

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 342a

51st Legislature, 1st Session, 2013

Tracking Number: .191530.1

Short Title: Indian Education Act Goals

Sponsor(s): Representatives Sandra Jeff and Patricia Roybal Caballero and Others

Analyst: Mark Murphy

Date: February 26, 2013

AS AMENDED

The House Education Committee amendments:

- **direct the \$1.0 million appropriation to the Indian Affairs Department (IAD) instead of the Public Education Department (PED) to carry out the goals of the *Indian Education Act*; and**
- **specify that any unexpended or unencumbered balance remaining at the end of a fiscal year will not revert to the General Fund.**

Original Bill Summary:

HB 342 appropriates \$1.0 million for expenditure in FY 14 to carry out and achieve the goals of the *Indian Education Act*, with emphasis on culturally relevant teaching and language maintenance.

Fiscal Impact:

\$1.0 million is appropriated from the General Fund to the Public Education Department (PED) for expenditure in FY 14. Any unexpended or unencumbered balance remaining at the end of FY 14 shall revert to the General Fund.

For FY 14, HB 3, as amended by the House Education Committee, includes a General Fund appropriation of \$1,824,600 to the Indian Education Fund and language that directs \$400,000 to a nonprofit organization that provides teaching support in schools with a high proportion of Native American students. If enacted, HB 342 would increase the appropriation to \$2,824,600.

Fiscal Issues:

According to the Indian Affairs Department (IAD) bill analysis:

- the Indian Education Fund has received General Fund appropriations since FY 04;
- beginning with FY 07, the fund also began receiving matching funds from a rural literacy grant awarded to a nonprofit agency (Save the Children);
- the appropriations to the fund have recently decreased; and
- since FY 11, \$700,000 of the appropriation has been earmarked to go to nonprofit organizations in the following way:

- \$300,000 for a rural literacy initiative contingent on \$300,000 in matching funds from sources other than state funds; and
- \$400,000 for a nonprofit organization that provides teaching support in schools with a high proportion of Native American students.

Table 1, below is based on data provided by the IAD, which outlines the appropriations (from the General Fund) and other revenues (matching funds from the selected rural literacy initiative) to the Indian Education Fund as well as expenditures and cash balances by fiscal year.

Table 1. Indian Education Fund Appropriations, Expenditures and Cash Balances

Fiscal Year	Appropriation	Other Revenue	Expenditures	Non-reverting amounts	Cash Balances
FY 04	\$2,000,000	0	\$66,500	\$1,933,500	\$1,933,500
FY 05	\$2,500,000	0	\$415,000	\$2,085,000	\$4,018,500
FY 06	\$2,500,000	0	\$2,590,200	\$-90,200	\$3,928,300
FY 07	\$2,497,400	\$500,000	\$2,658,500	\$338,900	\$4,267,200
FY 08	\$2,500,000	\$500,000	\$3,354,900	\$-354,900	\$3,912,300
FY 09	\$2,500,000	\$250,000	\$3,185,000	\$-185,000	\$3,727,300
FY 10	\$2,250,000	\$500,000	\$3,329,800	\$-579,000	\$3,147,500
FY 11	\$1,924,600	\$400,000	\$3,359,700	\$-1,035,100	\$2,112,400
FY 12	\$1,824,600	\$300,000	\$2,728,800	\$-604,200	\$1,508,200
Total	\$20,496,600	\$2,450,000	\$21,688,400		
Current					\$1,508,200

Source: Indian Affairs Department

Technical Issues:

There are two technical issues with this bill.

First, HB 342 states that any unexpended or unencumbered balance remaining at the end of FY 14 must revert to the General Fund. This appears to be in conflict with provisions that currently exist in the *Indian Education Act* that specify that “money in the fund shall not revert.” The Legislative Finance Committee (LFC) Fiscal Impact Report (FIR) also indicates that the appropriation of \$1.0 million would be a recurring expense to the General Fund.

The sponsor may wish to consider striking the provision requiring the appropriation to revert to the General Fund so that it does not conflict with current law.

Second, it is unclear whether this language would necessitate that the money be spent on activities directly related to culturally relevant teaching and the maintenance of native languages or if the money could still be spent on other *Indian Education Act* goals.

The sponsor may wish to consider:

- replacing the terms “with emphasis on” with the word “pertaining to” if the sponsor wishes to limit the use of the appropriation just to meet those goals; or
- specifying a percentage of the appropriation that must be used toward achieving those specific goals.

