

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

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

Bill Number	<u>HB85</u>	Sponsor	<u>Lente/Louis/Johnson</u>
Tracking Number	<u>.218705.2</u>	Committee Referrals	<u>HEC/HAF</u>
Short Title	<u>Yazzie Lawsuit Response Funding</u>		
Analyst	<u>Juliani</u>	Original Date	<u>3/10/2021</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 85 (HB85) appropriates funds to the Indian Affairs Department (IAD) for tribal departments of education to develop and implement education blueprints and governance structures; develop culturally and linguistically relevant early childhood curriculum, assessment, and teacher and program evaluation instruments; fund tribal libraries' after-school and community-based culturally and linguistically relevant summer school programs; and develop and staff information technology departments to enhance network operations and increase high-speed Internet connections for tribal departments of education and other tribal education entities. HB85 also appropriates \$1 million to the University of New Mexico to prepare a statewide information technology master plan for tribal communities.

FISCAL IMPACT

This bill appropriates a total of \$22.7 million from the general fund, all but \$1 million of which would go to IAD, with the remaining \$1 million to the University of New Mexico to prepare a statewide, long-range information technology comprehensive plan for tribal communities, for expenditures in FY22 and FY23. Any unexpended or unencumbered balance remaining at the end of FY23 shall revert to the general fund.

Analysis from IAD indicates the fiscal implication to IAD is minimal. Its analysis indicated, while the appropriation may have an impact on IAD's Administrative Services Division, which consists of four full-time employees, an additional accountant position would support the department and be responsible for administering funding, monitoring each project's progress, and assisting tribes in completing reporting procedures.

The Senate Finance Committee substitute bill for Senate Bill 377 (SB377), as amended by the House Appropriations and Finance Committee, included the following nonrecurring appropriations to PED for FY21 through FY23 for the following purposes:

- \$4.5 million from the public education reform fund for tribal departments of education in each of New Mexico's 23 nations, tribes, and pueblos to develop and implement education blueprints and governance structures, engage in collaborations with school districts and plan, and deliver community-based education programs and social support services for Native American students;
- \$4.5 million from the public education reform fund for tribal libraries in each of New Mexico's 23 nations, tribes, and pueblos to develop and staff culturally and linguistically relevant after-school student services and community-based summer programs; and
- \$1.6 million from the general fund for tribally based Native American language programs to plan and develop programs; recruit, train, and certify language teachers; coordinate curriculum and materials development; and develop culturally and linguistically appropriate student, teacher, and program assessments and evaluations.

Any remaining balances from these appropriations at the end of fiscal year 2023 shall revert to the public education reform fund or the general fund.

SUBSTANTIVE ISSUES

Martinez-Yazzie Lawsuit. In the consolidated *Martinez-Yazzie* education sufficiency lawsuit, the 1st Judicial District Court ruled the state failed to provide quality programs targeted to meet the specific needs of at-risk students, defined as economically disadvantaged students, English learners (ELs), Native American students, and students with disabilities. Native American students have historically experienced the largest achievement gap next to students with disabilities. In FY19, the most recent year of statewide standardized testing, 25 percent of Native American students were proficient in reading, compared with 34 percent of all students, and 12 percent were proficient in math, compared with 20 percent of all students. The court also noted, for the state to provide students with services needed to improve outcomes, it would need to ensure compliance with the Indian Education Act, the Hispanic Education Act, and the Bilingual Multicultural Education Act; provide programs to increase student learning time; and increase funding for services for at-risk students.

In response to the court's decision, the Legislature enhanced funding for the at-risk index by \$185.9 million and provided additional guidance to school districts and charter schools on use of these funds, created a new optional Extended Learning Time Program, expanded access to the K-3 Plus extended school year program to all elementary school students, and required school districts and charter schools to submit additional information to the Public Education Department (PED) to ensure local investments are evidence-based and targeted to close the achievement gap.

An underlying unresolved tension exists within the consolidated *Martinez-Yazzie* ruling that will affect the identification and implementation of ways to best address the court's findings. The state's response to the ruling has been to increase funding and efforts to ensure at-risk, in particular Native American, students are provided a sufficient education. However, weighing this concerted state response and the judge's urging of PED to exercise more oversight against tribes' calls for educational self-determination, an unintended consequence may be a wider division or more pronounced clash between state authority and tribal interests in the education of Native American students.

Tribal Remedy Framework. The *Tribal Remedy Framework*, developed in response to the findings in the consolidated *Martinez-Yazzie* lawsuit, offers a series of policy steps and specific funding proposals representing the perspectives and priorities of the nations, tribes, and pueblos residing

in New Mexico that seek to address the shortcomings identified in the court's ruling. This comprehensive implementation plan provides a roadmap toward a systematic transformation of the education system to redress the historical injustices noted by the court and ensure equitable outcomes for Native American students.

