

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/21/14
SPONSOR Alcon **LAST UPDATED** 01/28/14 **HB** 37

SHORT TITLE Equalization Distribution to Certain Schools **SB** _____

ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	Potentially Significant - See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		(\$4,200.0)	(\$4,200.0)	(\$8,400.0)	Recurring	State Equalization Guarantee Distribution

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Indian Affairs Department (IAD)

Responses Not Received From

Department of Finance and Administration (DFA)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 37 amends the Public School Finance Act to prohibit the state from taking credit in the public education funding formula for federal Impact Aid funds received by a school district that is located entirely within the boundaries of Indian reservation or pueblo land grants.

FISCAL IMPLICATIONS

To determine a given school district's state equalization guarantee (SEG) distribution under the current law, Section 22-8-25(D)(6) NMSA 1978 requires the PED to deduct the "local and federal revenues" from the total calculated program cost of the school district. "Local revenues" and "federal revenues" are statutorily defined terms. Federal revenue, for the purpose of calculating the SEG, is partially derived from 75 percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United State Code, commonly known as "PL 874 Funds" or "Impact Aid." This bill would change the current formula to require that PED no longer deduct "federal revenue" (federal Impact Aid payments and federal forest reserve payments) from the total program cost of any school district located entirely within the boundaries of recognized Indian reservations or pueblo grant lands.

The bill would exclude only federal Impact Aid and forest reserve payments made to the Zuni Public School District (Zuni) from the computation of the state equalization guarantee (SEG) distribution. For FY13, Zuni received \$16 thousand in forest reserve funds and \$5.6 million in Impact Aid payments – the state took credit for \$4.2 million of these revenues (75 percent). Pursuant to this bill, Zuni's SEG distribution would not be reduced by \$4.2 million dollars, resulting in an increase in operating budget for Zuni. In FY13, Zuni Public School District received 6.5 percent more funding per student than the statewide average.

While Zuni is the only school district the bill would apply to, the bill, if enacted, would have an effect on all school districts and charter schools in the state. In 2013, PED indicated the loss of this revenue would result in the dilution of the unit value to accommodate the loss of credits equaling \$4.2 million.

The PED previously noted, and the current AGO analysis agrees, an unintended consequence of this bill is that New Mexico may not meet the disparity test required by the federal government in order to take credit for 75 percent of the basic impact aid payments to school districts. If this were to occur, an additional \$52.7 million would be needed to keep the unit value stable. This would also mean that the state would cease to be an equalized state - students from different parts of the state with similar needs would be generating different funding – resulting in the reduction of the unit value and a reduction of operating budgets for other school districts and charter schools in the amount of \$52.7 million or an appropriation of \$52.7 million to hold school districts harmless.

SIGNIFICANT ISSUES

The AGO and IAD note there is the possibility of a legal challenge if this bill is enacted, stating that because Zuni appears to be the only school district whose funding formula would be affected by this bill, the requirement that a school district be located entirely within the recognized boundaries of an Indian reservation or pueblo grant land could be challenged as an arbitrary distinction or limitation. The possibility of a legal challenge on this point is reduced if there are more school districts that would actually be affected by implementation of HB 37.

Additionally, the IAD analysis notes the bill creates the potential for schools located within the boundaries of recognized Indian reservation or pueblo grant lands to be encouraged to form their own school districts in order to take advantage of the provision in HB 245. This would create administrative burden as well as a fiscal burden on PED and the state, including creating duplicate administrative structures to serve these students.

A key feature of New Mexico's Public School Finance Act's operational funding scheme is the state equalization guarantee distribution, which is a formula that is meant to apportion federal and local revenue for schools equitably among the state's school districts.

Impact Aid is a federal program that provides revenue to local governmental entities including school districts in lieu of property taxes not received from federal lands. These lands include property owned by the U.S. Forest, the Bureau of Land Management, National Laboratories, Indian reservations, and any other federally owned property. School districts directly receive 100 percent of federal Impact Aid payments. The objective of the Public School Finance Act is to equalize educational opportunity at the highest possible revenue level and guarantee each public school student equal access to programs and services appropriate to educational need, despite geographic location or local economic conditions. This is accomplished by accumulating revenue at the state level and distributing appropriations to districts based on a program cost determined through the Public School Funding Formula. Because New Mexico is an equalized state, all revenue sources are considered in meeting the annual program cost. As a result, the state takes credit for 75 percent of federal Impact Aid payments to the districts, the local 0.5% mil levy and federal forest reserve payments to the districts. This ensures that total district revenue received through the state equalization guarantee (SEG) remains consistent with the amount calculated to meet student need and that each public school student receives equal access to programs and services appropriate to educational need. There are four parts to Impact Aid: basic payment, Indian set-aside, special education add-on, and construction funds. The state takes credit for the basic payment portion of Impact Aid only.

