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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB84/HECS</u>	Sponsor	<u>HEC</u>
Tracking Number	<u>.219848.1</u>	Committee Referrals	<u>HEC/H AFC</u>
Short Title	<u>Native Language Education Program Unit</u>		
Analyst	<u>Simon</u>	Original Date	<u>3/1/2021</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

The House Education Committee substitute for House Bill 84 (HB84/HECS) would amend the Public School Finance Act to create a Native American language program unit, create a new factor in the public school funding formula for programs offered pursuant to the Indian Education Act, and allow tribal governments to receive distributions from the state equalization guarantee (SEG) distribution based on the number of public school students enrolled in Native American language programs and the number of Native American public school students. In addition, HB84 would require the Public Education Committee (PED) ensure resources linked to Native American students are used for programs that adhere to culturally appropriate methods determined by each tribe and provide that bilingual multicultural education programs must be developed, taught, and evaluated in accordance with tribal priorities and tribal sovereignty.

HB84/HECS carries an effective date of July 1, 2021.

FISCAL IMPACT

HB84/HECS does not contain an appropriation.

HB84/HECS would increase the number of program units generated by school districts and charter schools through the public school funding formula. In addition, HB84/HECS would create a new pool of program units that would not be allocated to school districts and charter schools. Under HB84/HECS, PED would enter into intergovernmental agreements with tribal governments to distribute the funding for these program units. Without an increase in appropriations to the SEG pool of funds, an increase in the number of program units would decrease the unit value, impacting school districts and charter schools statewide. HB2/HAFCS does not include an appropriation for HB84/HECS.

Native American Language Program Units. HB84/HECS creates new Native American language program units for tribal governments. The number of Native American language program units would be equal to the number of bilingual multicultural education program units generated by

school districts and charter schools for Native American language programs. Native languages are currently funded through the bilingual multicultural education factor of the public school funding formula at a rate of 0.5 program units per FTE student enrolled in a program. As a result, HB84/HECS essentially doubles funding for Native American languages offered pursuant to the Bilingual Multicultural Education Act, with half of the funds allocated to school districts and charter schools and half of the funds allocated to tribal departments of education.

According to the most recent bilingual multicultural education report from the PED, in FY19 seven of New Mexico's Native American languages were taught in public schools, and 6,742 students were served. Financial data from PED shows students in bilingual multicultural education programs average 0.344 FTE. Multiplying the statewide average FTE by the number of students in Native American language programs, staff estimate Native American language program units would be funded for 2,319.248 FTE. At the final program unit value of \$4,536.75, this would generate \$5.3 million in funding for Native American language programs.

At-Risk Programs. HB84 would create additional at-risk program units for school districts and charter schools and provide an allocation to tribal governments based on the number of public school students who are Native American. To be eligible for a distribution, a school district, charter school, or tribal department of education must provide Native American public school students services pursuant to the Indian Education Act's systemic framework to improve educational outcomes for Native American students.

Funding from the new at-risk program units for Native American students would flow equally to public schools and tribal governments. To calculate the number of program units for a school district or charter school, PED would multiply the number of Native American students in that school district or charter school times 0.15. To calculate the number of program units for tribal governments, PED would multiply the total number of Native American public school students statewide times 0.15. The total of 0.3 for Native American students would match but be separate from the current weight of 0.3 for low-income students, English learners, and highly mobile students.

Based on FY20 enrollment in school districts and charter schools, LESC staff estimate 34,567 Native American students are enrolled in public schools. At the final program unit value of \$4,536.75, this would generate \$23.5 million in funding for school districts and charter schools and \$23.5 million for tribal governments, for a total of \$47 million. See **Attachment 1: Estimated Impact of HB84/HECS for At-Risk Program Units.**

SUBSTANTIVE ISSUES

HB84/HECS seeks to address issues raised in the consolidated *Martinez* and *Yazzie* education sufficiency lawsuit. Specifically, the bill seeks to address findings related to the education of Native American students. In response to the court findings, tribal governments, education advocates, and other stakeholders have proposed a tribal remedy framework, which includes proposals to increase the role New Mexico's pueblos, tribes, and nations have in the education of Native American children.

A recent report from the Tribal Education Alliance suggests three strategies to increase the tribal responsibility over public education in New Mexico: increasing the capacity of tribal education departments, providing recurring state funding for tribal education departments, and developing a governance and accountability framework, often through formal agreements between tribal

departments of education and public schools, to ensure a culturally appropriate education for Native American students.

