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HOUSE BILL 84

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Derrick J. Lente and Georgene Louis and D. Wonda Johnson

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CREATING THE NATIVE LANGUAGE EDUCATION PROGRAM UNIT; ALLOWING TRIBAL EDUCATION DEPARTMENTS TO RECEIVE DISTRIBUTIONS GENERATED BY THE NATIVE LANGUAGE EDUCATION PROGRAM UNIT; DEFINING "TRIBAL EDUCATION DEPARTMENT"; ALLOWING TRIBAL EDUCATION DEPARTMENTS TO RECEIVE DISTRIBUTIONS FROM THE PUBLIC SCHOOL FUND; ALLOWING THE PUBLIC EDUCATION DEPARTMENT TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH TRIBES ABOUT PROGRAM COSTS AND FUNDING DISTRIBUTIONS; CHANGING THE AT-RISK PROGRAM COST CALCULATION.

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

SECTION 1. A new section of the Public School Finance Act is enacted to read:

"[NEW MATERIAL] NATIVE LANGUAGE EDUCATION PROGRAM UNITS.--

A. The number of native language education program

1 units is determined by multiplying the full-time equivalent MEM  
2 in native language education programs, whether the programs are  
3 school-based, community-based or tribal government-based,  
4 implemented in accordance with the provisions of the Indian  
5 Education Act and the Bilingual Multicultural Education Act by  
6 the cost differential factor 0.5.

7 B. Tribal education departments shall be eligible  
8 to receive distributions generated by native language education  
9 program units."

10 SECTION 2. Section 22-8-2 NMSA 1978 (being Laws 1978,  
11 Chapter 128, Section 3, as amended by Laws 2019, Chapter 206,  
12 Section 6 and by Laws 2019, Chapter 207, Section 6) is amended  
13 to read:

14 "22-8-2. DEFINITIONS.--As used in the Public School  
15 Finance Act:

16 A. "ADM" or "MEM" means membership;

17 B. "membership" means the total enrollment of  
18 qualified students on the current roll of a class or school on  
19 a specified day. The current roll is established by the  
20 addition of original entries and reentries minus withdrawals.  
21 Withdrawals of students, in addition to students formally  
22 withdrawn from the public school, include students absent from  
23 the public school for as many as ten consecutive school days;  
24 provided that withdrawals do not include students in need of  
25 early intervention and habitual truants the school district is

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1 required to intervene with and keep in an educational setting  
2 as provided in Section 22-12-9 NMSA 1978;

3 C. "basic program ADM" or "basic program MEM" means  
4 the MEM of qualified students but excludes the full-time-  
5 equivalent MEM in early childhood education and three- and  
6 four-year-old students receiving special education services;

7 D. "cost differential factor" is the numerical  
8 expression of the ratio of the cost of a particular segment of  
9 the school program to the cost of the basic program in grades  
10 four through six;

11 E. "department" or "division" means the public  
12 education department;

13 F. "early childhood education ADM" or "early  
14 childhood education MEM" means the full-time-equivalent MEM of  
15 students attending approved early childhood education programs;

16 G. "full-time-equivalent ADM" or "full-time-  
17 equivalent MEM" is that membership calculated by applying to  
18 the MEM in an approved public school program the ratio of the  
19 number of hours per school day devoted to the program to six  
20 hours or the number of hours per school week devoted to the  
21 program to thirty hours;

22 H. "operating budget" means the annual financial  
23 plan and educational plan required to be submitted by a local  
24 school board or governing body of a state-chartered charter  
25 school;

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1 I. "performance measure" means a quantitative  
2 indicator used to assess the output or outcome of an approved  
3 program;

4 J. "performance target" means the expected level of  
5 performance of a program's performance measure;

6 K. "program cost" is the product of the total  
7 number of program units to which a school district is entitled  
8 multiplied by the dollar value per program unit established by  
9 the legislature;