The *Tribal Remedy Framework*'s proposals encompass wide-ranging needs from enhancing support for tribal departments of education and ensuring their collaboration with school districts and establishing a pipeline for Native American teachers to funding the development of culturally and linguistically relevant early childhood curricula and support for tribal libraries' out-of-school time community-based programs. Collectively, the individual proposals can be organized around three primary underlying themes:

- Shared responsibility and increased tribal control;
- Community-based education; and
- Balanced, culturally and linguistically relevant education.

Fundamentally, the *Tribal Remedy Framework* advocates for a relationship based on more shared power between the state and tribes. The framework represents a declaration of tribal sovereignty and a reflection of culturally responsive and relevant education in practice. It calls for a shift in the school model to one centered on an indigenous worldview, where the knowledge and values of diverse Native American communities serve as cornerstones to school design and student learning, not simply as part of efforts to forge more inclusive and “culturally relevant” curricula.

HB85 includes appropriation requests that align with specific proposals in the *Tribal Remedy Framework*, including:

- Formalize collaboration between tribal departments of education and school districts through a local governance and accountability framework;
- Invest in tribal libraries as community education centers to provide extended learning, summer school, technology access, and career and support services;
- Invest in developing Native language programs and teachers and language curricula; and
- Invest in early education programs delivered by tribal communities.

HB85 Appropriations (dollars in thousands)					
Funding Purpose	Jicarilla Apache Nation	Mescalero Apache Tribe	Navajo Nation in New Mexico	19 Pueblos	Total
Tribal departments of education (TEDs) to develop and implement education blueprints and governance structures	\$250	\$250	\$500	\$4,750	\$5,750
TEDs to develop early childhood culturally and linguistically relevant curricula, assessments, and evaluation tools; and facilities	\$150	\$150	\$250	\$2,850	\$3,400
Tribal libraries to develop and staff culturally and linguistically relevant after-school and community-based summer programs	\$250	\$250	\$500	\$4,750	\$5,750
Native language programs to recruit and certify language teachers, and develop early childhood culturally and linguistically relevant curriculum, assessment and evaluation tools	\$150	\$150	\$250	\$2,850	\$3,400
Tribal education departments to create, develop, and staff information technology departments	\$150	\$150	\$250	\$2,850	\$3,400
				Total	\$21,700
University of New Mexico to develop comprehensive information technology plan for tribal communities					\$1,000
				Grand Total	\$22,700

Summary of HB85 Appropriations Aligned with the *Tribal Remedy Framework*. HB85 appropriates \$21.7 million from the general fund to the Indian Affairs Department for the following expenditures in FY22 and FY23:

Education Blueprints and Governance Structures. **\$5.75 million** for tribal departments of education to build capacity to develop and implement education blueprints and governance structures to serve Native American students, collaborate with school districts and schools, and plan community-based education and social support programs.

- *Tribal Remedy Framework*: Formalize collaboration between tribal departments of education and school districts through a local governance and accountability framework.

Culturally and Linguistically Relevant Early Childhood Education. **\$3.4 million** to tribal departments of education to develop early childhood culturally and linguistically relevant curriculum, assessment and evaluation tools, and facilities.

- *Tribal Remedy Framework*: Invest in early education programs delivered by tribal communities.

Support for Tribal Libraries. **\$5.75 million** for tribal libraries to develop and staff culturally and linguistically relevant after-school and community-based summer programs.

- *Tribal Remedy Framework*: Invest in tribal libraries as community education centers to provide extended learning, summer school, technology access, career, and support services.

Information Technology Infrastructure. **\$3.4 million** for tribal departments of education to create, develop and staff information technology departments.

- *Tribal Remedy Framework*: Invest in tribal libraries as community education centers to provide extended learning, summer school, technology access, and career and support services.

Native Language Development. **\$3.4 million** for Native language programs to develop programs, recruit and certify language teachers, and develop early childhood culturally and linguistically relevant curriculum, assessment, and evaluation tools.

- *Tribal Remedy Framework*: Invest in developing Native language programs and teachers and language curricula.

HB84 also appropriates an additional **\$1 million** to the University of New Mexico to prepare a statewide, long-range information technology comprehensive plan for tribal communities through its Indigenous Design and Planning Institute.

- *Tribal Remedy Framework*: Fund the Indigenous Design and Planning Institute at the University of New Mexico (UNM) to develop an information technology master plan.

Analysis from UNM indicates the activities funded through HB85 could be divided into the following four areas:

- Tribal case studies (\$150 thousand)
- Inventories of local technology infrastructure (\$200 thousand)

- Survey of existing facilities and operational IT staff (\$400 thousand)
- Age-cohort demographic study (\$150 thousand)
- Writing and Dissemination of Report (\$100 thousand)

UNM's analysis also indicates the Indigenous Design and Planning Institute could subcontract services to perform the associated tasks, employing graduate students, faculty, affiliate faculty, and outside specialists as appropriate. However, according to analysis from the Department of Information Technology (DoIT), the \$1 million appropriation to UNM may not be adequate to complete the statewide plan.

According to PED's analysis, enactment of HB85 could assist in building educational infrastructure in tribal communities to support academic achievement for Native American students. However, as PED's analysis indicates, much of the proposed funding would be directed toward tribal departments of education, making it unclear how much the funds would impact Native American students in public schools.

