HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 84

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

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CREATING THE NATIVE AMERICAN
LANGUAGE EDUCATION PROGRAM UNIT; ALLOWING TRIBAL GOVERNMENTS TO
RECEIVE DISTRIBUTIONS GENERATED BY THE NATIVE AMERICAN LANGUAGE
EDUCATION PROGRAM UNIT; DEFINING "TRIBAL EDUCATION DEPARTMENT"
AND "TRIBAL GOVERNMENT"; ALLOWING TRIBAL GOVERNMENTS TO RECEIVE
DISTRIBUTIONS FROM THE PUBLIC SCHOOL FUND; INSTRUCTING THE
PUBLIC EDUCATION DEPARTMENT TO ENTER INTO INTERGOVERNMENTAL
AGREEMENTS WITH TRIBAL GOVERNMENTS; CHANGING THE AT-RISK
PROGRAM COST CALCULATION; CLARIFYING THE STATE EQUALIZATION
GUARANTEE DISTRIBUTION FOR TRIBAL GOVERNMENTS; ALLOWING FOR
TRIBAL SOVEREIGNTY IN DEVELOPING AND EVALUATING NATIVE AMERICAN
LANGUAGE PROGRAMS.

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

SECTION 1. A new section of the Public School Finance Act.

.219848.1
HEC/HB 84

is enacted to read:

"[NEW MATERIAL] NATIVE AMERICAN LANGUAGE EDUCATION PROGRAM
UNITS.--Tribal governments are eligible for Native American
language education program units. The total number of Native
American language education program units is determined by
multiplying the full-time-equivalent MEM in programs in public
schools teaching a Native American language and receiving
program units for bilingual multicultural education by the cost
differential factor of 0.5."

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

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

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

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withdrawn from the public school, include students absent from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

- 2 -

219848.1
required to intervene with and keep in an educational setting
as provided in Section 22-12-9 NMSA 1978;

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

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

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

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

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

H. "operating budget" means the annual financial
plan and educational plan required to be submitted by a local
school board or governing body of a state-chartered charter
school;
I. "performance measure" means a quantitative indicator used to assess the output or outcome of an approved program;

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

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

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

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

N. "public money" or "public funds" means all money from public or private sources received by a school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school for public use;

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

(1) has not graduated from high school;

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

(3) in terms of age and other criteria:
   (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;
   (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department;
   (c) except as provided in Subparagraph (d) of this paragraph, has not reached the student's twenty-second birthday on the first day of the school year; or
   (d) has reached the student's twenty-second birthday on the first day of the 2019-2020 school year, is counted in a school district's or charter school's MEM on the third reporting date of the 2018-2019 school year, has been continuously enrolled in the same public school since that reporting date and is still enrolled in that school;

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

Q. "staffing cost multiplier" means:

   [(1) for fiscal year 2019, the instructional staff training and experience index;
   (2) for fiscal year 2020, the weighted average]
of the instructional staff training and experience index at seventy-five percent and the teacher cost index at twenty-five percent;

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

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

(5) for fiscal year 2023 and subsequent fiscal years, the teacher cost index; [and]

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

S. "tribal education department" means a tribal government office that oversees education programs within a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico; and

T. "tribal government" means the government of any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico."

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

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

A. The "public school fund" is created.
B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:

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

C. Tribal governments, on behalf of their tribal education departments, shall be eligible to receive distributions in accordance with the provisions of the Public School Finance Act; provided that a tribal government shall be able to spend the distribution in accordance with tribal priorities and nothing in that act shall be construed to waive or restrict the sovereign immunity of an Indian nation, tribe or pueblo.

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

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

A. The department shall determine the allocations to each school district, charter school and tribal government from each of the distributions of the public school fund, subject to the limits established by law.

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

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

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

A. The program cost for each school district, charter school and tribal government shall be determined by the department in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information
necessary to make an accurate determination of the district's or charter school's program cost."

