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HOUSE BILL

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING THE TRIBAL EDUCATION TRUST FUND; PROVIDING REPORTING REQUIREMENTS; CREATING THE TRIBAL EDUCATION TRUST FUND DISBURSEMENT FORMULA TASK FORCE; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** [NEW MATERIAL] TRIBAL EDUCATION TRUST FUND--CREATED--PURPOSE--DISTRIBUTION--REPORTING REQUIREMENTS--PUBLIC EDUCATION DEPARTMENT DUTIES--APPROPRIATION.--

A. The "tribal education trust fund" is created as a nonreverting fund in the state treasury. The tribal education trust fund shall be used for any purpose enumerated in Section 22-23A-2 NMSA 1978 or in an intergovernmental agreement between an Indian nation, tribe or pueblo and the public education department. The fund consists of

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1 distributions, appropriations, gifts, grants and donations.  
2 Income from investment of the fund shall be credited to the  
3 fund. Money in the fund shall be expended only as provided in  
4 this section.

5 B. The state investment officer shall invest money  
6 in the tribal education trust fund in accordance with the  
7 prudent investor rule set forth in the Uniform Prudent Investor  
8 Act.

9 C. The state investment officer shall report  
10 quarterly to the legislative education study committee and the  
11 state investment council on the investments made pursuant to  
12 this section. Beginning in fiscal year 2025, a report shall be  
13 submitted no later than October 1 each year to the legislative  
14 education study committee and any other appropriate interim  
15 committees.

16 D. Beginning in fiscal year 2026, a distribution  
17 shall be made from the tribal education trust fund to the  
18 public education department on July 1 of each year in which  
19 adequate money is available in the tribal education trust fund  
20 in an amount equal to the greater of twelve million five  
21 hundred thousand dollars (\$12,500,000) or five percent of the  
22 average of the year-end market values of the tribal education  
23 trust fund for the preceding five calendar years; provided that  
24 the public education department shall distribute funding  
25 received pursuant to this subsection according to the formula

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1 developed pursuant to Section 2 of this 2024 act.

2 E. In addition to the distribution pursuant to  
3 Subsection D of this section, money in the tribal education  
4 trust fund may be expended in the event that general fund  
5 balances, including all authorized revenues and transfers to  
6 the general fund and balances in the general fund operating  
7 reserve, the appropriation contingency fund, the tobacco  
8 settlement permanent fund, the state-support reserve fund and  
9 the tax stabilization reserve, will not meet the level of  
10 appropriations authorized from the general fund for a fiscal  
11 year. In that event, to avoid an unconstitutional deficit, the  
12 legislature may appropriate from the tribal education trust  
13 fund to the general fund only in the amount necessary to meet  
14 general fund appropriations for that fiscal year and only if  
15 the legislature has authorized transfers from the appropriation  
16 contingency fund, the general fund operating reserve, the tax  
17 stabilization reserve and the tobacco settlement permanent fund  
18 that exhaust those fund balances.

19 F. The public education department shall enter into  
20 intergovernmental agreements with New Mexico tribes prior to  
21 the disbursement of funds pursuant to Subsection G of this  
22 section.

23 G. Beginning in fiscal year 2026, on July 15 of  
24 each year, the public education department shall disburse money  
25 received pursuant to Subsection D of this section to each New

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1 Mexico tribe that has entered into an intergovernmental  
2 agreement with the department. Money disbursed to a New Mexico  
3 tribe shall not revert and shall carry over to the next fiscal  
4 year for continued use by the New Mexico tribe. Money  
5 disbursed pursuant to this subsection shall be disbursed on  
6 warrants signed by the secretary of finance and administration  
7 pursuant to vouchers signed by the secretary of public  
8 education or the secretary's designee.

9 H. The public education department shall create a  
10 disbursement formula, in consultation with the tribal education  
11 trust fund disbursement formula task force created pursuant to  
12 Section 2 of this 2024 act, that ensures that a New Mexico  
13 tribe receives nonreverting disbursements each year on July 15  
14 that the New Mexico tribe may use to carry out the purposes of  
15 the Indian Education Act.

16 I. Prior to April 15 of each year, each New Mexico  
17 tribe shall submit to the public education department a summary  
18 of its operating budget and plan for the ensuing fiscal year  
19 based on tribally determined goals and needs. This summary  
20 shall include a brief narrative describing how the budget and  
21 plan will contribute to meeting the purposes of the Indian  
22 Education Act.

23 J. Prior to October 15 of each year, each New  
24 Mexico tribe shall submit to the public education department a  
25 spending report and an assessment of program impact, student

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1 engagement and student outcomes based on tribally determined  
2 criteria.

