

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](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Jeff ORIGINAL DATE 02/13/14  
LAST UPDATED \_\_\_\_\_ HB 308  
SHORT TITLE School Transportation Boundary Agreements SB \_\_\_\_\_  
ANALYST Chavez

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	Public Education Department Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 169, SB 258, SB 278  
Duplicates SB 320

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)  
Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 308 amends Section 22 Article 16 NMSA 1978 to addresses transportation boundary issues of school districts with a high concentration of Native American students, provide for transportation boundary agreements, and to provide a resolution process for boundary disputes.

### FISCAL IMPLICATIONS

This bill does not contain an appropriation. The Indian Affairs Department (IAD) and the Public Education Department both note that HB 308 would create an additional administrative burden on PED.

### SIGNIFICANT ISSUES

The bill amends 22-16-4 NMSA 1978 to require school districts reporting a minimum of 75 percent of the school districts' membership as Native Americans shall consult with tribal leaders regarding concerns and issues related to public school transportation services, transportation boundaries and resolution boundary disputes.

The bill also adds a section to Chapter 22 Article 16 NMSA 1978 which provides for transportation boundary agreements and a process for the resolution of transportation boundary disputes. However, the bill duplicates the resolution process already in place in the New Mexico Administrative Code: 6.42.2.12 NMAC is an established rule that currently governs temporary boundary agreements. The NMAC rule establishes procedures and criteria as well as a resolution process. The rule establishes requirements related to the provision of transportation services to students who attend school in a district other than the district in which they live; and establishes procedures pertaining to the resolution of transportation issues in areas where local school districts are engaged in school district boundary disputes. The current rule is a statewide rule and does not limit its scope to a targeted ethnic population.

However, the bill does add two provisions to resolution disputes: (1) PED must provide a written report within 15 days of completion of a boundary dispute study that sets forth a permanent boundary agreement, and (2) PED must review the transportation boundary agreement annually. Upon review, if the conditions necessitating the agreement are no longer in place, the former boundary must be restored. However, if the conditions necessitating the agreement continue to be in place, make the temporary boundary agreement permanent or, after consultation with local school boards and affected tribal leaders, establish an alternative boundary. (See Technical Issues)

**IAD reports:**

At the September 24, 2013 meeting of the interim Indian Affairs Committee (IAC), issues surrounding school bus routes on the Navajo Nation between Gallup-McKinley School District (GMSD) and Central Consolidated School District (CCSD) were discussed. No Memorandum of Understanding (MOU) has been reached regarding issues with school bus routes.

On November 27, 2013 the Naabik'iyáti' Committee of the 22<sup>nd</sup> Navajo Nation Council approved legislation supporting and recommending a cooperative agreement between the Navajo Nation, McKinley County, San Juan County, and the New Mexico Public Education Department in an effort to resolve bus transportation disputes that have affected dozens of Navajo students living in or near the community of Naschitti.

Over the last few months, the Central Consolidated School District, which includes Naschitti, Tohatichi, and the Gallup-McKinley County School District, have met with state and tribal officials to resolve the boundary issues and have yet to come to an agreement to allow Gallup-McKinley buses to cross boundary lines to transport students living in San Juan County. Students living in the vicinity of Naschitti are often forced to walk miles to meet Gallup-McKinley County District buses at the county boundary line to be transported to their school in Tohatichi, located approximately 18 miles from Naschitti. Road construction is currently underway on U.S. Highway 491, making safety concerns a major problem for students walking to and from the county boundary.

This bill addresses a critical issue affecting Navajo Nation students and their safety in getting to school. The collaboration between tribal leaders and the PED is crucial.

PED notes that the requirement that the department engage with leaders to address Native American issues related to transportation is already included in the New Mexico administrative code. Pursuant to 6.42.2.11 NMAC (Transportation of Students Residing on Reservations), before the local boards of education enter into a transportation boundary agreement involving Native American students, district administrators shall consult with tribal representatives and shall review concerns or issues raised by representatives of the tribe when negotiating the terms of the agreement. Furthermore, this regulation does not limit consultation between the school districts and Tribal leaders regarding transportation services based on percentage of Native American students attending that school district, making the provisions outlined in the bill more limiting than current code. Currently there are only four school districts and one state chartered school that meet the 75 percent membership criterion in the bill: Dulce, Gallup, Central, and Zuni school districts, and Walatowa charter school.

### **PERFORMANCE IMPLICATIONS**

IAD states that if any tribe, nation, or pueblo has questions pertaining to the transportation boundaries issues or tribal consultation, the agency will become involved and work in collaboration with PED.

### **DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 169, SB 258, and SB 278 all addresses school transportation boundary agreements and resolution of transportation of boundary disputes.

SB 320 is a duplicate of this bill.

### **TECHNICAL ISSUES**

HB 308 adds a section of 22-16 NMSA 1978 that defines “school district” as a district reporting a minimum of 75 percent of the districts’ student membership as Native American. It may be confusing to add a definition of “school district” for one section of statute that is different from the definition in other sections of statute.

IAD states the requirement that PED conduct a study within 30 days of a boundary dispute, and within fifteen days of completion of the study, in consultation with tribal leaders, provide a written report to all parties involved in the dispute that creates a permanent or temporary transportation boundary agreement, presents the following difficulties:

- The time frames set forth may not be adequate to conduct a study *and* do a tribal consultation;
- It is unclear if the phrase “in consultation with tribal leaders” signifies that PED must conduct a tribal consultation utilizing their State-Tribal Collaboration Act Collaboration and Communication Policy; and
- It is unclear what exactly is meant by the phrase “conduct a study” and what processes and procedures the PED will use.

PED notes the following concerns:

- On page 5, line 17, the bill requires tribal leaders in conjunction with PED to provide a temporary boundary agreement whenever there is a boundary dispute between two local boards. The term “tribal leaders” is vague, ambiguous and unclear.

- This bill does not indicate which specific tribal leaders will be consulted. In certain school districts there may be multiple tribes represented within a school district.
- It is also not certain if the state can require tribal leaders to participate in these types of dispute resolution activities, notwithstanding the separate sovereign authorities of the State and the respective tribes.
- It may not be feasible for PED to consult and establish a boundary agreement within the 15 days set forth in the bill.

### **OTHER SUBSTANTIVE ISSUES**

According to an LESC interim staff report, New Mexico Public School Code currently includes provisions requiring local school boards to adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules require:

- A definition of the school district boundary and the boundaries of attendance areas for each public school; and
- For each public school, a definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route based on distances in current law, designated as "walk zones."

Other provisions of the code regarding school district boundaries indicate:

- Geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law; and
- Whenever it becomes economically feasible for students residing in one school district to attend school in another school district, local school boards may provide for annexation of the appropriate area by resolution of each of the local school boards; but
- The resolutions shall be submitted to the state board [department] of education for its approval.

School districts are not allowed to admit students if it would violate federal desegregation orders. Schools are not liable for decisions that concern the acceptance or rejection of a student for open enrollment and that are based on a good faith application of the law.