

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR	Lente/Romero, GA/Martinez, J/Roybal Caballero/Allison	LAST UPDATED	
		ORIGINAL DATE	1/26/23
SHORT TITLE	Tribal Education Trust Fund	BILL NUMBER	House Bill 140
		ANALYST	Liu/Torres, I

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$50,000.0	Nonrecurring	Public Education Reform Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	\$1,000.0	\$2,040.0	Recurring	Tribal Education Trust Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 147

Is a companion to House Bill 149

Relates to an appropriation in the General Appropriation Act

Sources of Information

LFC Files

Legislative Education Study Committee (LESC) Files

Responses Received From

New Mexico Attorney General (NMAG)

Indian Affairs Department (IAD)

Public Education Department (PED)

State Investment Council (SIC)

SUMMARY

Synopsis of House Bill 140

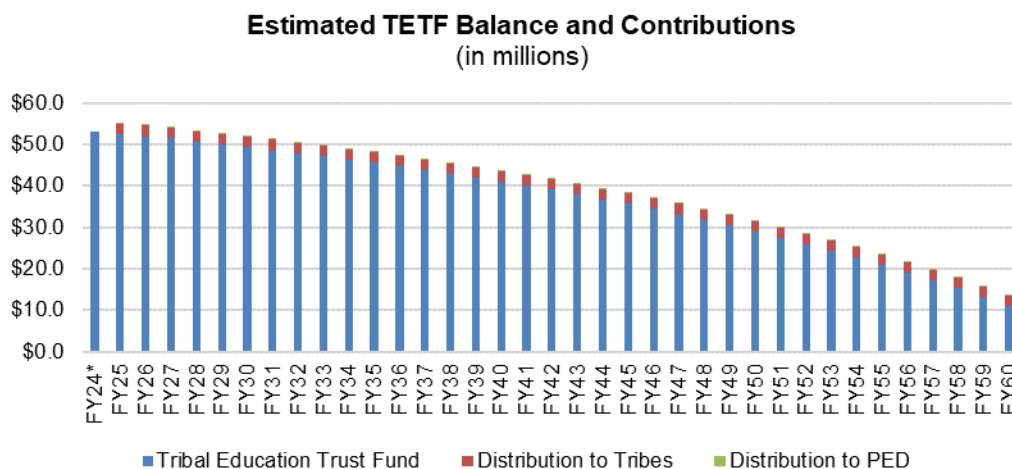
House Bill 140 appropriates \$50 million from the public education reform fund to create a tribal education trust fund (TETF), managed by SIC, that will make annual distributions for PED to

distribute to each New Mexico tribe. The bill establishes minimum distribution requirements, administrative and reporting responsibilities for PED and SIC, reporting requirements for tribal education departments (TED), and legislative authorization to tap the fund in the event of a general fund deficit and exhausting available reserves. The effective date of this bill is July 1, 2023. This bill is endorsed by LESC.

FISCAL IMPLICATIONS

The appropriation of \$50 million contained in this bill is a nonrecurring expense to the public education reform fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the public education reform fund. Provisions of the bill distribute TETF revenues annually (beginning in FY25) based on the greater of \$2.5 million or 5 percent of the average of year-end market values of TETF for the preceding five calendar years. Additionally, the bill makes another TETF distribution to PED for administrative costs based on the lesser of \$100 thousand or 1 percent of the fund.

The bill charges SIC with management of the fund. This allows higher investment earning potential than if managed as part of the state’s treasury balances. However, the relatively lower balance of the fund, the annual distributions, and the reserve risk of the fund suggest investment returns will likely be minimal. Assuming an aggressive return of 4 percent for the size and distributional characteristics of the fund, LFC staff estimate the fund will provide relatively flat distributions of \$2.5 million to Indian nations, tribes, or pueblos and \$100 thousand to PED for almost 40 years. Because the balance of the TETF is not expected to grow, the total distributions are likely to remain close to the minimum of \$2.6 million a year.



*Includes \$3 million in estimated gains for FY24 on top of the \$50 million endowment

SIC notes TETF will provide at least \$2.5 million annually to PED for distribution to Indian nations, tribes, or pueblos for the foreseeable future. Depending on the returns earned on TETF investments, the distribution may be expected to increase. Any increase, however, will be wholly dependent on returns and cannot be predicted with certainty.

