

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 37

51st Legislature, 2nd Session, 2014

Tracking Number: .194863.1

Short Title: Equalization Distribution to Certain Schools

Sponsor(s): Representative Eliseo Lee Alcon and Others

Analyst: Mark Murphy

Date: February 11, 2014

FOR THE INDIAN AFFAIRS COMMITTEE

Bill Summary:

HB 37 amends the *Public School Finance Act* to provide that no deductions in the State Equalization Guarantee (SEG) distribution will be made for federal revenues from Impact Aid funds for school districts located entirely within the boundaries of recognized Indian reservations or pueblo grant lands.

Fiscal Impact:

HB 37 does not contain an appropriation.

Fiscal Issues:

Impact on the Unit Value and SEG Distributions

If the provisions in HB 37 had been enacted for the current school year, it would have resulted in the Public Education Department (PED) reducing the total amount of deductions made for federal revenue received by the Zuni Public School District (ZPSD) by \$3.77 million. This would result in the need for the state funded SEG distribution to increase the distribution to ZPSD by \$3.77 million. Based on PED's Preliminary Funded Run for FY 14, without an additional appropriation, in order to do this, the Unit Value would need to decrease from \$3,817.55 to \$3,811.56. Ultimately, this would result in a 38.64 percent increase in the SEG distribution for ZPSD, while reducing the overall distribution for all other school districts and state charters by 0.16 percent.

Disparity Test

The Legislative Finance Committee (LFC) Fiscal Impact Report (FIR) states that:

- an unintended consequence of this bill is that New Mexico may not meet the disparity test required by the federal government in order to take credit for 75 percent of the basic impact aid payments to school districts; and
- if this were to occur, an additional \$52.7 million would be needed to keep the Unit Value stable.

However, a letter from the US Department of Education's (USDE) Director of Impact Aid, states the following with regard to this bill and the disparity test:

- New Mexico has for a number of years met the requirements of the disparity test and was authorized to reduce State aid by certain Impact Aid receipts; and
- based on a preliminary analysis of FY 12 data, it appears that New Mexico would still be able to meet the requirements of the disparity test for FY 14 even if it did not consider Zuni's Impact Aid payments but did so for all other school districts.

Therefore, it appears that the concern regarding the \$52.7 million noted in the FIR, while important to consider, would likely not occur and the fiscal impact of this bill would be limited to the \$3.77 million discussed above.

Future Impact Aid Awards

The letter from the USDE's Director of Impact Aid regarding this bill proposal, however, also notes the following pertinent information:

- the disparate treatment of certain school districts, or a single school district, could call into question whether the State violates the general prohibition in section 8009(a) of the law;
- such disparate treatment could also affect the eligibility of [a district] for payments under section 8003 of the law; and
- the Impact Aid eligibility regulations provide in relevant part that a local educational agency is eligible only if "the state provides funds for the education of those children on the same basis as all other public school children in the State."

Thus, it appears that the enactment of HB 37 may generate potentially significant unintended consequences at the local level in the relationship between ZPSD and USDE.

Substantive Issues:

Limited to One District

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

- it appears that only the ZPSD is "located entirely within the boundaries of a recognized Indian reservation or pueblo grant lands" such that ZPSD would use the new formula in HB 37 to determine its SEG distribution; and
- if enacted, schools located within the boundaries of recognized Indian reservations or pueblo grant lands may be encouraged to form their own school districts in order to take advantage of the provisions of HB 37.

If new districts were to be created, it may help tribal communities more effectively respond to local priorities, however, it would likely also create new administrative and fiscal burdens.

Additionally, the Attorney General's Office bill analysis notes:

- there is the possibility for a legal challenge since ZPSD appears to be the only school district who would be significantly affected by this bill;

- as such, the requirement that a school district be located entirely within the recognized boundaries of an Indian reservation or pueblo grant land could be challenged as an arbitrary distinction or limitation; however,
- the possibility of a legal challenge on this point is reduced if there are more school districts that would actually be affected by implementation of HB 37.

Technical Issues:

The LFC's FIR states the following technical issue:

- the bill does not have an effective date making it possible to argue that, in the event the bill is enacted, PED should not take credit for federal Impact Aid received by ZPSD in FY 14.

The sponsor may wish to consider including an effective date of July 1, 2014 or later to ensure the provisions of the bill do not become effective in FY 14.

Background:

Impact Aid

The federal Impact Aid law (originally known as PL 874) was signed into law by President Harry S. Truman in 1950 to provide assistance to school districts that experience an adverse financial impact due to federal activity or presence. This impact is usually caused by the federal ownership of non-taxable land, or the burden of providing an equal education to a district's "federally connected" children. The three types of federally connected children are:

- children residing on Indian lands;
- military children; and
- children residing in federal low-rent housing projects.

Federally connected students can reduce a school district's taxable financial base if their parents or guardians:

- pay no income taxes or vehicle license fees;
- live on non-taxable federal property;
- shop at stores that do not generate taxes; or
- work on non-taxable federal land.

Impact Aid provides a payment to school districts in lieu of these lost taxes. Impact Aid is one of the only federal education programs in which discretionary funds go directly into a school district's general operating fund to be used as the local school board sees fit.

According to provisions in the federal *Elementary and Secondary Education Act (ESEA)* pertaining to Impact Aid:

- funds are provided directly to school districts on the basis of statutory criteria provided in grant applications submitted to the US Department of Education (USDE);
- payments under the program are made for:

- federal acquisition of real property located within the school district;
- membership and attendance counts of federally connected children; and
- construction, repairs, maintenance, and modernization of facilities to eligible local educational agencies (LEAs); and
- payments made under the program are considered general aid, and may be employed at the discretion of the LEA, except for those funds awarded for:
 - federally connected children with disabilities; and
 - facility construction, repairs, and modernization.

According to provisions within the New Mexico *Public School Finance Act*, current law:

- defines “federal revenue” in the SEG distribution as receipts to the school district derived from the following:
 - 75 percent of the school district’s share of forest reserve funds; and
 - 75 percent of grants from the federal government as “PL 874 funds” or “impact aid”; and
- requires the calculation to determine the final SEG distribution for school districts to deduct the federal revenue from the total program cost of a school district.

Additionally, the IAD bill analysis states that:

- there are 89 public school districts in New Mexico;
- 23 public school districts have significant Native American student populations;
- 20 public school districts apply for Impact Aid funds;
- some public school districts have opted not to apply for Impact Aid funds; and
- Impact Aid is often an extremely important source of revenue for school districts that serve children living on Indian reservations and other Indian lands, because these districts frequently have a very small local property tax base from which to raise revenue for schools.

Committee Referrals:

HRC/HEC/HAFC

Related Bills:

HB 13a *School Equalization Guarantee “Local Revenue”*
 HB 19a *Update School Finance At-Risk Index*
 HB 35a *Additional Funding Units for Some Schools*
 HB 122 *Licensed School Employee Program Units*
 HB 256 *Tribal Land Charter School*
 HB 345 *School Finance “Local Revenue”*
 HJM 21 *Indian Education Subcommittee*
 SB 54 *Public School Funding Adequacy*
 SB 310 *School District “Local Revenue”*