

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HB 245

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .191765.1

**Short Title:** Stop Some Indian Impact Aid Credits

**Sponsor(s):** Representatives Eliseo Lee Alcon and Sandra D. Jeff, and Others

**Analyst:** Mark Murphy

**Date:** March 6, 2013

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**Bill Summary:**

HB 245 amends the *Public School Finance Act* to provide that no deductions in the State Equalization Guarantee (SEG) distribution will be made for federal revenues from Impact Aid funds for school districts located entirely within the boundaries of recognized Indian reservations or pueblo grant lands.

**Fiscal Impact:**

HB 245 does not contain an appropriation.

**Fiscal Issues:**

The Public Education Department (PED) bill analysis states:

- as written, HB 245 would exclude only the Zuni Public Schools district's Impact Aid from the computation of SEG distribution;
- this would result in a dilution of the unit value to accommodate the loss of credits equaling \$4.2 million;
- an unintended consequence of this bill is that New Mexico may not meet the disparity test required in order to take credit for 75 percent of the basic impact aid payments to districts;
- if this were to occur, the state would immediately be liable for an additional \$52.7 million needed to keep the unit value stable; and
- this would also mean that the state would cease to be an equalized state, resulting in students from different parts of the state with similar need generating differing dollar amounts.

The Legislative Finance Committee (LFC) Fiscal Impact Report (FIR) also states that HB 245 would exclude only federal Impact Aid payments made to the Zuni Public Schools from the computation of the SEG distribution.

**Substantive Issues:**

The federal Impact Aid law (originally known as PL 874) was signed into law by President Harry S. Truman in 1950 to provide assistance to school districts that experience an adverse financial impact due to federal activity or presence. This impact is usually caused by the federal

ownership of non-taxable land, or the burden of providing an equal education to a district's "federally connected" children. The three main types of federally connected children are:

- children residing on Indian lands;
- military children; and
- children residing in federal low-rent housing projects.

Traditionally, property sales and personal income taxes account for a large portion of the average school district's annual budget, but federally connected students can adversely affect a school district's financial base if their parents or guardians:

- pay no income taxes or vehicle license fees;
- live on non-taxable federal property;
- shop at stores that do not generate taxes; or
- work on non-taxable federal land.

Impact Aid provides a payment to school districts in lieu of these lost taxes. Impact Aid is one of the only federal education programs in which discretionary funds go directly into a school district's general operational fund to be used as the local school board sees fit.

According to provisions in the federal *Elementary and Secondary Education Act (ESEA)* pertaining to Impact Aid:

- funds are provided directly to school districts on the basis of statutory criteria provided in grant applications submitted to the US Department of Education (USDE);
- payments under the program are made for:
  - federal acquisition of real property located within the school district;
  - membership and attendance counts of federally connected children; and
  - construction, repairs, maintenance, and modernization of facilities to eligible local educational agencies (LEAs); and
- payments made under the program are considered general aid, and may be employed at the discretion of the LEA, except for those funds awarded for:
  - federally connected children with disabilities; and
  - facility construction, repairs, and modernization.

According to provisions within the New Mexico *Public School Finance Act*, current law:

- considers Impact Aid funding as "federal revenue" within the SEG distribution;
- defines "federal revenue" in the SEG distribution as receipts to the school district derived from the following:
  - 75 percent of the school district's share of forest reserve funds; and
  - 75 percent of grants from the federal government as "PL 874 funds" or "impact aid"; and
- requires the calculation to determine the final SEG distribution for school districts to deduct the federal revenue from the total program cost of a school district.

The Indian Affairs Department (IAD) bill analysis states that:

- 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; and
- 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.

As noted above, Impact Aid funds are provided not only to districts with Indian reservation or grant lands, but also to districts with any other large federal presence that affects the ability for the district to generate revenue.

### **Technical Issues:**

The IAD bill analysis states that:

- if Zuni Public Schools is the only district whose funding formula would be affected by HB 245 provisions, then HB 245 could be subject to challenge;
- the requirement of a school district having to be located entirely within the boundaries of recognized Indian reservations or pueblo grant lands could be seen as an arbitrary limitation; and
- it is unknown to IAD whether the state will meet the requirements needed for the USDE certification that allows the offset for any school districts.

PED's bill analysis states that if HB 245 is passed:

- the federal disparity test may result in the state not having the ability to include any Impact Aid in the credits for the SEG distribution.

### **Background:**

In New Mexico, only one school district is currently located entirely within the boundaries of an Indian reservation or pueblo grant lands. That district is Zuni Public Schools.

According to the Zuni Public Schools' website, the district came into being as follows:

- from 1956 to 1980, the three existing school sites (Zuni Elementary, Dowa Yalanne Elementary, and Zuni High School) in Zuni, were operated by the Gallup-McKinley County Schools (GMCS) district;
- at the start of the third decade of being a part of GMCS, however, many community members decided that the Zuni students' educational needs were not being met;
- during the latter half of the 1970s, the Zuni people started discussions about the need to have their own school district to address the educational problems that remained unresolved under the large GMCS;
- during the mid-1970s, the Zuni tribal members voted to create a new school district/system;

- as a result, based on the documented wishes of the Zuni people, the tribal government officials started up very definite planning for the creation of a new Zuni Public District/System;
- the definite planning commenced with an official Zuni Tribal Council Resolution, Resolution Number M70-79-1054, dated March 16, 1978;
- this official resolution authorized and directed the Zuni Pueblo’s Division of Education to begin work on the feasibility study for a separate school district for the Zuni community;
- this feasibility study included research of the pros and cons of several types of school district/systems options such as a:
  - Bureau of Indian Affairs contract school operated by the community;
  - Bureau of Indian Affairs school operated by the bureau’s system; or
  - New Mexico State Public School;
- a second resolution, Resolution Number M70-79-1054, dated May 7, 1979, authorized the Zuni Tribal Government to obtain funds from the US Bureau of Indian Affairs to hire a staff to plan for the separation of the Zuni schools from the GMCS;
- the plans were to create a new school district that would be a State of New Mexico Public School District;
- a final resolution, Resolution Number M70-79-1108, dated December 18, 1979, was to request the State Board of Education of the State of New Mexico “to create a public school district” coextensive with the McKinley portion of the Zuni Reservation to be known as the “Zuni Public School District”; and
- on January 7, 1980, the New Mexico State Board of Education approved the Zuni Tribal Council’s request for the new Zuni Public Schools district.

**Committee Referrals:**

HEC/HAFC

**Related Bills:**

SB 325 *Stop Some Indian Impact Aid Credits* (Identical)