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## FISCAL IMPACT REPORT

SPONSOR Lente/Herrera/Allison/Szczepanski/Johnson LAST UPDATED 3/7/23  
ORIGINAL DATE 1/31/23  
BILL  
SHORT TITLE Career Tech Funds for Indian Ed Schools NUMBER House Bill 198  
ANALYST Helms

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0.0 - \$235.35	\$0.0 - \$235.35	\$0.0 - \$470.70	Recurring	Career Technical Education Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to General Appropriation Act

### Sources of Information

LFC Files

#### Responses Received From

Public Education Department (PED)

Department of Indian Affairs (IAD)

Attorney General (NMAG)

Higher Education Department (HED)

## SUMMARY

### Synopsis of House Bill 198

House Bill 198 (HB198) would allow the federal Bureau of Indian Education (BIE) secondary schools to apply and receive grant funding from the career technical education (CTE) pilot project. The effective date of HB198 would be July 1, 2023.

## FISCAL IMPLICATIONS

HB198 does not contain an appropriation. The House Appropriations and Finance Committee substitute for House Bill 2 appropriates \$40 million for CTE initiatives and equipment, an increase of \$30 million from the prior year, which would cover costs of implementation.

For FY23, the Legislature appropriated \$10 million to PED for CTE initiatives and equipment. PED distributed \$4 million of the appropriation to school districts and charter schools for NextGen CTE initiatives via formula and set aside the remainder for competitive funding. Every

year since 2004, New Mexico secondary schools have also received funding from federal CTE grants (see “Significant Issues” below).

Provisions of this bill may require PED to make additional distributions to BIE schools. Albuquerque Public Schools received \$800.1 thousand from the FY23 NextGen CTE initiative formula distribution, about \$34.61 per high school student. With proportionate average funding to the 1,700 students at the nine BIE high schools in the state, the additional cost for BIE students could be \$58,837, provided all schools applied to PED and received funding. If PED quadruples the NextGen CTE initiative in proportion to the increase in the CTE pilot appropriation, the fiscal impact of the bill could increase to \$235,348.

## SIGNIFICANT ISSUES

As stated in detail below, CTE funds would benefit New Mexico’s Native American students at BIE schools. An additional consideration is state funding to BIE schools that receive federal funds for operations as opposed to state funds, typically have less oversight from the Public Education Department, and are not currently part of the majority of Public Education Department-funded initiatives.

While a January 2021 LFC progress report on implementation of the state Indian Education Act notes BIE schools are ineligible for Public Education Department-funded initiatives, PED does provide funding for Native language education grants to BIE schools. Additionally, the Legislature has also authorized direct public school capital outlay appropriations to Santa Fe Indian School and the Navajo Preparatory School, where the Attorney General’s note stated, “this administration has always regarded the Navajo Nation and New Mexico’s other tribes and pueblos as government entities when analyzing appropriations under the anti-donation clause.” Additionally, as long as appropriations are made directly to a state entity such as the Public Education Department, this satisfies Article IV Section 31 in the New Mexico constitution, requiring appropriation of resources to an entity under absolute control of the state.

Federal law for federally provided CTE grants offers some guidance, where state allocations of certain federal CTE funds can be distributed to BIE secondary schools; however, federal law or precedent does not directly apply to use of state funds.

Analysis from the Attorney General did not indicate any fiscal impact or any significant issues.

## CTE Funding

**Federal Funding.** While HB198 refers specifically to the state funding in the pilot project, New Mexico secondary schools receive CTE funds from at least two different sources relevant to HB198. One is federal, and the other is the state CTE fund, which is the fund subject to amendment in House Bill 198.

One source is federal CTE grants via the Carl D. Perkins CTE Act, often referred to as “Perkins funds.” These funds have strict reporting requirements available on the Perkins Collaborative Network website and are disbursed to both secondary and postsecondary institutions; of \$10 million distributed in New Mexico in 2022, roughly \$4.3 million was allocated to secondary schools, none of which were BIE schools. Preliminary LFC analysis shows other states do not

allocate Perkins funds to BIE schools, and BIE school eligibility for state-allocated Perkins funds is unclear. For example, Montana’s FY20-FY23 Perkins Act plan includes an emphasis on lowest-performing schools and specifically names public schools located on or near Indian reservations as targets for state Perkins fund disbursements but does not include BIE-funded schools.

The latest version of the Perkins act states an eligible recipient is defined as a local educational agency (including a public charter school that operates as a local educational agency), an educational service agency, an Indian Tribe, Tribal organization, or Tribal educational agency or a consortium, eligible to receive assistance; or an eligible institution or consortium of eligible institutions eligible to receive assistance.

It is unclear where federal BIE secondary schools fall in this definition. However, Perkins Section 3.21 is very clear on including BIE-supported *postsecondary* schools as eligible grantees, stating as eligible: “a postsecondary educational institution controlled by the Bureau of Indian Education or operated by or on behalf of any Indian Tribe that is eligible to contract with the Secretary of the Interior; a tribally controlled college or university.”