10 L. "program element" is that component of a public  
11 school system to which a cost differential factor is applied to  
12 determine the number of program units to which a school  
13 district is entitled, including MEM, full-time-equivalent MEM,  
14 teacher, classroom or public school;

15 M. "program unit" is the product of the program  
16 element multiplied by the applicable cost differential factor;

17 N. "public money" or "public funds" means all money  
18 from public or private sources received by a school district,  
19 [~~or~~] state-chartered charter school or tribal education  
20 department or officer or employee of a school district, [~~or~~]  
21 state-chartered charter school or tribal education department  
22 for public use;

23 O. "qualified student" means a public school  
24 student who:

25 (1) has not graduated from high school;

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1 (2) is regularly enrolled in one-half or more  
2 of the minimum course requirements approved by the department  
3 for public school students; and

4 (3) in terms of age and other criteria:

5 (a) is at least five years of age prior  
6 to 12:01 a.m. on September 1 of the school year;

7 (b) is at least three years of age at  
8 any time during the school year and is receiving special  
9 education services pursuant to rules of the department;

10 (c) except as provided in Subparagraph  
11 (d) of this paragraph, has not reached the student's  
12 twenty-second birthday on the first day of the school year; or

13 (d) has reached the student's twenty-  
14 second birthday on the first day of the 2019-2020 school year,  
15 is counted in a school district's or charter school's MEM on  
16 the third reporting date of the 2018-2019 school year, has been  
17 continuously enrolled in the same public school since that  
18 reporting date and is still enrolled in that school;

19 P. "rural population rate" means that proportion of  
20 the total population within a school district's geographic  
21 boundaries that lives in a rural area and not in an urban area  
22 as defined by the United States census bureau;

23 Q. "staffing cost multiplier" means:

24 (1) for fiscal year 2019, the instructional  
25 staff training and experience index;

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1 (2) for fiscal year 2020, the weighted average  
2 of the instructional staff training and experience index at  
3 seventy-five percent and the teacher cost index at twenty-five  
4 percent;

5 (3) for fiscal year 2021, the weighted average  
6 of the instructional staff training and experience index at  
7 fifty percent and the teacher cost index at fifty percent;

8 (4) for fiscal year 2022, the weighted average  
9 of the instructional staff training and experience index at  
10 twenty-five percent and the teacher cost index at seventy-five  
11 percent; and

12 (5) for fiscal year 2023 and subsequent fiscal  
13 years, the teacher cost index; ~~and~~

14 R. "state superintendent" means the secretary of  
15 public education or the secretary's designee; and

16 S. "tribal education department" means a tribal  
17 government unit within a federally recognized tribe, as cited  
18 in Subsection H of Section 22-23A-2 NMSA 1978 and Section  
19 22-23A-4.1 NMSA 1978."

20 SECTION 3. Section 22-8-14 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 69, as amended) is amended to read:

22 "22-8-14. PUBLIC SCHOOL FUND.--

23 A. The "public school fund" is created.

24 B. The public school fund shall be distributed to  
25 school districts and state-chartered charter schools in the

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1 following parts:

- 2 (1) state equalization guarantee distribution;  
3 (2) transportation distribution; and  
4 (3) supplemental distributions:  
5 (a) out-of-state tuition to school  
6 districts;  
7 (b) emergency; and  
8 (c) program enrichment.

9 C. Tribal education departments shall be eligible  
10 to receive distributions generated by at-risk program units,  
11 early childhood education program units and native language  
12 education program units in accordance with the provisions of  
13 the Public School Finance Act; provided that nothing in that  
14 act shall be construed to waive or restrict the sovereign  
15 immunity of a tribe.

16 [~~G.~~] D. The distributions of the public school fund  
17 shall be made by the department within limits established by  
18 law. The balance remaining in the public school fund at the  
19 end of each fiscal year shall revert to the general fund,  
20 unless otherwise provided by law."