The "Indian set-aside" portion of Impact Aid is a payment to school districts based on the number of Native American students enrolled and receiving educational services. This payment meets the Congressional trust responsibility for educating Native American students. The state does not take credit for this portion of Impact Aid. Districts are required to consult with local Pueblos, Tribes, and Nations as to those programs that will be most beneficial to Native American students enrolled in the local district. Pueblos, Tribes, and Nations acknowledge this collaboration through the Indian Policies and Procedures agreement with the local district.

ADMINISTRATIVE IMPLICATIONS

PED will be required to update the funding formula to reflect the changes of this bill. This should be able to be accomplished within current resources.

TECHNICAL ISSUES

The bill does not have an effective date making it possible to argue that, in the even the bill is enacted, the Public Education Department should not take credit for federal Impact Aid received by Zuni Public Schools in FY14. The Legislature should consider including an effective date of July 1, 2014 or later to ensure the provisions of the bill do not become effective in FY14.

The AGO notes the bill does not provide for a remedy if there are deductions for federal revenues pursuant to Paragraph (2) of Subsection C. The bill could be read as one that has a cancelling-out effect of Section 22-8-25(D)(6) NMSA 1978 if there are deductions for federal revenues pursuant to Paragraph (2) of Subsection C. In contrast however, the bill could also be read as one that requires the calculator to take note of the amount of deductions for federal revenues pursuant to Paragraph (2) of Subsection C and not include that amount in the calculation mandated in Section 22-8-25(D)(6) NMSA 1976.

OTHER SUBSTANTIVE ISSUES

According to the Indian Affairs Department:

According to a presentation entitled “Impact Aid-Title VIII: A 50 State Comparison” presented by the Indian Affairs Department in 2011: Impact Aid is a means to provide federal funds to public schools on Indian reservations. There are two reasons for Impact Aid: lack of local tax revenue and the unique needs of a predominantly Native American population-specifically to strengthen education programs in general. Impact Aid funds can be used for salaries for teachers and teacher aides; purchasing of text books, computers, and other equipment; after-school programs; remedial tutoring; advanced placement classes; and special enrichment programs. There are 89 public school districts in New Mexico. 23 public school districts have significant Native American student populations. 20 public school districts apply for Impact Aid funds. Some public school districts have opted not to apply for Impact Aid funds.

According to the National Indian Impacted Schools Association: Many local school districts across the United States include within their boundaries parcels of land that the federal government either owns or has removed from the local tax rolls-including Indian lands. These school districts face special challenges; they must provide a quality education to the children living on Indian and other federal lands, while sometimes operating with less local revenue than other school districts have, because the federal property is exempt from local property taxes.

Since 1950, Congress has provided financial assistance to these local school districts through the Impact Aid Program. Impact Aid was designed to assist local school districts that have lost property tax revenue due to the presence of tax-exempt federal property, or that have experienced increased expenditures due to the enrollment of federally conducted children, including children living on Indian lands. The Impact Aid law assists local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other federal properties. To a lesser extent, the Act also supports school districts with children who have parents in the uniformed services or employed on eligible federal properties but who do not live on federal property.

Impact Aid is often an extremely important source of revenue for school districts that serve children living on Indian reservations and other Indian lands, because these districts frequently have a very small local property tax base from which to raise revenue for schools. School districts may use their Impact Aid payments for whatever they choose, such as teacher salaries, utilities, facilities maintenance, and supplies, in accordance with their local and state requirements. Districts may even use the funds for capital improvements. The only limitations on the use of Impact Aid funds are those payments made for children with disabilities; these funds must be used for the increased costs of educating these children.

POSSIBLE QUESTIONS

Will the federal Impact Aid Office allow the state to not take credit for only one schools district’s Impact Aid?

Will this disqualify the public education funding formula, jeopardizing the ability to take credit for all Impact Aid? If disqualification happens, how will the state make up the more than \$50 million in Impact Aid the state takes credit for when determining the state equalization guarantee distribution?