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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	SJC	<b>LAST UPDATED</b>	
	State-Tribal Education Compact Schools	<b>ORIGINAL DATE</b>	3/12/23
<b>SHORT TITLE</b>	Act	<b>BILL NUMBER</b>	CS/Senate Bill 482/SJCS
		<b>ANALYST</b>	Liu

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
STEC School Operations		\$0.0 - \$483,054.9	\$0.0 - \$483,054.9	\$0.0 - \$966,109.8	Recurring	General Fund
STEC School Facilities		\$0.0 - \$56,511.7	\$0.0 - \$1,073,721.5	\$0.0 - \$1,130,233.2	Nonrecurring	Public School Capital Outlay Fund
<b>Total</b>		<b>\$0.0 - \$539,566.6</b>	<b>\$0.0 - \$1,556,776.4</b>	<b>\$0.0 - \$2,096,343.0</b>		

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to HB140, HB147, HB149, SB131

### Sources of Information

LFC Files

#### No Response Received

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis of SJC Substitute for House Bill 482

The Senate Judiciary Committee substitute for Senate Bill 482 amends the Public School Code to create state-tribal education compact (STEC) schools, authorizing the Public Education Department (PED) to enter into a compact with an Indian nation, tribe, or pueblo located wholly or partially in New Mexico to create language- and culture-based STEC schools. The governing body for an Indian nation, tribe, or pueblo in New Mexico may submit a resolution to PED to create a STEC school serving any grades between prekindergarten and 12<sup>th</sup> grade, and PED shall convene a government-to-government meeting for negotiating the terms of the compact. All actions, negotiations, and business of PED and the tribe entering into the compact are subject to the Open Meetings Act.

The compacts shall have a term of five years and include provisions relating to compliance, notices of violation, dispute resolution, recordkeeping and auditing, delineation of responsibilities, compact renewability, and compact termination. STEC schools will operate according to the compact terms and are exempt from all state statutes and rules applicable to school districts and charter schools except for provisions of this bill and the negotiated compact terms. Each STEC school will create curriculum controlled and evaluated by the tribe, employ licensed school employees, comply with licensed school employee background checks, comply with nondiscrimination laws, and be subject to legal and fiscal audits. STEC schools will not engage in sectarian practices in educational programming, admissions, employment, or operations and cannot limit or restrict any enrollment or school choice options.

The bill prohibits STEC schools from charging tuition but allows the charging of fees for participation in optional extracurricular events and activities. STEC schools may prioritize admission to tribal members and siblings of enrolled students if enrollment capacity is insufficient; otherwise, STEC schools cannot deny student admission on any basis other than age, grade, or capacity. STEC schools may implement a policy of preference for hiring Indians or prioritizing admission of tribal members when the capacity of the school's programs or facilities are not as large as demand.

STEC schools must report enrollment to PED and funding shall be determined by the public school funding formula. STEC schools can apply for state grants, including awards from the public school capital outlay fund, on the same basis as a school district. Salary amounts for licensed school employees must be based on the salaries of the school district in which the STEC school is located. STEC schools will be allowed to retain any unused funding at the end of any budget year for use in subsequent fiscal years. The effective date of this bill is July 1, 2023.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation but provides operational funding for STEC schools on the same basis as school districts. The bill notes funding shall be determined by the public school funding formula, also known as the state equalization guarantee (SEG) distribution. The upper cost estimate of \$483 million for operational costs in this analysis assumes all 36.9 thousand children enrolled in a pueblo, tribe, or nation choose to enroll in a STEC school and generate SEG funding based on the current unit value.

The estimate assumes all STEC school students participate in a bilingual multicultural education program, reflect the same proportionate student populations for grade levels, special education, fine arts, charter school activities, and home school programming as public schools. Additionally, the analysis assumes each STEC school adopts the at-risk index and rural population density of a geographically close district, and only operates two school facilities in each tribe for size adjustment factors. Estimated costs would increase further if the Navajo Nation established more than the two STEC schools assumed in this model or STEC schools provided extended learning time programs, which were excluded from this analysis (see Technical Issues).

Provisions of this bill provide STEC schools access to public school capital outlay fund programs as well. Assuming a 50 percent local-state match rate, \$425 per square foot, and 144 square feet per student, the upper cost estimate to the public school capital outlay fund could be as much as \$1.1 billion for new construction in future fiscal years. Given the typical timeline for

planning, design, and construction, initial costs in FY24 for building new facilities will likely be limited to planning and design—assumed to be 5 percent of the total out-year costs. Costs of initial facility construction may be deferred if the compact uses an existing tribal or BIA school to become a STEC school and leverage tribal or federal funding streams for facility replacement or renovation.

## **SIGNIFICANT ISSUES**

According to the Indian Affairs Department (IAD), the bill contributes to a growing body of state policy based on strengthening government-to-government relations and improving tribal education. The bill allows Indian nations, tribes, or pueblos to control their schools and assert tribal educational sovereignty. The bill affirms the state’s commitment to honor the government-to-government relationship between tribes and reflects PED’s commitment to work with tribal leaders and provide guidance for the implementation of Indian Education Act. IAD notes tribal communities are most familiar with their history, language, and culture, and their lived experiences enrich the pedagogies for tribal education departments and support the development of early childhood education, culturally and linguistically relevant curriculum, and community-based education.