**State Funding.** The state CTE fund is not funded by Perkins grant funding and is funded by state appropriation. PED representatives have stated, while there are four grant programs via PED to support Native language programs, PED does not offer any other grants to BIE schools or disburse funds to BIE schools. The FY23 appropriation for CTE was \$10 million; currently, the HAFC substitute for House Bill 2 quadruples the appropriation to \$40 million.

Some other states partner more closely with BIE schools. Wyoming Education Code, for example, includes a note that, “through education programs provided by the Eastern Shoshone and Northern Arapaho Indian Tribes to school age Indian children residing on the Wind River Indian Reservation, the state can address conditions of unemployment, poverty, and lack of adequate job skills on the reservation. Maintenance of these education programs unique to Indian students is of mutual benefit to the tribes and the state, reducing future financial needs of those students as members and as Wyoming residents....”

The Bureau of Indian Education describes BIE schools thus:

The BIE serves in the capacity of a State Education Agency and administers and oversees the education programs in BIE-funded schools. The [U.S.] Department of Education transfers funds to educate and provide services to students attending BIE-funded elementary and secondary schools. Schools funded by the BIE are either operated by the BIE or by tribes under contracts or grants. BIE-operated schools are under the direct auspices of the BIE, and tribally operated schools are run by individual federally recognized tribes with grants or contracts from the BIE.

Should there be legislative interest in increasing state funding to BIE schools for PED-related funding for college and career readiness, representatives from PED and BIE schools would need to develop clear guidelines for data collection and ongoing engagement.

### **Benefits to Native American Students**

Federally funded BIE schools could benefit from additional CTE funds. A 2020 report from the Los Alamos National Laboratory Foundation notes, while nine out of 25 schools interviewed

“received 26 supplemental grants from various sources in 2019, ... the remaining 16 schools did not receive supplemental support for college and career programming.” Of note, CTE pilot project schools must be secondary schools.

Analysis from the Department of Indian Affairs references a 2019 brief from the Legislative Education Study Committee and notes

Creative evidence-based solutions [for BIE schools] created through this amendment would allow critical response through the 7-year pilot project and [would address] key recommendations from the report that the state, “develop meaningful criteria for evaluating and reporting outcomes of initiatives for Native American students in tribal education status reports.”

New Mexico has 23 sovereign Native American governments, a state-funded public education system, and a federally funded BIE system. Of the 23 tribes, each has its own government, and as such, each tribe has a unique relationship with the state public education system and the BIE system. According to LESC analysis, nine BIE schools are considered secondary schools. PED analysis notes students living on tribal land may have access to both BIE and state-supported public schools at various points in their schooling.

Within districts and charters, Native American students make up about 10 percent of public-school enrollment. Native American students who are within the public school system in New Mexico were one of four at-risk student groups named in the *Martinez-Yazzie* lawsuit as receiving an insufficient education. A 2022 LFC evaluation finds:

The 2021 LFC progress report about the implementation of the Indian Education Act noted the state had invested \$90 million of \$147 million in combined state and federal funds available in FY21 for districts, charter schools, and institutions of higher education to devote to purposes aligned with the Indian Education Act and informed by the Tribal Remedy Framework. However, the evaluation found outcomes remain poor and the state lacked coordination. Since the 2021 evaluation, PED has published a technical assistance guide for entities applying for Indian Education Act funding.

## **ADMINISTRATIVE IMPLICATIONS**

HED and PED analysis notes HB198 requires PED to consult with HED and the Workforce Solutions Department (WSD) on measures that determine what constitutes a high-quality career technical education program and what constitutes student knowledge demonstrable to employers for success in career technical fields. PED would be required to collect data from BIE schools receiving CTE pilot project grants and to monitor the effects of high-quality career technical education programs for their effectiveness on student outcomes, including achievement scores,

## **OTHER SUBSTANTIVE ISSUES**

PED analysis notes:

Native American students have improved performance on several key outcomes, including high school graduation. The Native American students four-year high school graduation rate increased by 11 percentage points in New Mexico during the decade between 2009 and 2019, from 58 percent to 69 percent. This increase was greater than the

nine-point increase statewide during that time. Native American third graders also improved in reading and math proficiency by eight and seven percentage points, respectively, between 2015 and 2019, but remain below statewide proficiency rates. Native American students also increased their bilingual proficiency rates from 30 percent to 47 percent between 2015 and 2019.

PED analysis notes a 2020 report by the Learning Policy Institute (LPI) on New Mexico schools recommends tribal governments and PED should complete memoranda of understanding for sharing student data encompassing public school, BIE, and tribally controlled school data. PED analysis notes LPI's recommendation is in step with collaboration required in the Indian Education Act.

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