

LFC Requester:

N/A



**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment

Date 02/10/24

Correction Substitute

Bill No: [HB134/aHEC/aHAFC/aHFlor](#)

Sponsor: Lenter/Allison/Little/
Roybal Caballero/Johnson

Short Title: TRIBAL EDUCATION
TRUST FUND

Agency Name
and Code

Number: PED - 924

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act:

The House Appropriations and Finance Committee (HAFC) Substitute for House Bill 2 as amended by HAFC, the House Floor (HF1), and the Senate Finance Committee (SFC) (CS/HB2/HAFCS/aHFI#1/aSFC) includes \$50 million for the Tribal Education Trust Fund, contingent upon the passage of HB134 or similar legislation.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of House Floor Amendment: House Floor Amendment One (HB134/aHEC/aHAFC/aHFI) eliminates the Tribal Education Trust Fund Disbursement Formula Task Force from the bill. It also refines language surrounding the five percent disbursement formula for trust funds. Finally, the amendment strikes language that allows for annual \$100,000 allocations to PED for administrative costs related to Tribal Education Trust Fund disbursements.

Synopsis of HAFC Amendment: The House Appropriations and Finance Committee (HAFC) amendment to House Bill 134 (HB134/aHEC/aHAFC) removes the \$100 million appropriation from the bill.

Synopsis of HEC Amendment: The House Education Committee (HEC) amendment to House Bill 134 (HB134/aHEC) would create a process for selecting members of the Tribal Education Trust Fund Disbursement Formula Task Force. Representatives of the 23 pueblos, nations, and tribes of New Mexico would convene to develop a consensus proposal for Task Force membership. That proposal is to be transmitted to PED, which shall then solicit and accept taskforce appointments according to the proposal. The amendment also limits withdrawals to five percent of the average of the year-end market values of the Tribal Education Trust Fund for the preceding five calendar years, striking the prior reference to disbursements of the greater amount of either the five percent or \$12.5 million.

Synopsis: HB 134 would create the Tribal Education Trust Fund, a supplemental funding source for any purpose enumerated in the [Indian Education Act](#), or in any intergovernmental agreement between an Indian pueblo, nation or tribe and PED. The bill would establish reporting requirements between pueblos, nations, and tribes and PED, and it would create the Tribal Education Trust Fund Disbursement Formula Task Force (task force), on which the Assistant Secretary of Indian Education shall serve, ex officio.

The bill is endorsed by the Indian Affairs Committee and the Legislative Education Study Committee (LESC).

The bill has an effective date of July 1, 2024.

FISCAL IMPLICATIONS

HAFC Amendment

The HAFC amendment would remove the \$100 million appropriation from the bill. However, [CS/HB2/HFACS/aHFI#1/aSFC](#) includes a \$50 million appropriation for the Tribal Education Trust Fund, contingent upon passage of HB134.

Original Bill

The bill would have appropriated \$100 million from the General Fund to the Tribal Education Trust Fund for expenditure in FY25 and subsequent fiscal years to carry out the purpose of the Tribal Education Trust Fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SIGNIFICANT ISSUES

House Floor Amendment 1

HB134/aHEC/aHAFC/aHF1 makes four significant changes to previous iterations of HB134.

First, the Tribal Education Trust Fund Disbursement Formula Task Force is eliminated from the bill. Previous versions of HB134 relied on the task force, which would have been comprised of representatives of all 23 pueblos, nations, and tribes, to create a distribution formula for trust funds. Now, according to Section E of Section 1 of HB 134/aHEC/aHAFC/aHF1, PED will collaborate with New Mexico tribes to develop a distribution formula that is equitable and based on “unanimous consensus”. The bill does not clearly identify how PED will collaborate with tribes on the formula, and although it does identify tribal consultation as a method, this process can occur in many ways. Further, the requirement that the distribution formula be determined in a process of “unanimous consensus”, would appear to indicate all parties, including PED and all 23 of the state’s pueblos, tribes, and nations must agree on the final distribution formula, which, potentially, can be a difficult target to reach. The amended bill allows for the appointment of “peacemakers” in the event of a dispute, but neither defines “peacemaker”, nor clarifies how appointments of such persons are to be made.

Additionally, HB134/aHEC/aHAFC/aHF1 would require tribes to report their annual plan for using trust funds, their annual spending report, and their assessment of educational impacts and outcomes. This new requirement aligns with reporting mandates for historically defined Indian impacted school districts from [Section 9 of the Indian Education Act](#). This reporting requirement may improve transparency and accountability. It may also contribute to more effective discussions between PED and New Mexico pueblos, nations, and tribes during the development of the trust fund’s distribution formula.

Second, HB134/aHEC/aHAFC/aHF1 modifies language related to the annual distribution from the trust fund. For years 2026 through 2030, this amendment would require a distribution of five percent of the fund's previous year market value. Beginning in 2031, the annual distribution would be “five percent of the average of the year-end market values of the tribal education trust fund for the preceding five calendar years.”