3 K. The public education department shall report to  
4 the legislative education study committee, any other  
5 appropriate interim committee and the New Mexico tribes no  
6 later than November 15 of each year the total disbursements  
7 made pursuant to Subsection G of this section for the previous  
8 fiscal year, a summary of tribal reports received and a  
9 projection of available disbursements pursuant to Subsection G  
10 of this section in the following fiscal year.

11 L. The public education department may:

12 (1) establish procedures and adopt rules,  
13 after formal consultation with the New Mexico tribes, as  
14 required to administer and disburse money pursuant to  
15 Subsection G of this section; and

16 (2) solicit, receive and report on tribal  
17 education budgets, plans and reports pursuant to this section.

18 M. Nothing in this section shall interfere with the  
19 sovereignty of federally recognized New Mexico tribes.

20 N. Beginning in fiscal year 2025 and in each  
21 subsequent fiscal year, the lesser of one percent of the tribal  
22 education trust fund or one hundred thousand dollars (\$100,000)  
23 is appropriated from the tribal education trust fund to the  
24 public education department for expenditure in the fiscal year  
25 in which it is appropriated to administer the tribal education

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1 trust fund. Administrative costs include staff salaries and  
2 expenses related to administration of the tribal education  
3 trust fund. Any unexpended or unencumbered balance remaining  
4 at the end of a fiscal year shall revert to the tribal  
5 education trust fund.

6 O. As used in this section, "New Mexico tribe"  
7 means an Indian nation, tribe or pueblo located wholly or  
8 partially in New Mexico in which Native American students are  
9 being educated in New Mexico.

10 SECTION 2. TEMPORARY PROVISION--TRIBAL EDUCATION TRUST  
11 FUND DISBURSEMENT FORMULA TASK FORCE--CREATION--MEMBERSHIP--  
12 DUTIES--REPORTING REQUIREMENTS.--

13 A. The "tribal education trust fund disbursement  
14 formula task force" is created within the public education  
15 department. The task force shall function from the date of its  
16 appointment, which shall be no later than December 1, 2024,  
17 until July 1, 2031. The assistant secretary of Indian  
18 education of the public education department shall serve on the  
19 task force in an advisory function. The task force shall be  
20 supported by the public education department. The task force  
21 shall consist of the following nine members:

22 (1) three representatives from the Navajo  
23 Nation nominated by the leadership of New Mexico's Indian  
24 nations, tribes and pueblos and appointed by the public  
25 education department's assistant secretary of Indian education;

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1                   (2) two representatives, one from the  
2 Mescalero Apache Tribe and one from the Jicarilla Apache  
3 Nation, nominated by the leadership of New Mexico's Indian  
4 nations, tribes and pueblos and appointed by the public  
5 education department's assistant secretary of Indian education;

6                   (3) three representatives, one from the  
7 southern pueblos, one from the northern pueblos and one from  
8 the western pueblos, nominated by the leadership of New  
9 Mexico's Indian nations, tribes and pueblos and appointed by  
10 the public education department's assistant secretary of Indian  
11 education; and

12                   (4) the chair of the Indian education advisory  
13 council.

14                   B. The task force shall develop a disbursement  
15 formula that the public education department shall use for the  
16 disbursement of funds from the tribal education trust fund.  
17 The task force shall ensure that the disbursement formula is  
18 equitable for each Indian nation, tribe and pueblo located  
19 wholly or in part in the state. The task force shall consider  
20 tribal needs and tribal size, including both a base and student  
21 count elements for the disbursement formula.

22                   C. The task force shall report its recommendations  
23 for a disbursement formula to the governor, the legislature and  
24 the secretary of public education prior to July 1, 2025.

25                   D. The task force shall reconvene on July 1, 2030

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1 to review and assess the equity and functionality of the  
2 disbursement formula and provide additional recommendations, if  
3 necessary, to the governor, the legislature and the secretary  
4 of public education prior to July 1, 2031.

5 E. Members of the task force may receive per diem  
6 and mileage as provided for nonsalaried public officers in the  
7 Per Diem and Mileage Act and shall receive no other  
8 compensation, perquisite or allowance.

9 SECTION 3. APPROPRIATION.--One hundred million dollars  
10 (\$100,000,000) is appropriated from the general fund to the  
11 tribal education trust fund for expenditure in fiscal year 2025  
12 and subsequent fiscal years to carry out the purpose of the  
13 tribal education trust fund. Any unexpended or unencumbered  
14 balance remaining at the end of a fiscal year shall not revert  
15 to the general fund.

16 SECTION 4. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2024.