficial and appropriate. Revenues from the nonrenewable use of the trust lands, such as royalties from oil and natural gas production and proceeds of land sales, are deposited into the land grant permanent fund. The amount of revenue varies from year to year over the last 10 years; it has ranged from a low of \$97 million to a high of \$288 million.


The state investment officer invests the land grant permanent fund on behalf of the beneficiaries. Each beneficiary receives an annual distribution from the fund based on its share of the fund. The distribution amount is provided for in the constitution and is the subject of the proposed constitutional amendment. The current distribution amount is 4.7 percent of the five-year average balance of the fund. This amount was set by a constitutional amendment approved by the voters in 1996. The amount of the distribution is intended to allow the fund to grow at least in line with inflation, while providing the beneficiaries with a portion of the annual return to the fund from interest, dividends and capital gains. In fiscal year 2002, distributions from the land grant permanent fund totaled \$312 million, of which \$256 million went to the public schools. (From page 10)

The Land Grant Permanent Fund (also "Fund") has performed as follows¹:

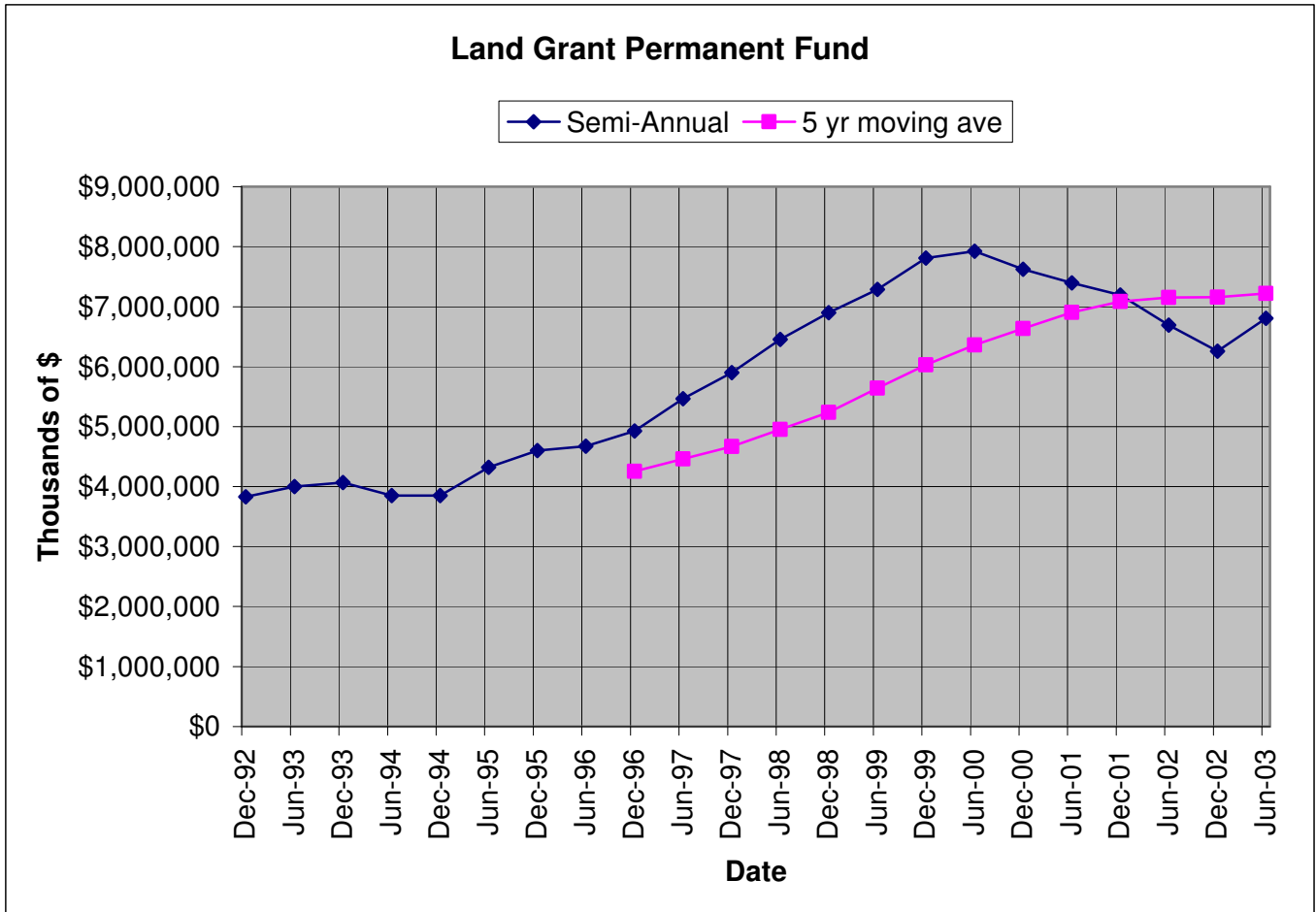
Calendar Year End 31-Dec	Market Value Thousands of \$	Annual Change %	5-Year Moving Sum (Thousands of \$)	5-Year Moving Ave (Thousands of \$)	Annual Change %
12/31/1992	\$3,827,430				
12/31/1993	\$4,065,810	6.23%			
12/31/1994	\$3,851,628	-5.27%			
12/31/1995	\$4,601,725	19.47%			
12/31/1996	\$4,929,439	7.12%	\$21,276,031	\$4,255,206	
12/31/1997	\$5,898,605	19.66%	\$23,347,206	\$4,669,441	9.73%
12/31/1998	\$6,901,892	17.01%	\$26,183,288	\$5,236,658	12.15%
12/31/1999	\$7,811,039	13.17%	\$30,142,700	\$6,028,540	15.12%
12/31/2000	\$7,624,359	-2.39%	\$33,165,334	\$6,633,067	10.03%
12/31/2001	\$7,196,182	-5.62%	\$35,432,077	\$7,086,415	6.83%
12/31/2002	\$6,255,967	-13.07%	\$35,789,439	\$7,157,888	1.01%



