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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number	<u>HB135</u>	Sponsor	<u>Lente</u>
Tracking Number	<u>.226732.2</u>	Committee Referrals	<u>HEC/HAFC</u>
Short Title	<u>Indian Education Fund Distributions</u>		
Analyst	<u>Davalos</u>	Original Date	<u>1/24/2024</u>
		Last Updated	<u>1/31/2024</u>

**FOR THE INDIAN AFFAIRS COMMITTEE AND THE LEGISLATIVE EDUCATION
STUDY COMMITTEE**

BILL SUMMARY

Synopsis of Bill

House Bill 135 (HB135) amends the Indian Education Act to make distributions from the Indian education fund to each tribe in New Mexico occur in automatic monthly payments, beginning in FY25. HB135 would replace the current application process administered by the Public Education Department (PED) with distributions determined by an equitable formula that considers tribal needs, tribal size and includes both a base amount and a student count element. Tribes may carry over unused portions of funds received, provided those funds are used for the purposes specified in the Indian Education Act.

The bill would permit PED to develop procedures and rules, to request quarterly spending reports from tribes, and to enter into intergovernmental agreements (IGA) with tribes for the purposes of disbursing funds.

The effective date of this bill is July 1, 2024.

FISCAL IMPACT

HB135 does not contain an appropriation. However, the bill would change how distributions of funds from the Indian education fund would be allocated.

HB135 would make automatic monthly distributions from the Indian education fund to New Mexico tribes, nations, and pueblos starting July 15 in a nonreimbursable manner, based on an equitable formula that considers tribal needs, tribal size, and includes both a base amount and a student count element. This bill does not make any changes to the Indian education funds provided to school districts, charter schools, or any other institutions.

The Indian education fund is statutorily a nonreverting fund, which means PED carries over fund balances not spent at the end of each fiscal year. Historically, carryover balances have been high, and have risen from \$1.3 million in FY19 to \$10.2 million in FY23, raising questions about the administration of the fund and if more could be done to reduce carryover. The table below shows legislative appropriations, expenditures, and carryover for the Indian education fund from FY19 to FY24.

	FY19	FY20	FY21	FY22	FY23	FY24
Legislative Appropriation	\$1,824,600	\$6,000,000	\$5,250,000	\$5,250,000	\$14,988,600	\$20,000,000
Total Expenditures	\$2,170,682	\$5,267,812	\$4,191,112	\$4,064,039	\$9,100,000	¹
Total Carryover/Remaining Balance	\$1,294,650	\$2,026,838	\$3,085,726	\$4,271,687	\$10,200,000	¹

Source: DFA and PED

¹ Expenditures and carryover for FY24 are not available before the end of the fiscal year.

In FY24, the Indian education fund received \$20 million. According to a PED [presentation](#) to LESC in June 2023, the distribution of \$20 million was determined by student count and operational need. The Indian education funds are disbursed through subgrants that fall under the improving educational and cultural outcomes for Native American students grant, previously known as the Indian education act grant. Those grants are:

- Indigenous language fellow grant (to increase fluent speakers);
- Native American community-based immersion schools prek-12 grant (to support immersion schools that serves Native American students);
- Access to high quality curriculum, instruction, and assessment grant (to develop high quality curriculum, instruction, or assessments);
- Native American language program grant (to support language programming);
- Indigenous education initiative (for internal review, curriculum development, and relaunching);
- Native language teacher pipeline grant (for the creation of teacher preparation programs);
- Recruit and retain high-quality indigenous personnel grant (to increase Native American educators); and
- Native American language and culture support grant (differential pay).

The House Appropriations and Finance Committee Substitute for House Bills 2 and 3 (HB2/HAFCS) includes \$20 million from the general fund to the Indian education fund for expenditure in FY25.

SUBSTANTIVE ISSUES

HB135 would change Indian education act funding by using an automatic monthly disbursement procedure, replacing the current application and reimbursement process. The bill specifies that PED may request quarterly spending reports from tribes and may enter into IGAs with tribes for the purposes of disbursing funds. Tribes may carry over unused portions of funds received, provided those funds are used for the purposes specified in the Indian Education Act.

Historically, the Indian education fund has allocated funds through grants to local education agencies and tribal education departments. Those funds are generally expended on educational services for Native American students that address the findings in the *Martinez-Yazzie* education sufficiency lawsuit, as well as the statutory requirements of the Indian Education Act. The fund also has been a primary source of funding for tribal education departments. While there have

historically been federal grants for tribal education departments, those funds have usually been allocated through a competitive grant process for use in schools funded by the federal Bureau of Indian Education. According to PED, the PED allocations from the Indian education fund are based on priorities established by the PED Secretary, Assistant Secretary of Indian Education in collaboration with tribal leaders, Tribal Education Directors, Indian Education Advisory Council members, and school personnel serving Native American students.

Award Letter Process of the Indian Education Fund. Over the past three years, PED has used an award letter process to award grants from the Indian education fund to entities that receive funding for tribal education priorities and programs as a reimbursement process. The award letter process replaced the prior procedure where PED entered into an IGA with each tribe, nation, or pueblo. The prior procedure took a considerable amount of time for the final IGA to be signed by both parties. Sometimes the signature process was not completed in time for the grant to be awarded, resulting in tribes, nations, and pueblos losing funds for that fiscal year. To remedy this situation, PED began to use the award letter process. The award letter process includes assurance forms for the tribe, nation, or pueblo to provide input and sign. The assurance forms include details related to payment, fund expenditures, and accountability measures. However, tribal leaders have expressed concerns with the award letter process because funds have been distributed as late as October, three months after the initial distribution date. This delay in funding has caused severe disruption to programs and services for American Indian students. Tribal representatives have also noted this process limits the flexibility of local leaders to design programming independent of PED requirements. By transitioning to an agreement with PED, tribal communities hope to gain additional flexibility in programs and initiatives they see as the best fit for their communities.