21 SECTION 4. Section 22-8-15 NMSA 1978 (being Laws 1967,  
22 Chapter 16, Section 70, as amended) is amended to read:

23 "22-8-15. ALLOCATION LIMITATION.--

24 A. The department shall determine the allocations  
25 to each school district, [~~and~~] charter school and tribal

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1 education department from each of the distributions of the  
2 public school fund, subject to the limits established by law.

3 B. The local school board in each school district  
4 with locally chartered charter schools shall allocate the  
5 appropriate distributions of the public school fund to  
6 individual locally chartered charter schools pursuant to each  
7 locally chartered charter school's school-based budget approved  
8 by the local school board and the department. The appropriate  
9 distribution of the public school fund shall flow to the  
10 locally chartered charter school within five days after the  
11 school district's receipt of the state equalization guarantee  
12 for that month.

13 C. The department shall allocate the appropriate  
14 distributions of the public school fund to each tribal  
15 education department pursuant to intergovernmental agreements."

16 SECTION 5. Section 22-8-17 NMSA 1978 (being Laws 1974,  
17 Chapter 8, Section 7, as amended) is amended to read:

18 "22-8-17. PROGRAM COST DETERMINATION--REQUIRED  
19 INFORMATION.--

20 A. The program cost for each school district, [~~and~~]  
21 charter school and tribal education department shall be  
22 determined by the department in accordance with the provisions  
23 of the Public School Finance Act.

24 B. The department is authorized to require from  
25 each school district and charter school the information

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1 necessary to make an accurate determination of the district's  
2 or charter school's program cost.

3 C. The department is authorized to enter into  
4 intergovernmental agreements with each tribe for the purposes  
5 of agreeing upon a tribal education department's program cost."

6 SECTION 6. Section 22-8-18 NMSA 1978 (being Laws 1974,  
7 Chapter 8, Section 8, as amended by Laws 2019, Chapter 206,  
8 Section 13 and by Laws 2019, Chapter 207, Section 13) is  
9 amended to read:

10 "22-8-18. PROGRAM COST CALCULATION--LOCAL  
11 RESPONSIBILITY.--

12 A. The total program units for the purpose of  
13 computing the program cost shall be calculated by multiplying  
14 the sum of the program units itemized as Paragraphs (1) and (2)  
15 in this subsection by the staffing cost multiplier and adding  
16 the program units itemized as Paragraphs (3) through [~~(16)~~]  
17 (17) in this subsection. The itemized program units are as  
18 follows:

- 19 (1) early childhood education;
- 20 (2) basic education;
- 21 (3) special education, adjusted by subtracting  
22 the units derived from membership in class D special education  
23 programs in private, nonsectarian, nonprofit training centers;
- 24 (4) bilingual multicultural education;
- 25 (5) native language education;

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- 1                    [~~(5)~~] (6) fine arts education;
- 2                    [~~(6)~~] (7) elementary physical education;
- 3                    [~~(7)~~] (8) size adjustment;
- 4                    [~~(8)~~] (9) at-risk;
- 5                    [~~(9)~~] (10) enrollment growth or new district
- 6 adjustment;
- 7                    [~~(10)~~] (11) special education units derived
- 8 from membership in class D special education programs in
- 9 private, nonsectarian, nonprofit training centers;
- 10                    [~~(11)~~] (12) national board for professional
- 11 teaching standards certification;
- 12                    [~~(12)~~] (13) home school student;
- 13                    [~~(13)~~] (14) home school student activities;
- 14                    [~~(14)~~] (15) charter school student activities;
- 15                    [~~(15)~~] (16) K-5 plus; and
- 16                    [~~(16)~~] (17) extended learning time.