**Calendar Year
Performance**



**Payout calculated
from here**



With this year's stock market run-up, the Land Grant Permanent fund was \$6,807,643,983² at June 30, 2003 and \$6,839,098,353³ at July 31, 2003.

Analysis

Federal "No Child Left Behind" legislation as it applies to New Mexico and New Mexico's School Reform Act of 2003 (House Bill 212) contains various educational reforms that require increased funding, including a new multi-tiered level approach for minimum teacher compensation.

The election is scheduled for an election date where turnout will be light. No constitutional amendment elections have ever been attempted other than on the regular November state election dates⁴.

From June 30, 2000 the Land Grant Permanent Fund has DECREASED from approximately \$8 Billion to its current \$6.8 Billion or a 14% decrease, despite more than \$700 Million in new nonrenewable royalty revenue (almost exclusively from oil & gas) being added to the Fund since June 30, 2000. However, the 5-year moving calendar year

average of the Fund (on which distributions are based) has continued to rise each of the last 5 years, therefore distributions from the fund have continued to INCREASE for five consecutive years although the fund balance has DECREASED since June 30, 2000. Nevertheless, Amendment 2 seeks to INCREASE distributions an additional 23% annually for fiscal years 2005-2012.

Nonrenewable (Oil & Gas)		
	Royalty Income ⁵	% Beginning
	(In Thousands)	Fiscal Yr Balance
6/30/1998	\$129,980	2.38%
6/30/1999	\$104,642	1.62%
6/30/2000	\$154,732	2.12%
6/30/2001	\$288,517	3.64%
6/30/2002	\$200,149	2.71%
6/30/2003	\$220,417	3.29%
Average	\$183,073	2.63%

Date	Fund Balance	Average Return	CPI Index	Average Inflation	Real Average Return
06/30/97	\$5,464,700		160.3		
06/30/03	\$6,807,644	4.10%	183.7	2.43%	1.67%

To keep the Land Grant Permanent Fund at **breakeven** in constant dollars, the Fund must increase each year no less than the sum of: distribution rate (proposed 5.8%) + average inflation rate (from above 2.43%) + fund expense rate (about .2%) = 8.43% - less average new nonrenewable royalty revenue (from above 2.63%) = 5.8%. Amendment 1 proponent's claim the Fund will grow to over \$14 Billion or 4.1% per year (including inflation averaging 2.43%) by 2021 or a real growth rate of 1.67%, thereby requiring a required return of (5.8% + 1.67%) = **7.47%**. Missing this 7.47% target, especially in the early years, could prove dangerous to the health of the Fund. This target would be even higher if New Mexico taxpayers demand more than a 1.67% real return.

However, since June 30, 1997 the Fund has only average **4.1%** after distributions. This is a far cry from the **7.47%** return required with Amendment 2. Given a fund of this size and current economic environment, Bond Review is skeptical that a sustained **7.47%** rate of return can be achieved, especially when the Fed Fund Rate is at **1%** and the return since June 30, 1997 has averaged only **4.1%**⁶.

On June 30, 2003, 31% of all NM funds were invested in interest rate sensitive bonds. If interest rates rise, the current value of these holdings will decrease. Because of 9/11, the risk of another significant terrorist incident should also be charged to any projection of future returns and none has been done here.

Most notably, Amendment 2 is **fatally flawed** due to the use of a 5-year moving average to protect downside risk to the Fund. To really protect the Fund, Amendment 2 must stop the supplemental payout the **instant** the Fund reached the downside trigger. Amendment

2's other stopgap of a 60%+ vote of both houses to halt the supplemental distribution, is some but little comfort to taxpayers. Legislatures rarely cut spending even with a simply majority requirement and to get a 60% vote of both houses would be very difficult, especially when these monies have been budgeted in earlier years.

As with Amendment 1, judging by the type of campaign, Amendment 2's financial support (a reported \$2 Million proposed budget) seems to be coming from the education lobby (The exact funding sources will be disclosed later this month.), which is not normally a friend of taxpayers unless given continual increases in funding without much taxpayer interference.

Finally, the state's oil and gas royalties are nonrenewable and finite. Unless new exploration is allowed and successful, then long-term royalties will decrease and the estimates of \$183+ million in annual royalty income will become suspect and decrease dramatically the anticipated returns of the Fund.