IAD notes the experiences of Indigenous peoples have contributed to unequal educational conditions, access, and attainment placing Native students at disadvantages in comparison to other groups. The bill intends to address poor academic outcomes for tribal students by fostering Native American cultural identity while promoting indigenous knowledge, language, values, and practice. IAD notes there is urgency within many tribal communities to teach children their traditional languages to preserve the worldviews of the community. STEC schools include more Indigenous history, culture, and language in the curriculum, and a community-supported experience for Native students.

In 2022, Alaska enacted a law authorizing the establishment of five STEC schools but did not provide initial funding to start up the schools. Funding for establishing the STEC schools will be negotiated between tribes and the Alaska Department of Education and Early Development and then requested to the Legislature.

In 2013, the state of Washington enacted legislation authorizing STEC schools. The state has since established seven STEC schools. A 2021 report from Washington’s Office of Superintendent of Public Instruction noted the state continued to experience challenges with identifying students, reporting data efficiently, addressing Covid-19 disruptions, and reducing staff turnover at the department. A 2018 survey of Washington STEC schools by the Evergreen State College highlighted initial issues with establishing STEC schools, as tribes did not have access to data on student demographics and test scores and struggled to meet state and federal reporting deadlines and accountability metrics. The survey indicated STEC schools increased Native culture and language practices, brought in more cultural experts, improved attendance and graduation rates, and had access to more resources through state and federal sources. However, STEC schools continue to struggle with integrating state standard curricula and providing culturally responsive instruction.

## **PERFORMANCE IMPLICATIONS**

A 2021 LFC evaluation on implementation of the Indian Education Act found Native American students continue to perform well below peers on state and national measures of achievement, despite the availability of nearly \$147 million in state and federal funds at public schools and institutions of higher education for purposes aligned to the act. The report noted a history of understaffing at PED’s Indian Education Division, difficulties with funding utilization, challenges with local collaboration, and a lack of specific, targeted outcomes have resulted in a system that has not served Native American students in a comprehensive and coordinated manner.

The LFC evaluation found Native American student enrollment in public schools fell to 32.4 thousand students in FY19, an 8.5 percent decrease over the prior five years. Four-year high school graduation rates for Native American students increased to 69 percent in FY19, an 11 percentage point improvement over the prior 5 years, but still 6 percentage points lower than the statewide average of 75 percent. Similarly, Native American student reading and math proficiency rates improved marginally over the same period but remained below statewide averages. The evaluation noted, however, changes in high school graduation requirements (allowing alternative demonstrations of competency) likely contributed to increased graduation rates and changes to statewide standardize assessments complicated measures of progress in these areas.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill require PED to establish an application, approval process, procedures, and timelines for compact negotiations with the tribes by July 1, 2024—one year after the effective date of the bill. The governing body of a Indian nation, tribe, or pueblo in New Mexico can initiate a government-to-government meeting for the purpose of negotiating compact terms for a STEC school by submitting a resolution and application. PED must convene the government-to-government meeting within 90 days of receipt of the resolution and application and post each state-tribal education compact on the department’s website. All actions, negotiations, and business of PED and the Indian nation, tribe, or pueblo entering into a compact must be conducted pursuant to the Open Meetings Act.

Provisions of the bill require STEC schools to report student enrollment to PED in the same manner as required of school districts, particularly reporting for purposes of receiving state of federal funding that is allocated based on student enrollment and demographics. PED will need to develop new budget codes and accounts for STEC schools, similar to state charter schools that are newly authorized. OSA notes STEC schools would need to be audited annually like other school districts.

Provisions of the bill define STEC schools as school districts under the Public School Capital Outlay Act, requiring the Public School Facilities Authority (PSFA) to account for STEC schools under the current ranking system for school facility replacement or improvement awards. PSFA may need to conduct site assessments if STEC schools are placed in an existing facility to measure the educational adequacy of the building.

## **RELATIONSHIP**

This bill is related to House Bill 140, which establishes a tribal education trust fund (TETF);

House Bill 147, which requires 50 percent of Indian education fund distributions to be allocated to New Mexico tribes; House Bill 149, which requires PED to request about \$4 million each year for the Legislature to consider appropriating to TETF; and Senate Bill 131, which changes the local-state match formula.

## TECHNICAL ISSUES

Provisions of this bill include STEC schools under the definition of “school district” in the Public School Capital Outlay Act, subjecting STEC schools to the local-state match formula that determines the share of local funding required for public school capital outlay fund projects. The local-state match formula is calculated using the property tax valuation of the district; however, STEC schools do not have a defined taxable base under this bill. As such, it is unclear if STEC school capital projects would be completely financed by the state, have an alternative match rate set by the Public School Capital Outlay Council (PSCOC), or be relegated to leasing or purchasing existing facilities through PSCOC awards.

## OTHER SUBSTANTIVE ISSUES

On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* education sufficiency lawsuits, and found that New Mexico’s public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English language learners, Native American students, and special education students. 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-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.

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