

<b>LFC Requester:</b>	<b>Liu</b>
-----------------------	------------

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**Analysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** 2/1/24  
**Bill No:** HB 134/aHEC

**Sponsor:** Lente  
**Short Title:** Tribal Education Trust Fund

**Agency Name and Code**    337 SIC  
**Number:** \_\_\_\_\_  
**Person Writing**    Wollmann/Iglesias  
**Phone:** 5052313334    **Email** Charles.wollmann@sic.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
	\$100,000.0		Nonrecurring	General Fund (to Tribal Education Trust Fund)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
		\$1,100.0*	Recurring	Public Education Department (trust fund distributions)

(Parenthesis ( ) Indicate Expenditure Decreases)

\*see technical issues

Relates to a \$50 million appropriation in the General Appropriation Act (HB2, as passed by the House)

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

#### HEC Amendment:

The House Education Committee amendment to HB134 changes the distribution from the Tribal Education Trust Fund to 5 percent of the rolling 5-year average (removed the minimum \$12.5 million distribution floor). This change will put the trust fund on a more sustainable path and addresses many of the issues SIC staff discussed in our fiscal impact report for the original bill.

The amendment also requires the Legislative Education Study Committee to determine the tribal education trust fund disbursement formula task force membership (under Section 2 of the bill).

#### Synopsis of Original Bill:

HB 134 seeks to create the Tribal Education Trust Fund (TETF) with a one-time \$100 million appropriation from the general fund. The TETF is a non-reverting fund in the state treasury, to be managed by the State Investment Officer, in accordance with the Uniform Prudent Investor Act.

The State Investment Officer will report quarterly on the fund's performance and activity, to both the State Investment Council and the Legislative Education Study Committee (LESC), as well as any other appropriate interim committees.

Annually, a distribution shall be made from the TETF to the Public Education Department (PED). The annual distribution shall be the greater of \$12.5 million or 5% of the average of the year-end valuation of the TET Fund for the previous five years [*note, this was changed in the HEC amendment*]. The PED will distribute the annual distribution to the New Mexico Tribes, which are defined as "an Indian nation, tribe or pueblo located wholly or partially in New Mexico in which Native American students are being educated in New Mexico." In addition, \$100 thousand annually will be distributed to the PED to cover the costs of administering its distributions to the New Mexico Tribes.

No later than December 1, 2024, the PED shall convene a Tribal Education Trust Fund Disbursement Formula Task Force to be staffed by the assistant secretary of Indian Education, and will consist of 9 members, all nominated by leadership of NM's Indian nations, tribes and pueblos: three representatives from the Navajo Nation, one representative from the Mescalero Apache Tribe, one representative from the Jicarilla Apache Nation, three representatives from the southern pueblos, one from the northern pueblos, one from the western pueblos, and the chair of the Indian education advisory council. The task force will develop an equitable disbursement formula the PED shall use to distribute to beneficiaries, considering tribal size and needs, and based on student count elements. The task force will report its findings to the governor, legislature and PED secretary no later than July 1, 2025. The task force will reconvene to review and assess the functionality of the disbursement formula on July 1, 2030, and produce recommended adjustments by July 1, 2031. Task force members will receive per diem as non-salaried public officers pursuant to the Per Diem and Mileage Act, but no other form of compensation. [*Note, this section was changed in the HEC amendment.*]

## FISCAL IMPLICATIONS

The TETF created by HB134 is non-reverting. Accordingly, the \$100 million appropriated in this bill will not revert to the General Fund.

However, in the event of a fiscal emergency, the bill permits the Legislature to appropriate funds from the TETF to the General Fund in order “to avoid an unconstitutional deficit.” This emergency appropriation from the TETF is only permitted after the Legislature has exhausted available funds from the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund, the state-support reserve fund and the tax stabilization reserve.

The HEC amendment sets the TETF’s distribution policy to 5 percent of a rolling five-year average value of the fund beginning in FY26. Additionally, the TETF will distribute the lesser of \$100 thousand or 1 percent of the value of the fund to PED for administrative expenses, beginning in FY25.

Since this is a new fund, for the first five years of the fund’s life it is unclear how to properly calculate a five-year average. For example, in FY26, the calculation could be based on 5 percent of an average of \$20 million (\$100 million for one year and \$0 for four years); or, the calculation could be based simply on 5 percent of \$100 million since the fund was nonexistent for the prior four years. For the purposes of our bill analysis, we assume the former interpretation, wherein the five-year average is assumed to be \$20 million. However, if this is not the intent, we would suggest adding clarifying language to the bill.