SIC notes TETF differs substantially in resources and beneficiaries from other funds, such as the land grant permanent fund (LGPF) and, therefore, may need to be invested with a different risk

and return profile. For example, LGPF receives cash inflows from the State Land Office that currently exceed annual cash distributions, whereas TETF will be funded with a one-time appropriation. SIC notes this difference may lead to different tolerance for risk and long-term investment goals. Given the inflows, LGPF can absorb short-term losses without impacting distributions to beneficiaries, whereas large swings in the investment returns of TETF may cause fluctuations in distributions. This factor may suggest a lower risk profile for TETF. On the flipside, SIC notes this same factor may suggest a higher risk profile for TETF because, in the absence of significant long-term growth that exceeds both the distribution rate and inflation (which last year was close to 7 percent), the real value of distributions from TETF will decrease every year.

Provisions of this bill permit the Legislature to appropriate from TETF to the general fund to avoid an “unconstitutional deficit.” However, this emergency appropriation is only authorized after the Legislature has exhausted available funds from the appropriation contingency fund, general fund operating reserve, tax stabilization reserve, state-support reserve, and tobacco settlement permanent fund.

SIGNIFICANT ISSUES

PED notes provisions of the bill require the department to allocate the TETF distribution annually on July 1 as follows:

- 90 percent distributed equally to each tribe and
- 10 percent distributed to each tribe in proportion to the number of New Mexico students each tribe serves.

Pueblo, Tribe, or Nation	Est. Number of Children (Ages 5-17)	90% Equal Distribution (in thousands)	10% Population Distribution (in thousands)	Total TETF Distribution (in thousands)
Acoma	729	\$ 102.3	\$ 4.9	\$ 107.2
Cochiti	210	\$ 102.3	\$ 1.4	\$ 103.7
Isleta	663	\$ 102.3	\$ 4.5	\$ 106.8
Jemez	557	\$ 102.3	\$ 3.8	\$ 106.1
Jicarilla	619	\$ 102.3	\$ 4.2	\$ 106.5
Laguna	1,072	\$ 102.3	\$ 7.3	\$ 109.5
Mescalero	654	\$ 102.3	\$ 4.4	\$ 106.7
Nambe	182	\$ 102.3	\$ 1.2	\$ 103.5
Navajo Nation	27,306	\$ 102.3	\$ 185.2	\$ 287.5
Ohkay Owingeh	282	\$ 102.3	\$ 1.9	\$ 104.2
Picuris	37	\$ 102.3	\$ 0.3	\$ 102.5
Pojoaque	64	\$ 102.3	\$ 0.4	\$ 102.7
San Felipe	599	\$ 102.3	\$ 4.1	\$ 106.3
San Ildefonso	105	\$ 102.3	\$ 0.7	\$ 103.0
Sandia	59	\$ 102.3	\$ 0.4	\$ 102.7
Santa Ana	169	\$ 102.3	\$ 1.1	\$ 103.4
Santa Clara	134	\$ 102.3	\$ 0.9	\$ 103.2
Santo Domingo	889	\$ 102.3	\$ 6.0	\$ 108.3
Taos	307	\$ 102.3	\$ 2.1	\$ 104.4
Tesuque	58	\$ 102.3	\$ 0.4	\$ 102.7
Zia	160	\$ 102.3	\$ 1.1	\$ 103.4
Zuni	2,007	\$ 102.3	\$ 13.6	\$ 115.9
Total	36,862	\$ 2,250.0	\$ 250.0	\$ 2,500.0

Currently, tribes, pueblos, and nations receive distributions from the Indian education fund (IEF) 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 FY23 the appropriation was

\$15 million.

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 FY23, the Legislature appropriated \$15 million to IEF, and PED allocated nearly \$2 million to tribal education departments (Pojoaque, Mescalero Apache, and Tesuque did not apply for funds):

