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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 1/26/23

**SPONSOR** Lente

**BILL**  
**NUMBER** House Bill 147

**SHORT TITLE** Indian Education Fund Distributions

**ANALYST** Liu

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$8,029.1	\$8,029.1	\$16,058.2	Recurring	Indian Education Fund - Tribes
		(\$8,029.1)	(\$8,029.1)	(\$16,058.2)	Recurring	Indian Education Fund - PED
<b>Total</b>		\$0.0	\$0.0	\$0.0	Recurring	Indian Education Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to HB140, HB149  
Relates to 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)

## SUMMARY

### Synopsis of House Bill 147

House Bill 147 distributes 50 percent of the Indian education fund (IEF) allocation to New Mexico tribes. The bill allocates 90 percent of the earmarked distribution to tribes equally and allocates the remaining 10 percent based on the proportionate New Mexico student population served by each tribal education department. Tribes may carryover unused IEF allocations for purposes relating to the Indian Education Act. PED must issue monthly distributions of the allocation to tribes and may request quarterly spending reports from the tribes. The effective date of this bill is July 1, 2023. This bill is endorsed by LESC.

## FISCAL IMPLICATIONS

The bill does not contain an appropriation but earmarks half of IEF allocations for tribes. The LFC and LESC FY24 budget recommendations appropriate \$20 million from the general fund to IEF, a \$5 million increase from the \$15 million IEF appropriation in FY23. The executive FY24 recommendation for IEF is \$25.2 million. Provisions of the bill will reduce funding for existing PED initiatives through the Indian education fund (IEF), potentially increasing obligations from the general fund to offset decreases in department priorities. Based on the LFC and LESC recommended funding levels for FY24, IEF distributions are expected to quadruple as such:

Pueblo, Tribe, or Nation	Est. Number of Children (Ages 5-17)	FY23 IEF Distribution (in thousands)	FY24 IEF Tribal Distribution (in thousands)
Acoma	729	\$ -	\$ 428.9
Cochiti	210	\$ 120.9	\$ 414.8
Isleta	663	\$ 100.0	\$ 427.1
Jemez	557	\$ 108.4	\$ 424.2
Jicarilla	619	\$ -	\$ 425.9
Laguna	1,072	\$ 113.7	\$ 438.2
Mescalero	654	\$ -	\$ 426.8
Nambe	182	\$ 97.7	\$ 414.0
Navajo Nation	27,306	\$ 300.0	\$ 1,149.9
Ohkay Owingeh	282	\$ 97.2	\$ 416.7
Picuris	37	\$ 100.5	\$ 410.1
Pojoaque	64	\$ -	\$ 410.8
San Felipe	599	\$ 100.9	\$ 425.3
San Ildefonso	105	\$ 100.0	\$ 411.9
Sandia	59	\$ 99.3	\$ 410.7
Santa Ana	169	\$ 102.5	\$ 413.7
Santa Clara	134	\$ 102.0	\$ 412.7
Santo Domingo	889	\$ 113.0	\$ 433.2
Taos	307	\$ 104.6	\$ 417.4
Tesuque	58	\$ -	\$ 410.7
Zia	160	\$ 100.0	\$ 413.4
Zuni	2,007	\$ 110.3	\$ 463.5
<b>Total</b>	<b>36,862</b>	<b>\$ 1,970.9</b>	<b>\$ 10,000.0</b>

At least \$3 million will shift from other IEF allocations to direct, monthly allotments to tribes, which will see a net increase of \$8 million. In FY23, other IEF allocations 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.

## SIGNIFICANT ISSUES

PED notes the state enacted the Indian Education Act in 2003 to provide Native American students in New Mexico with opportunities for an equitable and culturally appropriate education in public schools. The law establishes the Indian Education Division of PED as well as the Indian Education Advisory Council and lays out systems for the state and school districts and charter schools to collaborate with tribal governments on matters related to curricula, teaching, support services, and other programs to meet the needs of Native American students. The purpose of the act is to ensure equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for Native American students enrolled in public schools. IAD notes the act further requires conservation of Native language and tribal immersion and control over schools.

Provisions of this bill would require no less than 50 percent of distributions made from IEF to be made to New Mexico tribes and to be distributed as follows:

- 90 percent of the total amount of distributions to be provided in equal amounts to each tribe; and
- 10 percent of the total amount of distributions to be provided to each NM tribe in an amount proportional to the total number of New Mexico students served by the tribal education department within the New Mexico tribe.

The remaining funds, at most 50 percent of distributions, could be distributed to school districts, charter schools, and other entities, for which the bill requires PED develop procedures and rules to award to those entities.

Over the past two years, PED has utilized the award letter process to award grants from the Indian Education Fund to entities that receive the funding for tribal education priorities and programs. The award letter process replaced the prior process where PED entered into an intergovernmental agreement (IGA) with each tribe, nation, or pueblo. The prior process took a considerable amount of time for the final IGA to be signed by both parties. Sometimes, the tribe did not complete the signature process in time for the grant to be awarded, thus losing funds for that fiscal year. To remedy this situation, PED began to utilize the award letter process, which proved to be the best option because it was a less complicated process and allowed the funds to be distributed on July 1 of the calendar year. The award letter process includes assurance forms for the tribe, nation, or pueblo to provide input and sign. The assurance forms include details related to payment, fund expenditures, and accountability measures.

## 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 5 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 5 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 standardized assessments complicated measures of progress in these areas.

Historically, educational outcomes for Native American students have been consistently below their non-Native peers. According to PED's 2021-2022 Tribal Education Status Report, proficiency rates for Native American students were considerably lower than those of students of other ethnicities

- In reading, half as many proficient Native American students were proficient compared to the percentage of proficient Asian American students;
- In math, one-fifth of Native American students were proficient; and
- In science, just under one-third of Native American students were proficient.

## ADMINISTRATIVE IMPLICATIONS

The bill would require PED to develop procedures and rules to award money from the fund for school districts, charter schools, and other entities. PED would be required to issue monthly distributions to tribes. PED notes the bill would require additional FTE to complete this work. The bill allows PED to request quarterly spending reports from tribes and to enter into agreements with tribes for the purposes of disbursing funds.

## RELATIONSHIP

This bill relates to House Bill 140, which creates a \$50 million tribal education trust fund, and 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.

## OTHER SUBSTANTIVE ISSUES

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

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