Bond Review's Recommendation on Amendment 2

Bond Review makes the recommendation to **VOTE NO** on Amendment 2. Amendment 2 is fatally flawed as written and should be **REJECTED** by taxpayers.

Ironically, because of this year's stock market run-up, the Fund could handle a one-time boost in its payout but to lock in a greatly increased payout year after year until 2016 is unwise and dangerous to the health of the Land Grant Permanent Fund. Bond Review could support a much smaller increase; say to no more than 5.0% if it contained an **instant** downside trigger.

Patrick Lyons, Commissioner of Public Lands, has suggested that rather than taking additional funds from the Land Grant Permanent Fund, funds could be gleaned from the Severance Tax Fund, Medicaid reform, or by closing the state gas tax loophole provided to certain Indian reservations.

Another solution could be to expand oil and gas exploration on State land and thus increase the annual income from oil and gas royalties.

Another solution would be to write an amendment that would allow a higher annual payout **only if** the overall Fund; for example, grew annually 2% more than inflation after the payout. This would allow the actual performance of the fund to determine the payout.

Any, or some combination of all, of the alternate solutions would be preferable and wiser than raising, by 23%, the payout of the Land Grant Permanent Fund.

Those “For” Amendment 2

NM Citizens for Accountability & Reform in Education (NM CAREs)

<http://www.yeson1and2.com> and from their web site:

Governor Bill Richardson
U.S. Senator Pete Domenici
U.S. Senator Jeff Bingaman
Lt. Governor Diane Denish
Former Governor Garrey Carruthers
U.S. Representative Tom Udall
Former U.S. Representative Manuel Lujan
Former N.M. Republican Party Chair Edward Lujan
New Mexico Parent Teacher Association (PTA)
Association of Commerce and Industry (ACI)
N.M. School Boards Association
N.M. Coalition of School Administrators
Strengthening Quality in Schools
Governor’s Business Executives for Education
Greater Albuquerque Chamber of Commerce
Albuquerque Hispano Chamber of Commerce
N.M. Association of School Business Officials
N.M. Federation of Educational Employees – AFT
Middle Rio Grande Business and Educational Collaborative
Hobbs Chamber of Commerce
Albuquerque Economic Forum
Association of College Presidents
N.M. Retail Association
Santa Fe Chamber of Commerce
N.M. Superintendents Association
Independent Insurance Agents of N.M.
N.M. Voters Services Coalition
National Education Association (NEA)
National Education Association - New Mexico
AARP (The American Association of Retired Persons)
Association of Community College Officials
Dekker, Perich & Sabitini
N.M. Association of Community Colleges
N.M. Business Roundtable for Educational Excellence
N.M. Coalition of Charter Schools
Rio Rancho Chamber of Commerce
New Mexico Coalition Against Domestic Violence
Rio Rancho Economic Development Corp.
Socorro Consolidated Schools
Golden Apple Foundation of New Mexico
National Association for the Advancement of Colored People (NAACP)-Albuquerque Branch
Hispano Roundtable of New Mexico
Northern New Mexico Network
National Association of Industrial and Office Properties (NAIOP)
Presbyterian Health Plan
Southeastern NM Education Resource Collaborative (SNMERC)
Ed Corley Automotive Group
Independent Community Bankers Association of NM
New Mexico Bankers Association
American Federation of Teachers (AFL-CIO)
All Indian Pueblo Council
NM Professional Fire Fighters Association
NM Realtors Association
Valencia County Hispano Chamber of Commerce
Municipal League of New Mexico

Those “Against” Amendment 2

Bond Review, Inc.

<http://www.bondreview.com/>

Patrick Lyons, Commissioner of Public Lands

Senator Bill Sharer

State Land Trust Advisory Board

Tom Tinnin, Albuquerque

David Bacon, Santa Fe

Renata Witte, Albuquerque

Paula Garcia, Albuquerque

Dr. Kris Havstad, Las Cruces

Joseph Kelly, Roswell

Felicia Thal, Buena Vista

The Republican Party – New Mexico

<http://www.savethefund.com>

Gary Johnson, former Governor

Jim Jennings

Michael Sanchez

Green Party of New Mexico

Footnotes:

¹ Calendar Year End Numbers provided by New Mexico State Investment Council

² Provided by New Mexico State Investment Council

³ Provided by New Mexico State Investment Council

⁴ From talk given by Patrick Lyons, Commissioner of Public Lands, August 2003.

⁵ From New Mexico State Land Office

⁶ The return on Fund equities is highly correlated to the performance of the S&P500 and current interest rates greatly affect the expected returns from bonds in the Fund portfolio.

Acknowledgments

Bond Review would like to thank Amanda Cooper and Jack Polidon from Citizens for Accountability & Reform in Education (NM C.A.R.Es), Deborah Gallegos and Michael Benze from New Mexico State Investment Council, and Kristin Haase from the New Mexico State Land Office. Their promptness, courtesy and professionalism serve them well. Also, many thanks go to Dr. Qualls for his comments, advice and numeric accuracy.