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

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

A. For a school district or charter school, the total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) and (2) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (3) through (16) in this subsection. The itemized program units are as follows:

(1) early childhood education;
(2) basic education;
(3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
(4) bilingual multicultural education;
(5) fine arts education;
(6) elementary physical education;
(7) size adjustment;
(8) at-risk;
(9) enrollment growth or new district adjustment;

(10) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;

(11) national board for professional teaching standards certification;

(12) home school student;

(13) home school student activities;

(14) charter school student activities;

(15) K-5 plus; and

(16) extended learning time.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Except as otherwise provided in this section, funds generated under the Public School Finance Act are discretionary to local school boards and governing bodies of charter schools; provided that the special program needs as enumerated in this section are met; [and] provided further that the department shall ensure that the local school board or governing body of a charter
school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement; and provided further that the department shall ensure that resources linked to Native American students are used for school-based, community-based or tribal government-based programs that meet Native American students' needs, improve their achievement, including oral native language acquisition, and adhere to culturally appropriate methods determined by each Indian nation, tribe or pueblo.

C. For tribal governments, the total program units for the purpose of computing the program cost shall be calculated as follows:

(1) the department shall calculate the total number of program units for all tribal governments by adding the number of Native American language education program units and at-risk program units pursuant to Subsection E of Section 22-8-23.3 NMSA 1978; and

(2) the department shall enter into an intergovernmental agreement with each tribal government establishing that portion of the total program units from Paragraph (1) of this subsection to be allocated to each tribal government. Funds generated under the Public School Finance Act shall be discretionary to tribal governments and their tribal education departments."

SECTION 7. Section 22-8-23.3 NMSA 1978 (being Laws 1997, .219848.1
Chapter 40, Section 7, as amended) is amended to read:

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

A. A school district is eligible for [additional] at-risk program units if it establishes within its department-approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services implemented to improve the academic success of at-risk students. The report shall identify the ways in which the school district and individual public schools use funding generated through the at-risk index and the intended outcomes. For purposes of this section, "at-risk student" means a student who meets the criteria to be included in the calculation of the three-year average total rate in Subsection B of this section. The number of additional units to which a school district is entitled under this section is computed in the following manner:

At-Risk Index x MEM = Units

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

Three-Year Average Total Rate x 0.30 = At-Risk Index.

B. To calculate the three-year average total rate,
the department shall compute a three-year average of the school
district's percentage of membership used to determine its Title
1 allocation, a three-year average of the percentage of
membership classified as English language learners using
criteria established by the office for civil rights of the
United States department of education and a three-year average
of the percentage of student mobility. The department shall
then add the three-year average rates. The number obtained
from this calculation is the three-year average total rate.

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

D. A school district or charter school is eligible
for additional at-risk program units if it provides to Native
American public school students identified services, programs
or activities pursuant to Section 22-23A-11 NMSA 1978. The
number of program units pursuant to this subsection is computed
in the following manner:

0.15 x Native American MEM = Units

where Native American MEM is equal to the number of public
school students in the school district or charter school that
are Native American.

E. A tribal government is eligible for at-risk
program units if its tribal education department provides to
Native American public school students identified services,
programs or activities pursuant to Section 22-23A-11 NMSA 1978.
HEC/HB 84

The total number of program units for all tribal governments pursuant to this subsection is computed in the following manner:

\[ 0.15 \times \text{Native American MEM} = \text{Units} \]

where Native American MEM is equal to the total number of public school students in all school districts and charter schools that are Native American.

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

1. case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;
2. culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;
3. additional compensation strategies for high-need schools;
4. whole school interventions, including school-based health centers and community schools;
5. educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical
education, guidance counseling services and coordination with
post-secondary institutions; [and]

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

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

**SECTION 8.** Section 22-8-25 NMSA 1978 (being Laws 1981,
Chapter 176, Section 5, as amended) is amended to read:

"22-8-25.  STATE EQUALIZATION GUARANTEE DISTRIBUTION--
DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is
that amount of money distributed to each school district to
ensure that its operating revenue, including its local and
federal revenues as defined in this section, is at least equal
to the school district's program cost. For state-chartered
charter schools, the state equalization guarantee distribution
is the difference between the state-chartered charter school's
program cost and the two percent withheld by the department for
administrative services. **For tribal governments, the state
equality guarantee distribution is equal to the tribal
government's program cost.**

