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FISCAL IMPACT REPORT

SPONSOR <u>Lente/Allison/Johnson</u>	LAST UPDATED <u>2/1/24</u> ORIGINAL DATE <u>1/25/24</u>
SHORT TITLE <u>Indian Education Fund Distributions</u>	BILL NUMBER <u>House Bill 135</u>
ANALYST <u>Liu</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		See Fiscal Implications				

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

Relates to House Bills 39 and 134

Sources of Information

LFC Files
 Legislative Education Study Committee (LESC) Files

Agency Analysis Received From
 Indian Affairs Department (IAD)
 Public Education Department (PED)

SUMMARY

Synopsis of House Bill 135

House Bill 135 changes the distribution of the Indian education fund (IEF) to automatic monthly payments to New Mexico tribes, beginning on July 15 in FY25. The distributions will not be on a reimbursement basis and will be based on an equitable formula that considers tribal needs, tribal size, base funding levels, and student counts.

PED must develop rules for awarding IEF grants to school districts, charter schools, and other entities. PED may also request quarterly spending reports from the New Mexico tribes and enter into agreements for disbursing funds. New Mexico tribes may carry over unused IEF awards for purposes of implementing the Indian Education Act. This bill is endorsed by LESL. The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

The bill does not contain an appropriation but changes how PED makes IEF distributions and allows tribes to carryover unused IEF awards. Automatic distributions of IEF awards would expedite funds to tribes, addressing historic delays in issuing IEF awards. Provisions of this bill could allow tribes to carry over unspent funds indefinitely, which would effectively allow tribes to accumulate fund balances and reduce reversions from the IEF to the general fund. It is unclear whether the formula in this bill will increase the share of IEF allocations made to tribes or if PED will maintain existing award levels as the bill does not define the allocation amount for tribes, schools, and other entities.

SIGNIFICANT ISSUES

Currently, tribes, pueblos, and nations receive IEF distributions on an annual basis, and the Legislature has increased appropriations in recent years for IEF distributions. In FY18, IEF appropriations totaled \$2.5 million; in FY24 the appropriation was \$20 million. For FY24, tribes were authorized to spend down IEF awards over a two-year period. In some instances, and with other smaller grants, if a tribal community receives a grant but fails to spend all awarded funds in a given fiscal year, those funds revert to the PED. The department notes this funding approach makes it difficult for tribal communities to develop, plan, and execute multi-year projects.

PED makes IEF distributions based on priorities established by the PED secretary and assistant secretary of Indian education to implement the Indian Education Act. For FY24, the Legislature appropriated \$20 million to IEF. In FY24, PED reported the following budgeted amounts:

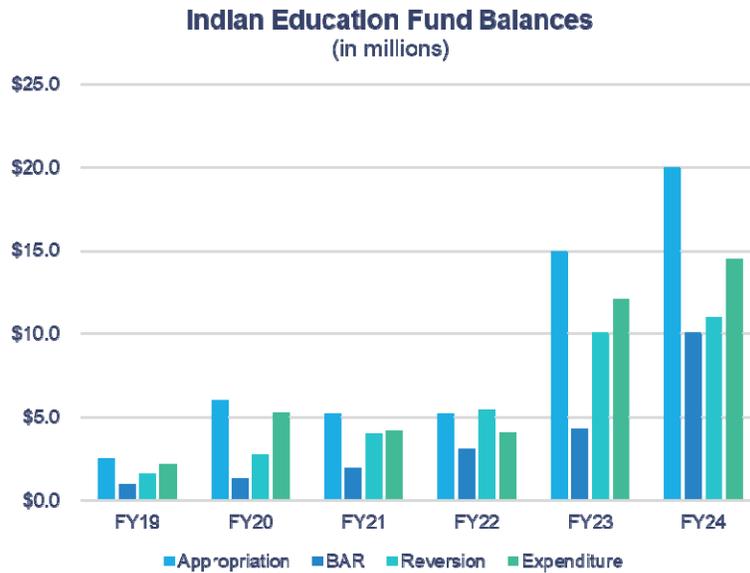
Indian Education Fund Grant Name	FY23 Budget (in thousands)	FY24 Budget (in thousands)
Indian Education Grant – Tribes, Nations, Pueblos	\$2,053.2	\$4,000.0
Indian Education Grant – Districts, Charters	\$2,853.8	\$5,000.0
Indigenous Language Fellow	\$2,871.5	\$2,871.5
Native American Community-Based Immersion Schools	\$954.8	\$954.8
Curriculum, Instruction, and Assessment	\$200.0	\$200.0
Native American Language Program	\$250.0	\$250.0
Indigenous Education Initiative	\$1,500.0	\$1,500.0
Native Language Teacher Pipeline	\$693.0	\$693.0
Recruit and Retain Indigenous Personnel	\$974.0	\$3,250.0
Pay Parity for 520 Certificate Teachers*	\$419.7	\$4,000.0
Total	\$12,770.0	\$22,719.3

*PED also allocated \$1.5 million from general fund appropriations from the General Appropriation Act of 2022

Source: LESC Files

In FY23, PED requested (BAR) authority to carryover \$10 million in unspent IEF awards from FY23 for expenditure in FY24. In previous years, the IEF has accumulated balances from significant reversions, suggesting an inability of tribes to spend or obligate PED awards. IAD notes nations, pueblos, and tribes must use their own resources and submit for reimbursement on expenditures for IEF awards, which could limit spending. Tribes contend PED has historically issued late award notifications, and other processing issues, such as delays in getting signatures or approvals, have contributed to unspent IEF awards.

During FY23, PED awarded approximately \$1.7 million in Indian Education Act grants. PED notes tribes spent \$1.2 million of those funds, and the remaining \$507.5 thousand was returned to the department. Provisions of this bill would allow tribes, nations, and pueblos to retain those unused funds for future spending, if they are used for the purposes of the Indian Education Act.



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 five years, but still 6 percentage points lower than the statewide average of 75 percent. For FY22, the graduation rate dropped to 72 percent for Native American students but narrowed to 4 percentage points below the statewide average.

Similarly, Native American student reading and math proficiency rates improved marginally over the same period but remained below statewide averages. This trend remains the same for FY23, with Native American students reported as 23 percent proficient in reading and 13 percent proficient in math compared to the statewide average proficiencies of 38 percent in reading and 24 percent in math.

ADMINISTRATIVE IMPLICATIONS

Provisions of this bill do not clearly indicate which entity would develop an equitable formula for IEF distributions to tribes but does name PED as the responsible agency to develop rules for awarding IEF distributions to school districts, charter schools, and other entities.

PED notes tribes, nations, and pueblos must currently submit monthly requests for reimbursements that are reviewed and approved by the department. This process ensures purchases are allowable under the Indian Education Act and helps the department target technical assistance to grantees. PED notes a non-reimbursable funding approach may reduce accountability.

While provisions of the bill would remove processes for requesting reimbursement, the bill authorizes PED to request quarterly spending reports from New Mexico tribes, enter into agreements with tribes, and determine if carryover funds are used for purposes of the Indian Education Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is related to the IEF appropriation in the budget. The LFC, LESC, and executive recommendations all include \$20 million for IEF appropriations.

This bill relates to House Bill 39, which appropriates \$27.6 million to higher education institutions for initiatives to support the Native American workforce pipeline, and House Bill 134, which creates a tribal education trust fund that directly distributes funding to tribes.

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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