The table below provides a simplified example of potential investment returns for the TETF and subsequent potential distributions to PED.

Tribal Education Trust Fund (\$millions)						
Calendar Year	Beginning Balance	Contributions	Gains & Losses	Distrib	Ending Balance	YOY Fund Growth
2024	\$0.0	\$100.0	\$3.0	-\$0.1	\$102.9	
2025	\$102.9	\$0.0	\$6.1	-\$1.1	\$107.9	4.9%
2026	\$107.9	\$0.0	\$6.4	-\$2.2	\$112.1	3.9%
2027	\$112.1	\$0.0	\$6.6	-\$3.3	\$115.4	2.9%
2028	\$115.4	\$0.0	\$6.8	-\$4.5	\$117.7	2.0%
2029	\$117.7	\$0.0	\$6.9	-\$5.7	\$118.9	1.0%
2030	\$118.9	\$0.0	\$7.0	-\$5.8	\$120.1	1.0%
2031	\$120.1	\$0.0	\$7.0	-\$5.9	\$121.2	0.9%
2032	\$121.2	\$0.0	\$7.1	-\$6.0	\$122.2	0.9%
2033	\$122.2	\$0.0	\$7.2	-\$6.1	\$123.3	0.9%
2034	\$123.3	\$0.0	\$7.2	-\$6.2	\$124.3	0.9%
2035	\$124.3	\$0.0	\$7.3	-\$6.2	\$125.4	0.9%
2036	\$125.4	\$0.0	\$7.3	-\$6.3	\$126.5	0.9%
2037	\$126.5	\$0.0	\$7.4	-\$6.3	\$127.5	0.9%
2038	\$127.5	\$0.0	\$7.5	-\$6.4	\$128.6	0.9%
2039	\$128.6	\$0.0	\$7.5	-\$6.4	\$129.7	0.9%
2040	\$129.7	\$0.0	\$7.6	-\$6.5	\$130.9	0.9%

  

Distribution to PED (\$MM)		
Fiscal Year	Distrib Date	Amount
FY24	Jul-23	\$0.0
FY25	Jul-24	\$0.1
FY26	Jul-25	\$1.1
FY27	Jul-26	\$2.2
FY28	Jul-27	\$3.3
FY29	Jul-28	\$4.5
FY30	Jul-29	\$5.7
FY31	Jul-30	\$5.8
FY32	Jul-31	\$5.9
FY33	Jul-32	\$6.0
FY34	Jul-33	\$6.1
FY35	Jul-34	\$6.2
FY36	Jul-35	\$6.2
FY37	Jul-36	\$6.3
FY38	Jul-37	\$6.3
FY39	Jul-38	\$6.4
FY40	Jul-39	\$6.4

Return expectations for funds the Council manages range from 5.1 percent (Tax Stabilization Reserve) to 7 percent (the long-term return target for the Land Grant Permanent Fund. For the purpose of this sample analysis, staff assume a 6 percent average annual return for the new Trust

Fund created in this bill; however, actual return expectations would ultimately depend on the fund's asset allocation.

Under the above assumptions, the TETF could potentially distribute approximately \$1 million to PED in FY26 and, depending on the returns earned on the TETF's investments (and any additional appropriations in subsequent years), the distribution may be expected to increase. Any increase in the trust fund's market value (and subsequent distributions), however, would be wholly dependent upon actual returns in the future market environment and cannot be predicted with certainty. In any event, the creation of this permanent fund will have the benefit of creating efficient long-term distributions from the TETF to beneficiaries.

## **SIGNIFICANT ISSUES**

HB134 does not provide substantial investment guidance to the SIO and lacks direction regarding both a basic risk/return profile or a specific entity identified as the contact point for the SIO to consult on risk appetite which will guide the SIC's determination of the TETF's long-term strategic asset allocation.

The prudent investor rule referenced in HB134 directs that an investment manager, like the SIO, should implement "an investment strategy having risk and return objectives reasonably suited to the trust." *See* NMSA § 45-7-603(b). The prudent investor rule itself, however, does not dictate the appropriate level of risk for any particular trust.

For investors this means trading risk for returns. Generally, the lower the risks the lower the returns and vice versa. Over the long run, an investor which seeks to avoid all losses will likely obtain low investment returns. By contrast, an investor which is willing to accept short term volatility is likely to make significantly more money in the long run but will also likely suffer many stretches of significant losses.