HB84/HECS seeks to provide state funding for tribal departments of education by carving out specific sections of the public school funding formula, from which tribal departments of education could receive state funds. HB84/HECS would require PED to enter into intergovernmental agreements with tribal governments on behalf of tribal departments of education to allocate funding generated through the program units set aside for tribal governments pursuant to HB84/HECS. HB84/HECS adds definitions of “tribal government” and “tribal education department” to the Public School Finance Act. These definitions are aligned with those in the Indian Education Act and the State-Tribal Collaboration Act.

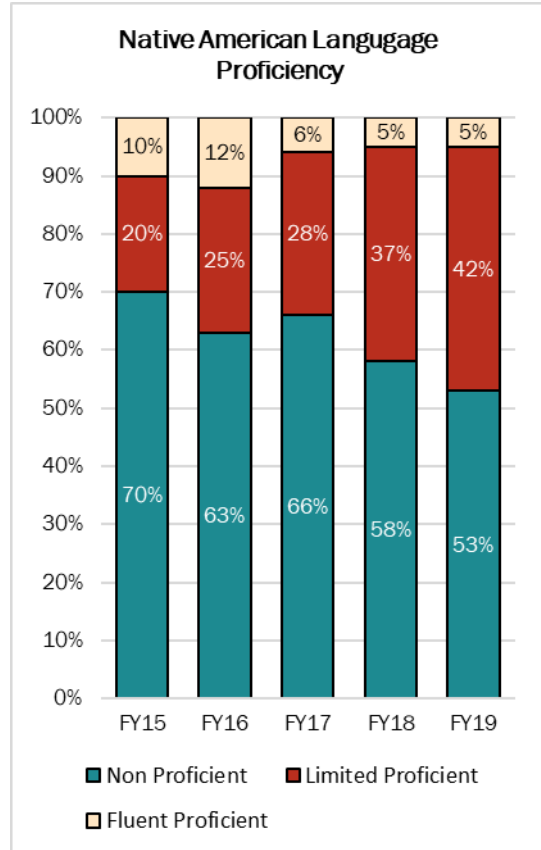
While tribal programs currently offer federally funded Head Start programs, Native American language programs, library services, summer school, and student support services, these programs fall outside of the state’s public education system and are not governed by the provisions of the provisions of the Public School Code.

Bilingual Multicultural Education Programs. Native American language programs are currently supported though the public school funding formula’s factor for bilingual multicultural education programs. PED’s most recent bilingual multicultural education report indicates 13 school districts and three charter schools offer a Native American language program through the state’s bilingual multicultural education program. Programs are offered in Jicarilla Apache, Keres, Navajo (Diné), Tiwa, Tewa, Towa, and Zuni.

Assessment data collected by PED indicates long-term declines in the number of students rated as nonproficient and an increase in the number of students rated as limited-proficient. From FY15 through FY19, nonproficient students fell from 70 percent to 53 percent, while students with limited proficiency increased from 20 percent to 42 percent.

Use of Racial Characteristics in Education Finance. PED notes, states funding formulas general rely on poverty indicators or other indicators of economic disadvantage to address racial inequities, rather than relying on racial characteristics. In analysis of another bill that adds racial and ethnic demographics to the at-risk index, PED provides the following analysis:

The U.S. Supreme Court has established a doctrine of strict scrutiny around the use of race in state laws. To meet strict scrutiny, the state must demonstrate that the use of race is narrowly tailored and the state has a compelling interest to consider race. This means generally the State of New Mexico would need to argue there is a compelling state interest in linking funding to racial achievement gaps and that it is so narrowly tailored that it cannot be constructed as having racial animus. Generally,



strict scrutiny also requires the state to show that there is not efficacy in other race neutral proposals.

While HB84/HECS uses racial information to generate funding, this funding is linked to specific programs required by the Indian Education Act. In addition, PED notes several education finance experts have offered the opinion that race-conscious funding policies can pass a strict scrutiny test. The U.S. Department of Education’s Office for Civil Rights notes in a “Dear Colleague” letter from 2014 funding disparities that benefit students of a particular race, color, or national origin may be permissible to remedy past discrimination. The U.S. Supreme Court has found policies that explicitly seek to remedy past discrimination meet the strict scrutiny test.

Despite court findings, some legal advocacy groups have pursued litigation on the use of race-conscious policies, and the previous federal administration had pursued litigation against Yale University, arguing the university’s admissions policies violated the Civil Rights Act of 1964. Following the change in administration at the federal level, the Justice Department voluntarily dismissed that lawsuit, but private advocacy groups have indicated they will continue to pursue lawsuits targeting race-conscious policies.