Substantive Issues:

According to the IAD bill analysis, appropriations to the Indian Education Fund may be used for the following purposes:

- training for Native American teachers in the areas of bilingual education, ESL, special education, reading, and administration;
- scholarships for non-degree American Indian students, including educational assistants, for initial certification and endorsements;
- professional development for non-Native American education assistants, teachers, and principals that currently serve Native American children;
- development of curriculum and attendant instructional materials; and
- identification, assessment and replication of exemplary programs.

Ensuring culturally relevant teaching and the maintenance of native languages have, therefore, been components of the *Indian Education Act* since its enactment. HB 342 specifies that the \$1.0 million appropriation would be spent to carry out and achieve the goals of the *Indian Education Act* and would place emphasis on the culturally relevant teaching and the maintenance of native languages.

The *Tribal Education Status Report for School Year 2011-2012* published by PED in November 2012 provides data regarding funds put towards the maintenance of native languages.

Table 2 below outlines the distribution of Tribal Language Grant awards, which indicates that:

- \$700,000 was allocated by PED for Tribal Language Grants to 14 different tribes/pueblos in school year 2010-2011;
- \$425,000 was allocated by PED to a total of 8 different tribes/pueblos in New Mexico in school year 2011-2012; and
- a 39.28 percent reduction in the award amounts occurred in school year 2011-2012.

Table 2. Tribal Language Grant Award Amounts, 2010-2011 and 2011-2012

Tribe/Pueblo/Nation	2010-2011 Tribal Language Grant Award Amount	2011-2012 Tribal Language Grant Award Amount
Acoma	\$30,000	\$0
Cochiti	\$50,000	\$65,000
Isleta	\$50,000	\$65,000
Jemez	\$50,000	\$0
Jicarilla	\$40,000	\$0
Mescalero	\$50,000	\$50,000
Nambe	\$50,000	\$0
Navajo	\$50,000	\$0
Sandia	\$0	\$40,000
San Felipe	\$50,000	\$65,000
San Ildefonso	\$40,000	\$0
Santa Ana	\$40,000	\$0
Santa Clara	\$50,000	\$50,000
Santo Domingo	\$50,000	\$40,000
Taos	\$50,000	\$50,000
Zia	\$50,000	\$0
TOTAL:	\$700,000	\$425,000

Source: PED, *Tribal Education Status Report School Year 2011-2012*.

The *Tribal Education Status Report School Year 2011-2012* also indicates that a cohort of eight schools was selected in school year 2011-2012 to participate in Culture Based Education grants. The report, however, does not provide the amount that these schools were funded nor does it indicate how many such grants were provided in the previous year. The eight participating schools were:

- Cochiti Elementary and Middle School;
- Mescalero Apache School;
- Mesa Elementary;
- Los Alamos Middle School;
- Laguna-Acoma High School;
- Grants High School;
- Walatowa Charter High School; and
- Dowa Yalanne Elementary School.

Background:

In 2003, legislation was enacted to create the *Indian Education Act* (Laws 2003, Chapter 156). Among its provisions, the act:

- created the Indian Education Division within PED whose duties include:
 - meeting the educational needs of Native American students;
 - planning, developing, implementing, and evaluating curricula in native languages, culture, and history, in conjunction and by contract with native language practitioners and tribal elders;
 - entering into agreements with each tribe to share programmatic information and to coordinate technical assistance for public schools that serve Native American students;
 - providing funding to establish an Indian education office in the northwest corner of the state;
 - requiring school districts to obtain a signature of approval by tribal governments or their designees residing within school district boundaries, verifying that the tribes agree to the districts' Indian education Policies and Procedures pursuant to federal requirements;
 - seeking funds for curricula development to provide instruction in tribal history and government and developing plans to implement these subjects into history and government courses in school districts throughout the state;
 - providing funding to establish, develop, and implement programs for increasing the number of Native American educational assistants, teachers, and principals through support services, including recruitment, academic transition and financial support, teacher preparation and induction, and professional development, including Native American bilingual programs; and
 - developing a plan to establish a postsecondary investment system for Native American students to which parents, tribes, and the state may contribute;
- the establishment of an Indian Education Advisory Council that:
 - consists of 14 members, which include representatives from the Navajo, Mescalero and Jicarilla Apache Nations, the Northern and Southern Pueblos, the Urban Indian

- population, the BIA, Head Start organizations, and the general public (one of whom will be non-Native American) and who have knowledge of and involvement in the education of Indian students; and
- meets on a semiannual basis with representatives of the tribes, members of the state board of education, the Governor's office, the Office of Indian Affairs, the Legislature, and the State Superintendent of Public Instruction to evaluate, consolidate, and coordinate all activities related to the education of Native American students; and
- the establishment of an accountability system based on state academic content and performance standards that will require reports on public school performance from the Indian Education Division in collaboration with the BIA's Education Division and school districts with tribal lands within their boundaries.

