

HOUSE BILL 134

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

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

FOR THE INDIAN AFFAIRS COMMITTEE AND

THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING THE TRIBAL EDUCATION
TRUST FUND; PROVIDING REPORTING REQUIREMENTS; Hf11→~~CREATING THE
TRIBAL EDUCATION TRUST FUND DISBURSEMENT FORMULA TASK
FORCE~~←Hf11 Hf11→PROVIDING DUTIES FOR THE PUBLIC EDUCATION
DEPARTMENT←Hf11 Hf11→HAFc→; ~~MAKING APPROPRIATIONS.~~←HAFc←Hf11
Hf11→; MAKING APPROPRIATIONS.←Hf11

.226731.3AIC February 3, 2024 (2:04pm)

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

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

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

D. Beginning in fiscal year 2026, a distribution

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shall be made from the tribal education trust fund to the public education department on July 1 of each year in which adequate money is available in the tribal education trust fund Hf11→as follows:

(1) for fiscal years 2026 through 2030, in an amount equal to five percent of the year-end market value of the fund for the immediately preceding calendar year; and

(2) for fiscal year 2031 and each subsequent fiscal year, ←Hf11 in an amount equal to HEC→~~the greater of twelve million five hundred thousand dollars (\$12,500,000) or~~ ←HEC five percent of the average of the year-end market values of the tribal education trust fund for the preceding five calendar years Hf11→; ~~provided that the public education department shall distribute funding received pursuant to this subsection according to the formula developed pursuant to Section 2 of this 2024 act.~~ ←Hf11 Hf11→. ←Hf11

Hf11→E. The public education department shall distribute the annual funding from the tribal education trust fund distributions as provided in Subsection D of this section to New Mexico tribes according to an equitable formula that considers Native American student populations and tribal education capacity needs and is developed in a unanimous consensus process of consultation, collaboration and communication with New Mexico tribes by June 1, 2025, with the

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option of appointing peacemakers in the event of a dispute regarding the formula.←Hf11

Hf11→E.←Hf11 Hf11→F.←Hf11 In addition to the distribution pursuant to Subsection D of this section, money in the tribal education trust fund may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund, the state-support reserve fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to avoid an unconstitutional deficit, the legislature may appropriate from the tribal education trust fund to the general fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve, the tax stabilization reserve and the tobacco settlement permanent fund that exhaust those fund balances.

Hf11→F.←Hf11 Hf11→G.←Hf11 Hf11→The beneficiaries of the tribal education trust fund shall be the New Mexico tribes and their respective students in New Mexico educational institutions.←Hf11 The public education department shall enter into intergovernmental agreements with New Mexico tribes prior to the disbursement of funds pursuant to Subsection

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Hf11→G←Hf11 Hf11→H←Hf11 of this section.

Hf11→G.←Hf11 Hf11→H.←Hf11 Beginning in fiscal year 2026, on July 15 of each year, the public education department shall disburse Hf11→to New Mexico tribes←Hf11 money received pursuant to Hf11→Subsection D←Hf11 Hf11→Subsections D and E←Hf11 of this section Hf11→to each New Mexico tribe that has entered into an intergovernmental agreement with the department←Hf11 . Money disbursed to a New Mexico tribe shall not revert and shall carry over to the next fiscal year for continued use by the New Mexico tribe. Money disbursed Hf11→pursuant to this subsection←Hf11 shall be Hf11→disbursed←Hf11 on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's designee.

Hf11→Hf11→H.←Hf11 Hf11→I.←Hf11 The public education department shall Hf11→HEC→create a←HEC HEC→implement the←HEC←Hf11 Hf11→create a←Hf11 disbursement formula, Hf11→HEC→in consultation with←HEC HEC→developed by←HEC←Hf11 Hf11→in consultation with←Hf11 the tribal education trust fund disbursement formula task force created pursuant to Section 2 of this 2024 act, that ensures that Hf11→HEC→a←HEC←Hf11 Hf11→a←Hf11 New Mexico Hf11→HEC→tribe receives←HEC HEC→tribes receive←HEC←Hf11 Hf11→tribe receives←Hf11 nonreverting disbursements each year on July 15 that Hf11→HEC→the←HEC←Hf11 Hf11→the←Hf11 New Mexico

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~~Hf11→HEC→tribe←HEC HEC→tribes←HEC←Hf11 Hf11→tribe←Hf11 may use to carry out the purposes of the Indian Education Act.←Hf11~~

I. Hf11→~~Prior to April 15 of each year, each~~←Hf11 Hf11→~~Each~~←Hf11 New Mexico tribe shall Hf11→~~submit~~←Hf11 Hf11→~~report~~←Hf11 to the public education department Hf11→~~a summary of its operating budget and plan for the ensuing fiscal year based on tribally determined goals and needs. This summary shall include a brief narrative describing how the budget and plan will contribute to meeting~~←Hf11 Hf11→~~the~~ tribe's annual plan for using the funds in accordance with←Hf11 the purposes of the Indian Education Act Hf11→~~and shall include with that plan the tribe's annual spending report and the tribe's assessment of impact and outcomes using tribally determined criteria~~←Hf11 .