Additionally, race, ethnicity, and tribal affiliations are based on self-reported registration data filled out by a student’s parent or guardian. Were the state to shift to a funding model that included race characteristics, PED may need to develop an auditing system to ensure the accuracy of parent or guardian self-reported data. PED’s Audit and Accounting Bureau conducts annual audits of public school funding formula components, notably for the funding formula’s staffing cost multiplier, which can result in a mid-year reduction to a school district’s or charter school’s funding if PED determines the data submitted by the school district or charter school was inaccurate.

ADMINISTRATIVE IMPLICATIONS

HB84/HECS includes a provision to protect tribal sovereignty in the development of educational programming. The report from the Tribal Education Alliance notes the importance of tribal sovereignty in protecting indigenous ways of life. However, it presents a challenge for the state in crafting programs to meet the court’s mandates in the consolidated *Martinez* and *Yazzie* lawsuit. As the court makes clear, the state’s system of public education falls under the control of the state. The court stated:

The defense attempts to cast blame on the districts, even if accurate, would not absolve the State from responsibility. The State of New Mexico is the defendant. School districts are — an area of land established as a political subdivision of the state for the administration of public schools. The State is responsible for assuring that students receive an adequate education. This responsibility extends to assuring that all its political subdivisions are meeting this constitutional goal.

However, tribal departments of education are not political subdivisions of the state but managed and controlled by sovereign tribal authorities. PED does not have ability to exercise the same “control, management, and direction” over tribal education programs as it does over public schools. Similarly, a New Mexico state court would have no authority over programs under the control, management, and direction of a tribal department of education.

Additionally, provisions of HB84/HECS appear to increase tribal governments' control over programming offered to students in public schools. Page 11, lines 3 through 9, of HB84/HECS requires PED to ensure resources linked to Native American students adhere to culturally appropriate methods determined by each tribe. Additionally, page 20, lines 16 through 19, would provide that bilingual multicultural education programs teaching a Native American language must be developed, taught, and evaluated in accordance with tribal priorities and sovereignty. Analysis from the Indian Affairs Department on legislation related to federal Impact Aid notes tribal governments are not satisfied with the current state of tribal consultations between school districts and tribal government, and the provisions of HB84/HECS may require school districts, charter schools, and PED to defer to tribal authorities in designing instructional programs for Native American students.

These provisions would not negate the state's constitutional mandate to provide a sufficient education, and the court would likely continue to hold the state accountable for student results, even if the state has only limited authority over how those programs are operated.

ALTERNATIVES

Currently, tribal governments receive funding from PED to support Native American language programs in public schools through appropriations to the Indian education fund. For FY21, tribal government awards totaled \$2.2 million. The Indian education fund is allocated outside of the provisions of the Public School Finance Act and not as prescriptive in the allocation of funds as the provisions of the public school funding formula. Increasing recurring general fund appropriations to the Indian education fund and providing additional direction to PED on how to distribute additional funding for Native American language programs, tribal community-based programming for after school and summer programs, or support capacity building at tribal departments of education could accomplish similar goals.

RELATED BILLS

HB84 relates to House Bill 85, House Bill 86, and House Bill 87, which address other elements of the tribal remedy framework.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)

JWS/mb

Estimated Impact of HB84/HECS for At-Risk Program Units

School District or Charter School	Native American Students	Estimated Value of Program Units
ALAMOGORDO	90	\$61,246
ALBUQUERQUE	4,497	\$3,060,265
ANIMAS	3	\$2,042
ARTESIA	4	\$2,722
AZTEC	442	\$300,787
BELEN	78	\$53,080
BERNALILLO	1,392	\$947,273
BLOOMFIELD	1,058	\$719,982
CAPITAN	10	\$6,805
CARLSBAD	60	\$40,831
CARRIZOZO		
CENTRAL CONS.	5,033	\$3,425,019
CHAMA VALLEY	23	\$15,652
CIMARRON		
CLAYTON	5	\$3,403
CLOUDCROFT	3	\$2,042
CLOVIS	50	\$34,026
COBRE CONS.	5	\$3,403
CORONA		
CUBA	397	\$270,163
DEMING	9	\$6,125
DES MOINES		
DEXTER		
DORA		
DULCE	537	\$365,435
ELIDA		
ESPAÑOLA	236	\$160,601
ESTANCIA	10	\$6,805
EUNICE		
FARMINGTON	3,477	\$2,366,142
FLOYD		
FT. SUMNER	3	\$2,042
GADSDEN	20	\$13,610
GALLUP	8,918	\$6,068,810
GRADY		
GRANTS	1,549	\$1,054,114
HAGERMAN		
HATCH		
HOBBS	47	\$31,984
HONDO	2	\$1,361
HOUSE		
JAL	1	\$681
JEMEZ MOUNTAIN	81	\$55,122
JEMEZ VALLEY	162	\$110,243
LAKE ARTHUR		
LAS CRUCES	235	\$159,920