Funding to Support *Martinez-Yazzie* Students. Significant overlap exists among the *Tribal Remedy Framework*, the funding proposals in HB85 and its related bills, particularly House Bills 86 and 87, and existing funding streams with the state's public education system. In fact, PED may be able to support many of the initiatives in HB85 through the department's existing funds.

For FY21, in addition to the \$5.25 million for the Indian education fund. The Legislature increased funding for the at-risk index by \$185.9 million to be used for evidence-based academic or nonacademic interventions for at-risk students and provided targeted funding for bilingual and multicultural programs to implement culturally and linguistically responsive instruction for Native American students and English learners. Additionally, the Legislature allocated funds to support professional development to train teachers in culturally and linguistically responsive practices and appropriated \$9 million from the public education reform fund for culturally and linguistically responsive instructional materials.

However, there is no guarantee that these funds, though available, would indeed be allocated to support Native American students. PED and school districts can choose to use these funds in support of other programs or initiatives, not necessarily to improve outcomes for Native American students or other students identified as at-risk. HB85 would ensure funding, albeit funding that is nonrecurring, for specific requests reflective of a series of tribal priorities related to addressing the findings in the *Martinez-Yazzie* ruling through a \$22.7 million appropriation for FY22 and FY23.

Other state funds and resources also exist for tribal education entities to use to provide direct services to students. For example, tribal libraries can work with the State Library's Tribal Libraries Program, whose mission is to promote and support information access in tribal communities with emphasis on current technology and tribal library development. The Development Bureau of the State Library also provides consulting services for tribal librarians on a wide range of topics including technology, policies and planning, and library best practices as well as training for tribal library staff and community members.

According to analysis from the Public Schools Insurance Authority (NMPSSA) tribal schools and libraries are eligible for federal E-rate funding, which provides on average 80 percent to 90 percent of the cost to upgrade broadband infrastructure and related services. While tribal schools are not covered under the Public School Facilities Authority's (PSFA) broadband deficiencies correction program, the PSFA broadband team assisted and coordinated the development of two successful

broadband partnerships – Middle Rio Grande and Jemez-Zia – that took advantage of E-rate funding and improved broadband connectivity for six pueblos. According to PSFA, further expansion and upgrades are needed for a functional network. In addition, tribal libraries are also currently eligible for broadband infrastructure funding from the State Library, in collaboration with the Department of Information Technology and PSFA, through the broadband for libraries program funded by the library broadband infrastructure fund. Analysis from DoIT included a recommendation tribal entities first leverage the federal E-rate program for schools and libraries to pay for eligible broadband and Internet upgrades and then use the proposed state funds as E-rate state matching funds.

According to the Department of Cultural Affairs' analysis, HB85 assumes every pueblo has a library able to provide after school and summer programs. DCA's analysis indicated the pueblos of Nambé, Picuris, and Taos currently do not have a tribal library. In addition, according to DCA's analysis, the bill creates jurisdictional and coordination issues with the State Library (Section 18-2-1 et seq NMSA 1978) and the Rural Libraries Fund (Section 18-18-1 et seq NMSA 1978) because funds are distributed to the State Library from other funding sources for the same purposes as outlined in HB85.

ADMINISTRATIVE IMPLICATIONS

According to IAD's analysis, IAD's accounting staff typically develops intergovernmental agreements for each grantee and provides technical assistance to individual tribes. IAD staff also reviews invoices, administers reimbursements, and schedules site visits to ensure goals and objectives of projects are met.

According to PED's analysis, the bill does not entail any specific administrative implications for the department.

According to analysis from UNM, the Indigenous Design and Planning Institute has its own internal capacity to oversee operations and perform the necessary administrative and budget activities, according to state regulations and monitored by the university's budget office.

OTHER SIGNIFICANT ISSUES

The bill is similar to HB138 from the 2020 regular legislative session, a bill which would have appropriated \$16.2 million to IAD to support culturally and linguistically relevant education blueprints and governance structures; early childhood curriculum, assessment, and teacher and program evaluation instruments; tribal libraries' after-school and community-based summer school programs; and the development of staff information technology departments to increase high-speed Internet connections for tribal departments of education and other tribal education entities.

RELATED BILLS

Relates to HB84, Native Language Education Program Unit, which would add Native language education to the list of itemized program units in statute.

Relates to HB85, Native American Library, Internet, Education, which appropriates funding to the Indian Affairs Department to support tribal libraries, expanding broadband Internet access, and educational resource center projects on Indian lands.

Relates to HB87, Yazzie Lawsuit Higher Ed Funding, which appropriates funding to institutes of higher education and tribal colleges to support programs to improve educational outcomes for Native American students.

SOURCES OF INFORMATION

- LESC Files
- Indian Affairs Department (IAD)
- Department of Cultural Affairs (DCA)
- Public School Facilities Authority (PSFA)
- University of New Mexico (UNM)
- Public Education Department (PED)
- Department of Information Technology (DoIT)

RJ/mb