LESC Interim Reports

In 2004, 2005, and 2006, the LESC requested presentations from PED on its progress in implementing and ensuring that Native American children are benefiting from the *Indian Education Act*. PED reported in each of those years on its appropriations to the fund and its activities related to the *Indian Education Act*.

During the 2006 interim, the LFC staff conducted a review of the effectiveness of PED's implementation of the *Indian Education Act* and the progress in closing the Native American achievement gap. The LFC audit contained a variety of findings related to such matters as pattern of expenditures, government-to-government collaborations, PED leadership and interventions, culturally relevant standards, native language development, and the status of the Indian Education Division. Among other findings, the audit raised questions about timeliness of PED's implementation of the act, the focus of programs and resources, and limited collaborations.

Also during the 2006 interim, at the request of the interim Indian Affairs Committee, the Legislative Council appointed an *Indian Education Act* subcommittee to address issues related to the implementation of the *Indian Education Act*. The subcommittee included three representatives, one each from the LESC, the LFC, and the interim Indian Affairs Committee. The amendments to the *Indian Education Act* proposed in HB 892 (Laws 2007, Chapter 295) resulted from input by members of the subcommittee, tribal and pueblo leaders, and representatives of the Indian Education Advisory Council.

The amendments to the *Indian Education Act* that were enacted by the 2007 legislation included:

- definitions of the terms:
 - assistant secretary;
 - government-to-government;
 - indigenous;
 - tribal;
 - New Mexico tribe; and
 - urban Indian;

- requirements that the Secretary of Public Education ensure that the duties prescribed in the *Indian Education Act* are carried out;
- requirements that the Secretary of Public Education consult on proposed rules implementing the *Indian Education Act* with the Indian Education Advisory Council and shall present rules for review and comment at the semiannual government-to-government meeting;
- establishment of the “Indian Education Division” within PED, that requires that the Assistant Secretary for Indian Education to:
 - direct the activities of the division and advise the secretary on development of policy regarding the education of tribal students;
 - coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the *Indian Education Act* a priority;
 - collaborate with state and federal departments, agencies, and tribal governments to identify ways such entities can assist the PED in the implementation of the *Indian Education Act*; and
 - complete numerous other specified duties.

Senate Memorial 52 (2011), Indian Education Act Effectiveness

During the 2012 LESC interim, the committee discussed Senate Memorial (SM) 52, *Indian Education Act Effectiveness*, which passed the Senate, requesting the LESC and the Interim Indian Advisory Committee (IAC) to review the effectiveness of the *Indian Education Act*. Prior to the committee discussion, the LESC Director stated that LESC staff had discussed the memorial with staff from the Legislative Council Service (LCS) to determine if the Interim Indian Advisory Committee (IIAC) would be including SM 52 in its workplan. LCS staff, the director reported, were uncertain if the memorial would be discussed as interim committee calendars had not been considered and approved by the Legislative Council.

Among LESC staff concerns, the LESC Director stated, is a definition for the term “effectiveness.” After committee discussion, the LESC Chair indicated that he would confer with the chair of the IIAC to determine if this interim committee would include the memorial in its workplan. If included, the Chair requested LESC staff to adjust the LESC interim workplan accordingly, at which time he would appoint Representative Roberto “Bobby” Gonzales, Senator Lynda Lovejoy, and Representative Ray Begaye to serve on the subcommittee requested by the memorial. However, it was later learned that the IIAC workplan did not include an interim hearing on the Senate memorial.

Related Initiative

Finally, during the 2012 interim, the LESC discussed student transfer issues between BIE and non-BIE schools in New Mexico. An LESC committee member solicited the perspective of the Assistant Secretary for Indian Education at PED, but he was not in attendance at the meeting. During the conversations, committee members highlighted the low achievement rates for Native American students as demonstrated in the *Tribal Education Status Report* and indicated that dialogue between BIE and the state regarding student mobility, accountability, and teacher licensure was needed. A committee member also indicated that the *Indian Education Act* had been underfunded in recent years. The LESC then approved a motion to formulate a 2013 interim task force to begin the process of developing recommendations for aligning BIE and state policies in order for the task force to bring the recommendations to the LESC for consideration as potential legislation for the 2014 legislative session.

Committee Referrals:

HEC/HAFC

Related Bills:

*HB 3a *Education Appropriation Act*

HB 245 *Stop Some Indian Impact Aid Credits*

SB 325 *Stop Some Indian Impact Aid Credits*