Hf11→~~J. Prior to October 15 of each year, each New Mexico tribe shall submit to the public education department a spending report and an assessment of program impact, student engagement and student outcomes based on tribally determined criteria.~~←Hf11

Hf11→~~K.~~←Hf11 Hf11→~~J.~~←Hf11 The public education department shall report to the legislative education study committee, any other appropriate interim committee and the New Mexico tribes no later than November 15 of each year the total disbursements made pursuant to Subsection Hf11→~~G~~←Hf11

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Hf11→H←Hf11 of this section for the previous fiscal year, a summary of tribal reports received and a projection of available disbursements pursuant to Subsection Hf11→G←Hf11 Hf11→H←Hf11 of this section in the following fiscal year.

Hf11→L.←Hf11 Hf11→K.←Hf11 The public education department may:

(1) establish procedures and adopt rules, after formal consultation with the New Mexico tribes, as required to administer and disburse money Hf11→from the tribal education trust fund←Hf11 pursuant to Subsection Hf11→G←Hf11 Hf11→H←Hf11 of this section; and

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

Hf11→M.←Hf11 Hf11→L.←Hf11 Nothing in this section shall interfere with the sovereignty of federally recognized New Mexico tribes.

~~Hf11→N. Beginning in fiscal year 2025 and in each subsequent fiscal year, the lesser of one percent of the tribal education trust fund or one hundred thousand dollars (\$100,000) is appropriated from the tribal education trust fund to the public education department for expenditure in the fiscal year in which it is appropriated to administer the tribal education trust fund. Administrative costs include staff salaries and expenses related to administration of the tribal education trust fund. Any unexpended or unencumbered balance remaining~~

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~~at the end of a fiscal year shall revert to the tribal
education trust fund.~~

Hf11→0. Hf11→M. As used in this
section, "New Mexico tribe" means Hf11→an Hf11→a
federally recognized Indian nation, tribe or pueblo
located wholly or partially in New Mexico Hf11→in which
Hf11→and on whose lands in New Mexico Native American
students are being educated Hf11→in New Mexico .

Hf11→SECTION 2. TEMPORARY PROVISION--TRIBAL EDUCATION
TRUST FUND DISBURSEMENT FORMULA TASK FORCE--CREATION--
HEC→MEMBERSHIP-- HEC Hf11→MEMBERSHIP-- Hf11
DUTIES--REPORTING REQUIREMENTS.--

A. ~~The "tribal education trust fund disbursement
formula task force" is created within the public education
department. The task force shall function from the date of its
appointment, which shall be no later than December 1, 2024,
until July 1, 2031. Hf11→HEC→The assistant secretary of
Indian education of the public education department shall serve
on the task force in an advisory function. HEC Hf11→The
assistant secretary of Indian education of the public education
department shall serve on the task force in an advisory
function. Hf11→The task force shall be supported by the public
education department. Hf11→HEC→The task force shall consist
of the following nine members:~~

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

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

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

~~(4) the chair of the Indian education advisory council.~~ ←HEC

HEC →B. ~~To determine task force membership, the legislative education study committee shall convene representatives from the twenty-three sovereign Indian nations, tribes and pueblos located wholly or in part in New Mexico to propose an equitable tribal representation on the task force. The secretary of Indian affairs may participate in the deliberations with tribal representatives in an advisory~~

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~~capacity. The deliberations shall be based on indigenous values for decision-making in accordance with the principle of tribal self-determination. A consensus proposal for task force membership developed by the representatives of the twenty-three Indian nations, tribes and pueblos shall be presented to the legislative education study committee no later than September 1, 2024. The legislative education study committee shall transmit the proposal to the public education department. The public education department shall solicit and accept task force appointments pursuant to that proposal and convene the task force pursuant to Subsection A of this section. HEC Hfl1 Hfl1~~→The task force shall consist of the following nine members:

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

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

~~(3) three representatives, one from the southern pueblos, one from the northern pueblos and one from~~

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~~the western pueblos, nominated by the leadership of New Mexico's Indian nations, tribes and pueblos and appointed by the public education department's assistant secretary of Indian education; and~~

~~(4) the chair of the Indian education advisory council.~~

~~Hfll Hec B. Hec Hec C. Hec Hfll Hfll B. Hfll~~

~~The task force shall develop a disbursement formula that the public education department shall use Hfll Hec use Hec Hec implement Hec Hfll Hfll use Hfll for the disbursement of funds from the tribal education trust fund. The task force shall ensure that the disbursement formula is equitable for each Indian nation, tribe and pueblo located wholly or in part in the state. The task force shall consider tribal needs and tribal size, including both a base and student count elements for the disbursement formula.~~

~~Hfll Hec C. Hec Hec D. Hec Hfll Hfll C. Hfll~~

~~The task force shall Hfll Hec report its recommendations for a Hec Hec provide the Hec Hfll Hfll report its recommendations for a Hfll disbursement formula to the governor, the legislature and the secretary of public education prior to July 1, 2025.~~

~~Hfll Hec D. Hec Hec E. Hec Hfll Hfll D. Hfll~~

~~The task force shall reconvene on July 1, 2030 to review and~~

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

~~Hf11→HEC→E.←HEC HEC→F.←HEC←Hf11 Hf11→E.←Hf11 Members of the task force may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.←Hf11~~

~~H AFC→SECTION 3. APPROPRIATION.--One hundred million dollars (\$100,000,000) is appropriated from the general fund to the tribal education trust fund for expenditure in fiscal year 2025 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.←H AFC~~

~~SECTION Hf11→H AFC→4.←H AFC H AFC→3.←H AFC←Hf11 Hf11→Hf11→4.←Hf11←Hf11 Hf11→2.←Hf11 EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2024.~~