17                    B. The total program cost calculated as prescribed

18 in Subsection A of this section includes the cost of early

19 childhood, special, bilingual multicultural, native language,

20 fine arts and vocational education and other remedial or

21 enrichment programs. It is the responsibility of the local

22 school board, [~~or~~] governing body of a charter school or tribal

23 education department to determine its priorities in terms of

24 the needs of the community served by that [~~board~~] body. Except

25 as otherwise provided in this section, funds generated under

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1 the Public School Finance Act are discretionary to local school  
2 boards, ~~[and]~~ governing bodies of charter schools and tribal  
3 education departments; provided that the special program needs  
4 as enumerated in this section are met; ~~[and]~~ provided further  
5 that the department shall ensure that the local school board or  
6 governing body of a charter school is prioritizing resources  
7 for the public school toward proven programs and methods linked  
8 to improved student achievement; and provided further that the  
9 department shall ensure that resources linked to native  
10 students are used for school-based, community-based or tribal  
11 government-based programs that meet native student needs,  
12 improve their achievement, including oral native language  
13 acquisition, and adhere to culturally appropriate methods  
14 determined by each tribe."

15 SECTION 7. Section 22-8-23.3 NMSA 1978 (being Laws 1997,  
16 Chapter 40, Section 7, as amended) is amended to read:

17 "22-8-23.3. AT-RISK PROGRAM UNITS.--

18 A. A school district or tribal education department  
19 is eligible for additional program units if it establishes  
20 within its department-approved educational plan identified  
21 services to assist students to reach their full academic  
22 potential. A school district may contract with tribal  
23 education departments for the provision of identified services,  
24 including programs, services and activities pursuant to Section  
25 22-23A-11 NMSA 1978. A school district receiving additional

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1 at-risk program units shall include a report of specified  
2 services implemented to improve the academic success of at-risk  
3 students. The report shall identify the ways in which the  
4 school district and individual public schools use funding  
5 generated through the at-risk index and the intended outcomes.  
6 For purposes of this section, "at-risk student" means a student  
7 who meets the criteria to be included in the calculation of the  
8 three-year average total rate in Subsection B of this section.  
9 The number of additional units to which a school district is  
10 entitled under this section is computed in the following  
11 manner:

$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

13 where MEM is equal to the total district membership, including  
14 early childhood education, full-time-equivalent membership and  
15 special education membership and where the at-risk index is  
16 calculated in the following manner:

$$\text{Three-Year Average Total Rate} \times 0.30 = \text{At-Risk Index.}$$

19 B. To calculate the three-year average total rate,  
20 the department shall compute a three-year average of the school  
21 district's percentage of membership used to determine its Title  
22 1 allocation, a three-year average of the percentage of  
23 membership classified as English language learners using  
24 criteria established by the office for civil rights of the  
25 United States department of education, ~~[and]~~ a three-year

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1 average of the percentage of student mobility and a three-year  
2 average of the percentage of Native American students. The  
3 department shall then add the three-year average rates. The  
4 number obtained from this calculation is the three-year average  
5 total rate.

6 C. The department shall recalculate the at-risk  
7 index for each school district every year.

8 D. For purposes of this section, "services" means  
9 research-based, ~~[or]~~ evidence-based or community-based,  
10 culturally appropriate social, emotional or academic  
11 interventions, such as:

12 (1) case management, tutoring, reading  
13 interventions and after-school programs that are delivered by  
14 social workers, counselors, teachers or other professional  
15 staff;

16 (2) culturally relevant professional and  
17 curriculum development, including those necessary to support  
18 language acquisition, bilingual and multicultural education;

19 (3) additional compensation strategies for  
20 high-need schools;

21 (4) whole school interventions, including  
22 school-based health centers and community schools;

23 (5) educational programming intended to  
24 improve career and college readiness of at-risk students,  
25 including dual or concurrent enrollment, career and technical

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1 education, guidance counseling services and coordination with  
2 post-secondary institutions; ~~and~~

3 (6) services to engage and support parents and  
4 families in the education of students; and

5 (7) tribal community-based programming, such  
6 as after-school extended learning and summer school."

7 SECTION 8. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2021.

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