B. "Local revenue", as used in this section, means
seventy-five percent of receipts to the school district derived
from that amount produced by a school district property tax
applied at the rate of fifty cents ($0.50) to each one thousand
dollars ($1,000) of net taxable value of property allocated to
the school district and to the assessed value of products
severed and sold in the school district as determined under the
Oil and Gas Ad Valorem Production Tax Act and upon the assessed
value of equipment in the school district as determined under
the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section,
means receipts to the school district or state-chartered
charter school, excluding amounts that, if taken into account
in the computation of the state equalization guarantee
distribution, result, under federal law or regulations, in a
reduction in or elimination of federal school funding otherwise
receivable by the school district, derived from the following:

    (1) seventy-five percent of the school
district's share of forest reserve funds distributed in
accordance with Section 22-8-33 NMSA 1978; and

    (2) seventy-five percent of grants from the
federal government as assistance to those areas affected by
federal activity authorized in accordance with Title 20 of the
United States Code, commonly known as "PL 874 funds" or "impact
aid".

D. To determine the amount of the state
equalization guarantee distribution, the department shall:

    (1) calculate the number of program units to
which each school district or charter school is entitled using
.219848.1

- 16 -
an average of the MEM on the second and third reporting dates
of the prior year; or

(2) calculate the number of program units to
which a school district or charter school operating under an
approved year-round school calendar is entitled using an
average of the MEM on appropriate dates established by the
department; or

(3) calculate the number of program units to
which a school district or charter school with a MEM of two
hundred or less is entitled by using an average of the MEM on
the second and third reporting dates of the prior year or the
fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in
Paragraph (1), (2) or (3) of this subsection and the staffing
cost multiplier from the October report of the prior school
year, establish a total program cost of the school district or
charter school;

(5) for school districts and state-chartered
charter schools, calculate the local and federal revenues as
defined in this section;

(6) deduct the sum of the calculations made in
Paragraph (5) of this subsection from the program cost
established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed
ergy savings contract payments that the department determines
HEC/HB 84

will be made to the school district from the public school
utility conservation fund during the fiscal year for which the
state equalization guarantee distribution is being computed;
and

(8) deduct ninety percent of the amount
certified for the school district by the department pursuant to

E. Reduction of a school district's state
equalization guarantee distribution shall cease when the school
district's cumulative reductions equal its proportional share
of the cumulative debt service payments necessary to service
the bonds issued pursuant to the Energy Efficiency and
Renewable Energy Bonding Act.

F. The amount of the state equalization guarantee
distribution to which a school district is entitled is the
balance remaining after the deductions made in Paragraphs (6)
through (8) of Subsection D of this section.

G. The state equalization guarantee distribution
shall be distributed prior to June 30 of each fiscal year. The
calculation shall be based on the local and federal revenues
specified in this section received from June 1 of the previous
fiscal year through May 31 of the fiscal year for which the
state equalization guarantee distribution is being computed.
In the event that a school district or charter school has
received more state equalization guarantee funds than its
0.219848.1

- 18 -
entitlement, a refund shall be made by the school district or charter school to the state general fund."

SECTION 9. Section 22-23-6 NMSA 1978 (being Laws 1973, Chapter 285, Section 6, as amended) is amended to read:

"22-23-6. BILINGUAL MULTICULTURAL EDUCATION PROGRAMS--ELIGIBILITY FOR STATE FINANCIAL SUPPORT.--

A. To be eligible for state financial support, each bilingual multicultural education program shall:

   (1) provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in a district;

   (2) fund programs for culturally and linguistically different students in the state in grades kindergarten through three for which there is an identifiable need to improve the language capabilities of both English and the home language of these students before funding programs at higher grade levels;

   (3) use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

   (4) use teachers who have specialized in elementary or secondary education and who have received
specialized training in bilingual education conducted through
the use of two languages. These teachers or other trained
personnel shall administer language proficiency assessments in
both English and in the home language until proficiency in each
language is achieved;

(5) emphasize the history and cultures
associated with the students' home or heritage language;

(6) establish a parent advisory committee,
representative of the language and culture of the students, to
assist and advise in the development, implementation and
evaluation of the bilingual multicultural education program;
and

(7) provide procedures to ensure that parental
notification is given annually prior to bilingual multicultural
education program placement.

B. Bilingual multicultural education programs
teaching a Native American language shall be developed, taught
and evaluated in accordance with tribal priorities and
sovereignty.

[C. Each bilingual multicultural education
program shall meet each requirement of [Subsection-A]
Subsections A and B of this section and be approved by the
department to be eligible for state financial support."

SECTION 10. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2021.