A professional investment manager can obtain the best returns for a given level of risk, but ultimately, the appropriate level of risk must be determined by the client. In the case of the TETF, the clients are the PED and the New Mexico Tribes. Unfortunately, choosing the proper risk/return profile is a complex process that requires consideration of long-term goals, short-term needs, other available resources to meet needs, political/social tolerance for losses, and an appreciation of the inherent uncertainty of investment markets. Accordingly, HB134 sponsors and stakeholders may consider identifying the entity that will work with the SIO on behalf of the PED and the New Mexico Tribes to maintain a proper risk profile for the TETF.

In the case of New Mexico's permanent funds, the eleven member State Investment Council is responsible for making sure that the SIO invests the permanent funds with a risk profile appropriate for money belonging to all the people of New Mexico. This process has resulted in a blended investment portfolio that has proved more stable than the public equity markets and more profitable than the bond markets. Over the last ten years, the Land Grant Permanent Fund (LGPF) has, in aggregate, achieved returns in excess of the sum of the LGPF's distribution rate and inflation. This means that through investments alone the LGPF has been able to make constitutionally mandated annual distributions and grow in real dollar terms.

On the other hand, the TETF differs substantially in resources and beneficiaries from the LGPF, and therefore may need to be invested with a different risk/return profile. For example, the LGPF receives cash inflows from the State Land Office that currently exceed annual cash

distributions, whereas the TETF will be funded with a one-time appropriation. This difference may lead to different tolerance for risk and long-term investment goals. Given the inflows, the LGPF can absorb short term losses without impacting distributions to beneficiaries, whereas large swings in the investment returns of the TETF may cause fluctuations in distributions – and if impacted by significant investment losses any year, the result could shorten the life and ability of the TETF. This factor may suggest a lower risk profile for the TETF. On the flipside, this same factor may suggest a higher risk profile for the TETF, because in the absence of significant long-term growth that exceeds both the distribution rate and inflation, the real value of distributions from the TETF will decrease every year. In short, there is no right answer to the proper risk/return profile for the TETF that does not require input regarding the client’s risk tolerance and preferences.

For these reasons, an amendment to HB134 that specifically identifies a risk/return profile or an entity that will work with the SIO on behalf of the PED and the New Mexico Tribes to maintain a proper risk profile for the TETF should be considered.

## **PERFORMANCE IMPLICATIONS**

The State Investment Officer, with the approval of the State Investment Council would manage the TETF in accordance with the Uniform Prudent Investor Act and would seek to ethically optimize risk-adjusted returns that maintain or possibly grow the fund over time.

The Council does not currently have a “boilerplate” asset allocation for any fund, including the proposed TETF, but it is a fair assumption that the new fund could/would be constructed in a manner similar to the Land Grant Permanent Fund or other funds managed by the SIC.

## **ADMINISTRATIVE IMPLICATIONS**

HB134 will require additional time from investment and administrative staff at the State Investment Office. While likely to be significant, the additional resources required can be addressed through the SIO’s ordinary budgeting process.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 2, as passed by the House, includes a \$50 million appropriation to the Tribal Education Trust Fund, contingent on this bill. A \$50 million initial appropriation would roughly halve the estimates provided in our fiscal impact analysis.

## **TECHNICAL ISSUES**

Since this is a new fund, for the first five years of the fund’s life it is unclear how to properly calculate a five-year average. For example, in FY26, the calculation could be based on 5 percent of an average of \$20 million (\$100 million for one year and \$0 for four years); or, the calculation could be based simply on 5 percent of \$100 million since the fund was nonexistent for the prior four years. For the purposes of our bill analysis, we assume the former interpretation, wherein the five-year average is assumed to be \$20 million. However, if this is not the intent, we would suggest adding clarifying language to the bill.

HB134 requires the SIO to report quarterly on investment results of the TETF. While this does not place a significant burden on the SIO, it may create an unwarranted expectation among

oversight bodies that quarterly variations in investments results are meaningful. The TETF will have a long-term investment horizon for which quarterly variation will not be of primary importance. Further, the 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).

## **AMENDMENTS**

As discussed in the “Significant Issues” section above, an amendment to HB134 that specifically identifies a risk/return profile or an entity that will work with the SIO on behalf of the PED and the New Mexico Tribes to maintain a proper risk profile for the TETF should be considered.