Estimated Impact of HB84/HECS for At-Risk Program Units

School District or Charter School	Native American Students	Estimated Value of Program Units
LAS VEGAS CITY	14	\$9,527
LOGAN	4	\$2,722
LORDSBURG		
LOS ALAMOS	97	\$66,010
LOS LUNAS	542	\$368,838
LOVING	4	\$2,722
LOVINGTON	10	\$6,805
MAGDALENA	135	\$91,869
MAXWELL		
MELROSE		
MESA VISTA	2	\$1,361
MORA		
MORIARTY	23	\$15,652
MOSQUERO		
MOUNTAINAIR	6	\$4,083
PECOS	5	\$3,403
PEÑASCO	44	\$29,943
POJOAQUE	285	\$193,946
PORTALES	30	\$20,415
QUEMADO	20	\$13,610
QUESTA	5	\$3,403
RATON	6	\$4,083
RESERVE		
RIO RANCHO	911	\$619,947
ROSWELL	39	\$26,540
ROY		
RUIDOSO	289	\$196,668
SAN JON		
SANTA FE	267	\$181,697
SANTA ROSA	2	\$1,361
SILVER CITY CONS.	37	\$25,179
SOCORRO	50	\$34,026
SPRINGER		
TAOS	146	\$99,355
TATUM	1	\$681
TEXICO	2	\$1,361
TRUTH OR CONSEQ.	12	\$8,166
TUCUMCARI	4	\$2,722
TULAROSA	235	\$159,920
VAUGHN		
WAGON MOUND		
WEST LAS VEGAS	5	\$3,403
ZUNI	1,226	\$834,308
CHARTER SCHOOLS		
ALBUQUERQUE		
ACE LEADERSHIP	5	\$3,403
AIMS @ UNM	10	\$6,805

Estimated Impact of HB84/HECS for At-Risk Program Units

School District or Charter School	Native American Students	Estimated Value of Program Units
ALBUQUERQUE BILINGUAL ACADEMY	1	\$681
ALBUQUERQUE CHARTER ACADEMY	16	\$10,888
ALBUQUERQUE COLLEGIATE	4	\$2,722
ALBUQUERQUE SCHOOL OF EXCELLENCE	23	\$15,652
ALBUQUERQUE SIGN LANGUAGE	2	\$1,361
ALICE KING COMMUNITY SCHOOL	8	\$5,444
ALTURA PREPARATORY SCHOOL	3	\$2,042
AMY BIEHL ST. CHARTER	10	\$6,805
CESAR CHAVEZ COMM. ST. CHARTER	26	\$17,693
CHRISTINE DUNCAN COMMUNITY	7	\$4,764
CIEN AGUAS INTERNATIONAL	1	\$681
CORAL COMMUNITY	16	\$10,888
CORRALES INTERNATIONAL	6	\$4,083
COTTONWOOD CLASSICAL ST. CHARTER	6	\$4,083
DIGITAL ARTS & TECH ACADEMY	13	\$8,847
EAST MOUNTAIN	11	\$7,486
EL CAMINO REAL	3	\$2,042
EXPLORE ACADEMY	19	\$12,930
GILBERT L. SENA CHARTER	16	\$10,888
GORDON BERNELL	51	\$34,706
HEALTH LEADERSHIP CHARTER	7	\$4,764
HORIZON ACADEMY WEST ST. CHARTER	15	\$10,208
INT'L SCHOOL MESA DEL SOL ST. CHARTER	8	\$5,444
LA ACADEMIA DE ESPERANZA	3	\$2,042
LOS PUENTES	9	\$6,125
MARK ARMIJO (NUESTROS VALORES)	3	\$2,042
MEDIA ARTS COLLAB. ST. CHARTER	14	\$9,527
MISSION ACHIEVEMENT & SUCCESS-MAS	39	\$26,540
MONTESSORI ELEMMENTARY ST. CHARTER	3	\$2,042
MONTESSORI OF THE RIO GRANDE	6	\$4,083
MOUNTAIN MAHOGANY	3	\$2,042
NATIVE AMERICAN COMM ACAD.	393	\$267,441
NEW AMERICA CHARTER SCHOOL	6	\$4,083
NEW MEXICO INTERNATIONAL	4	\$2,722
NORTH VALLEY ACADEMY ST. CHARTER	7	\$4,764
PAPA	6	\$4,083
ROBERT F. KENNEDY	3	\$2,042
SIEMBRA LEADERSHIP HIGH SCHOOL	12	\$8,166
SOLARE COLLEGIATE		\$0
SOUTH VALLEY	4	\$2,722
SOUTH VALLEY PREP ST. CHARTER		\$0
SOUTHWEST PREPATORY LEARNING CENTER	7	\$4,764
SOUTHWEST SECONDARY LEARNING CENTER	10	\$6,805
SW AERONAUTICS, MATHEMATICS AND SCIENCE	4	\$2,722
TECHNOLOGY LEADERSHIP	16	\$10,888
THE ALBUQUERQUE TALENT AND DEVELOPMENT ACAD	10	\$6,805
THE GREAT ACADEMY	13	\$8,847