Third, HB134/aHEC/aHAFC/aHF1 explicitly identifies tribes and their students as beneficiaries of the Tribal Education Trust Fund.

And finally, HB134/aHEC/aHAFC/aHF1 would strike the annual \$100,000 distribution from the trust fund to the PED to cover administrative costs related to the Tribal Education Trust Fund.

The \$50 million appropriation in CS/HB2/HAFCS/aHF1#1/aSFC would be invested by the State Investment Officer in accordance with the Prudent Investor Rules set forth in the Uniform prudent

Investor Act. The State Investment Council's return target for the General Land Grant Permanent Fund is seven percent. Assuming the State Investment Officer reaches the target return rate, the Tribal Education Trust Fund would have the potential for significant growth in the coming years.

HEC Amendment

The HEC amendment to HB134 honors tribal sovereignty and decision-making based on tribal values. The original bill required that the task force be composed of three members of the Navajo Nation, three members from Pueblo communities – one southern, one northern, one western – and two Apache members – one Jicarilla and one Mescalero. The amendment places the selection process squarely in the hands of the representatives for the 23 pueblos, nations, and tribes of New Mexico.

Limiting withdrawals from the Tribal Education Trust Fund to five percent of the average of the year-end market values of the Tribal Education Trust Fund for the preceding five calendar years would increase the sustainability of the fund.

Original Bill

Currently, pueblos, nations, and tribes across the state apply for Indian Education Act grant funding from PED. If a tribal community receives a grant but fails to spend all awarded funds in a given fiscal year, those funds revert to PED. Unspent funds from awards from the Tribal Education Trust Fund would not revert, providing tribal communities with an additional year-to-year funding stream.

In FY23, the legislature allotted \$13.3 million for tribal and rural extended learning time. PED allocated these funds to all 23 pueblos, nations, and tribes. The legislature also appropriated \$20 million to the Indian Education fund for expenditure in FY24 and FY25. Of this allocation, PED distributed approximately \$4 million to pueblos, nations, and tribes, and \$5 million to school districts and charter schools through the [Improving Educational & Cultural Outcomes for Native American Students Grant](#). This \$9 million investment, along with an additional \$5 million from six other Indian Education Division (IED) grant programs, was aimed at helping to meet the outcomes of the systematic framework of the IEA, which directly aligns with improving educational outcomes for Native American students.

In FY23 and FY24, PED has granted nearly \$4 million to pueblos, nations, and tribes, school districts, and charter schools to increase the number of fluent speakers within a specific community and establish, expand, or strengthen language programming. PED has also worked to expand classroom services for Native American students, such as increased funding through the Improving Educational and Cultural Outcomes for Native American Students grant. Programming can include language and culture classes, tutoring, professional development, mental and social-emotional health supports, and cultural arts and activities.

Additionally, in FY23, PED provided \$12 million to pueblos, nations, and tribes for tribal library capital outlay. Several pueblos have used these dollars to build new libraries and education centers, and other pueblos, nations, and tribes will use the funds for planning, designing, expanding, renovating, and equipping current libraries.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

HB134/aHEC/aHAFC/aHF1 would require the PED to collaborate with tribes to develop an equitable distribution formula. The bill does not specify how the collaboration would take place. It is possible this work could be conducted during required semiannual meetings between PED's Assistant Secretary of Indian Education and New Mexico pueblos, nations, and tribes. It is important to note that the bill does not specify actions to take in the event that unanimous consensus on a distribution formula cannot be reached, except to note that peacemakers may be appointed in such a circumstance (see "Significant Issues, House Floor Amendment 1", above).

The department is also to report the total disbursements from the fund for the prior fiscal year, a summary of required tribal reports received by the PED, and a projection of available disbursements for the following year to LESC, the New Mexico tribes, and any other appropriate interim committee. PED is empowered to establish procedures and adopt rules for the administration of the fund after formal consultation with New Mexico tribes.

Finally, [6.35.2 NMAC, Implementing the Indian Education Act](#), requires pueblos, nations, and tribes to submit a report to PED by October 15 of each year, detailing spending, and assessing program impact, student engagement, and student outcomes, based upon criteria determined by each community. These reporting requirements for pueblos, nations, and tribes align with current reporting requirements for school districts and charter schools pursuant to the Indian Education Act and [6.35.2 NMAC, Implementing the Indian Education Act](#).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion to: [HB135, Indian Education Fund Distribution](#), which would modify the language of Section 22-23A-8 NMSA 1978 to reflect the funding and reporting proposals of HB134.

TECHNICAL ISSUES

The title of HB134/aHEC/aHAFC/aHF1 states "making appropriations." The contents of the bill, however, do not contain an explicit appropriation of any kind. The bill's sponsors may wish to strike that language from the bill's title.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.