Tribal Remedy Framework¹. The Tribal Education Alliance produced the report, [Pathways to Education Sovereignty: Taking a Stand for Native Children](#) that builds upon the [Tribal Remedy Framework](#) by taking the recommendations made by tribal leaders and community members in response to the *Martinez-Yazzie* court ruling. The report describes how New Mexico’s tribes, nations, and pueblos can reclaim education of their children by proposing “shared responsibility and increased tribal control over the schooling of Native children” as the first of three strategic solutions to address historical injustices and ensure equitable outcomes for Native American students. HB135 is in alignment with this strategic solution presented by TEA by supporting capacity building to enable school districts and tribal education departments to collaborate in serving Native American students.

Outcomes for Native American Students. Historically, educational outcomes for Native American students have been consistently below their non-Native peers. FY23 proficiency rates for Native American students were considerably lower than those of students of other ethnicities:

- In reading, 23 percent of Native American students were proficient;
- In math, 13 percent of Native American students were proficient; and
- In science, 20 percent of Native American students were proficient.

Research suggests that incorporating Native American languages and cultures into academic settings can improve educational engagement and outcomes, including improved retention, graduation rates, college attendance rates, and standardized test scores.

¹ The Tribal Remedy Framework has been endorsed by the [All Pueblo Council of Governors](#), the [Jicarilla Apache Nation](#), the [Mescalero Apache Tribe](#), and the [Navajo Nation](#).

Anti-Donation Clause. Provisions of this bill would allow New Mexico tribal governments to receive equitable distributions while respecting the sovereign immunity and decision-making of a tribe to determine how funds will be used. While Section 14 of Article IX of the New Mexico Constitution, known as the Anti-Donation Clause, prohibits the state from making donations in aid of any person, association, or public or private corporation, there are four judicially recognized exclusions to the Anti-Donation Clause. These include: 1) The donee is an arm of the state; 2) For revenue bond and lease financing; 3) If the donor [state] receives value; or 4) For just compensation. The provisions in this bill that allows New Mexico tribal governments to receive an equitable distribution fall under one of the exclusions in which the donor [state] receives value. Multiple court rulings have determined that where a state entity receives value in exchange for funding, the state as not “pledge[d] its credit or ma[de] any donation to or in ad of [another] person...” This analysis sounds in contract law, where the receipt of consideration separates binding contracts from non-binding, donative promises.² In addition, this bill allows PED to enter into IGAs with New Mexico tribes, nations, and pueblos; the Anti-Donation Clause does not forbid government entities from making transfers to other government entities.

ADMINISTRATIVE IMPLICATIONS

HB135 may require an additional FTE at PED to develop procedures and rules for the award money from the Indian education fund for school districts, charter schools, and other entities, as well as to issue monthly distributions to tribes.

OTHER SIGNIFICANT ISSUES

Martinez-Yazzie Education Sufficiency Lawsuit. In 2019, the 1st Judicial Court issued a final judgement and order on the consolidated *Martinez-Yazzie* education sufficiency lawsuit, finding New Mexico’s public education system failed to provide a constitutionally sufficient and adequate education for at-risk students, defined as English language learners, Native American students, students with disabilities, and students from low-income families. The court pointed to high school graduation rates, student test proficiencies, and college remediation rates as indicators of how the state is not meeting its constitutional obligation to ensure all students are college, career, and civics ready. The court’s findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students. Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-

² See *White v. Board of Educ. of Silver City*, 1938-NMSC-009, ¶ 31 (rejecting challenge because board of education “will get value received for every dollar put into the enterprise” of a bond issue to build a school to join state and local schools); *City of Gallup v. N.M. State Park & Recreation Comm’n*, 1974-NMSC-084, ¶ 9 (rejecting an anti-donation claim because, under agreement, state would receive title to 640 acres in Red Rock State Park, \$1.5M for construction, and maintenance and operation of the park for the life of lease contract with Gallup) ; *Pierce v. State*, 1996-NMSC001, ¶ 29 n.12 (rejecting challenge to statutorily conferred pension benefits because benefits are not a gratuity); *Treloar v. County of Chaves*, 2001-NMCA-074, ¶ 32 (rejecting challenge to severance benefits because “severance pay is deemed to be in the nature of wages that have been earned”); *State ex rel. Office of State Eng’r, et al. v. Lewis, et al.*, 2007NMCA-008, ¶ 51 (rejecting challenge to Pecos River rights settlement because, in exchange for funds, State received land and water rights, as well as settlement of claims in suit); cf. *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. . . The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration.”)

risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

The Legislature passed the Indian Education Act in 2003 to provide Native American students in New Mexico with opportunities for an equitable and culturally and linguistically relevant education in public schools. The law establishes the Indian Education Division of PED as well as the Indian Education Advisory Council and lays out systems for the state and school districts and charter schools to collaborate with tribal governments on matters related to curricula, teaching, support services, and other programs to meet the needs of Native American students. The purposes of the act are to establish equitable and culturally relevant learning systems, conservation of Native languages, and tribal immersion and control over schools.

RELATED BILLS

Relates to HB134, Tribal Education Trust Fund, which creates a tribal education trust fund and provides a \$100 million initial investment with provisions detailing how investment returns on the fund would provide stable and consistent revenue for tribal education departments. HB134 also creates a tribal education trust fund task force to develop an equitable distribution formula.

SOURCES OF INFORMATION

- LESC Files
- Indian Affairs Department

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