Pueblo, Tribe, or Nation	Est. Number of Children (Ages 5-17)	FY23 IEF Distribution (in thousands)
Acoma	729	\$ -
Cochiti	210	\$ 120.9
Isleta	663	\$ 100.0
Jemez	557	\$ 108.4
Jicarilla	619	\$ -
Laguna	1,072	\$ 113.7
Mescalero	654	\$ -
Nambe	182	\$ 97.7
Navajo Nation	27,306	\$ 300.0
Ohkay Owingeh	282	\$ 97.2
Picuris	37	\$ 100.5
Pojoaque	64	\$ -
San Felipe	599	\$ 100.9
San Ildefonso	105	\$ 100.0
Sandia	59	\$ 99.3
Santa Ana	169	\$ 102.5
Santa Clara	134	\$ 102.0
Santo Domingo	889	\$ 113.0
Taos	307	\$ 104.6
Tesuque	58	\$ -
Zia	160	\$ 100.0
Zuni	2,007	\$ 110.3
Total	36,862	\$ 1,970.9

Other distributions through the FY23 IEF appropriation included

- \$2.8 million for school districts and charter schools,
- \$2.4 million for indigenous language fellows,
- \$1.2 million for indigenous education initiatives,
- \$974 thousand for educator recruitment in Native American communities,
- \$955 thousand for immersion schools,
- \$693 thousand for Native language teacher pipeline grants,
- \$200 thousand for Native language programs, and
- \$150 thousand for curriculum, instruction, and assessment.

The Tribal Education Alliance, an advocacy organization, notes the 90 percent equal distribution to tribes ensures each entity receives at least \$100 thousand, ensuring smaller tribes have capacity to hire a staff person.

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. 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

The bill requires each tribal education department to summarize operating budget, plan, goals, and needs for the ensuing fiscal year by April 15 of each year. Spending reports, impact assessments, and student outcomes are due to PED by October 15 annually. PED will, in turn, report to appropriate legislative committees and New Mexico tribes by November 15 each year, summarizing all disbursements and tribal reports.

PED may need to hire additional staff and promulgate rules or negotiate and draft appropriate memoranda of understanding or intergovernmental agreements with New Mexico tribes for the distribution of moneys from the fund as required under the bill.

SIC notes the bill does not identify the proper risk or return profile for TETF. The prudent investor rule referenced in the bill directs an investment manager to implement “an investment strategy having risk and return objectives reasonably suited to the trust.” The prudent investor rule itself, however, does not dictate the appropriate level of risk for any particular trust. In the case of TETF, the clients are PED and New Mexico nations, pueblos, and tribes. SIC notes choosing the proper risk or return profile is a complex process that requires consideration of long-term goals, short-term needs, other available resources to meet needs, political or social tolerance for losses, and an appreciation of the inherent uncertainty of investment markets. SIC will need to work with PED and New Mexico nations, pueblos, and tribes to maintain a proper risk profile for TETF.

The bill requires the state investment officer to report quarterly on investment results of TETF. While this does not place a significant burden on the office, it may create an unwarranted expectation among oversight bodies that quarterly variations in investments results are meaningful. As a permanent fund, TETF will have a long-term investment horizon for which quarterly variation will not be of primary importance. SIC further notes TETF is likely to have assets that are valued on a quarterly lag which will confuse any trends apparent quarter to quarter. For instance, a second-quarter report will show results for the second quarter of public equity and the first quarter of private equity (due to the lag in reporting valuations for private market investments).

COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 147, which requires 50 percent of IEF distributions to be allocated to New Mexico tribes. The bill is a companion to House Bill 149, which requires PED to request about \$4 million each year for the Legislature to consider appropriating to TETF. The bill also relates to the IEF appropriation in the General Appropriation Act.

TECHNICAL ISSUES

Provisions of the bill make two separate distributions from TETF each year, beginning in FY25:

- Greater of \$2.5 million or 5 percent of the average year-end market values of TETF for the preceding five calendar years for tribes and
- Lesser of \$100 thousand or 1 percent of TETF for PED administrative expenses.

It is unclear if both distributions occur simultaneously or at different points of the year, which would affect the TETF balance amount used to calculate the amount of each distribution.

OTHER SUBSTANTIVE ISSUES

The public education reform fund is a nonreverting fund in the state treasury, subject to legislative appropriations, and appropriated to PED for the purposes of implementing evidence-based public education initiatives related to high-quality teaching and school leadership, extended learning opportunities for students, educational interventions for at-risk students, effective and efficient school administration, or promoting public education accountability. Revenues are primarily from reversions of K-5 Plus and Extended Learning Time program funds left unused by school districts and charter schools. Current balances from the reform fund are projected to reach \$186.5 million by the end of FY23.

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 New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English 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.