Estimated Impact of HB84/HECS for At-Risk Program Units

School District or Charter School	Native American Students	Estimated Value of Program Units
TIERRA ADENTRO ST. CHARTER	7	\$4,764
TWENTY-FIRST CENTURY	9	\$6,125
WILLIAM W & JOSEPHINE DORN CHARTER	5	\$3,403
AZTEC		
MOSAIC ACADEMY CHARTER	10	\$6,805
CARLSBAD		
JEFFERSON MONT. ACAD.		\$0
PECOS CONNECTIONS	36	\$24,498
CENTRAL CONS.		
DREAM DINE'	20	\$13,610
CIMARRON		
MORENO VALLEY HIGH	1	\$681
DEMING		
DEMING CESAR CHAVEZ	1	\$681
ESPAÑOLA		
LA TIERRA MONTESSORI	4	\$2,722
MCCURDY CHARTER SCHOOL	28	\$19,054
GALLUP		
DEAP	39	\$26,540
HOZHO ACADEMY	133	\$90,508
MIDDLE COLLEGE HIGH	74	\$50,358
SIX DIRECTIONS	74	\$50,358
JEMEZ VALLEY		
WALATOWA CHARTER HIGH SCHOOL	51	\$34,706
SAN DIEGO RIVERSIDE CHARTER	86	\$58,524
LAS CRUCES		
ALMA D' ARTE STATE CHARTER	1	\$681
J. PAUL TAYLOR ACADEMY	1	\$681
LA ACADEMIA DOLORES HUERTA	1	\$681
LAS MONTANAS	4	\$2,722
NEW AMERICA SCHOOL - LAS CRUCES	1	\$681
RAICES DEL SABER XINACHTLI	1	\$681
LOS LUNAS		
SCHOOL OF DREAMS ST. CHARTER	18	\$12,249
MORIARTY		
ESTANCIA VALLEY	12	\$8,166
QUESTA		
RED RIVER VALLEY		
ROOTS & WINGS	3	\$2,042
RIO RANCHO		
ASK ACADEMY ST. CHARTER	10	\$6,805
SANDOVAL ACADEMY OF BIL ED SABE	2	\$1,361
ROSWELL		
SIDNEY GUTIERREZ		
SANTA FE		
MASTERS PROGRAM ST. CHARTER	3	\$2,042
MONTE DEL SOL	4	\$2,722

Estimated Impact of HB84/HECS for At-Risk Program Units

School District or Charter School	Native American Students	Estimated Value of Program Units
NEW MEXICO CONNECTIONS ACADEMY	58	\$39,470
NEW MEXICO SCHOOL FOR THE ARTS - ST. CH	19	\$12,930
TIERRA ENCANTADA CHARTER	1	\$681
TURQUOISE TRAIL ELEMENTARY	14	\$9,527
ACADEMY FOR TECH & CLASSICS	6	\$4,083
SILVER CITY CONS.		
ALDO LEOPOLD ST. CHARTER		
SOCORRO		
COTTONWOOD VALLEY CHARTER	3	\$2,042
TAOS		
TAOS ACADEMY	7	\$4,764
TAOS INTEGRATED SCHOOL OF ARTS ST.	17	\$11,569
TAOS INTERNATIONAL	6	\$4,083
ANANSI CHARTER	7	\$4,764
TAOS MUNICIPAL CHARTER	6	\$4,083
VISTA GRANDE	26	\$17,693
WEST LAS VEGAS		
RIO GALLINAS CHARTER SCHOOL	1	\$681
TRIBAL GOVERNMENTS	34,567	\$23,523,276
STATEWIDE	34,567	\$47,046,551