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## FISCAL IMPACT REPORT

**SPONSOR** Romero, GA                      **ORIGINAL DATE** 2/4/22  
**LAST UPDATED** 2/11/22                      **HB** 165/aHEC/aHAFC  
**SHORT TITLE** Web-Based Native American Student Tool                      **SB** \_\_\_\_\_  
**ANALYST** Liu

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB87, HB88, HB89, HB90, HB166

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)  
 Department of Information Technology (DoIT)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 165 strikes the \$250 thousand appropriation from the original bill.

#### Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 165 requires PED to enter into an intergovernmental agreement with tribes to receive intellectual property rather than a joint powers agreement (JPA) under the original bill.

#### Synopsis of Original Bill

House Bill 165 appropriates \$250 thousand from the general fund to PED for the purpose of developing and hosting a Native American web-based resource tool and hiring 1 FTE to oversee the tool on the department's website. PED must enter into a JPA to receive any intellectual

property from the tribe (IP), provided the IP remains with the tribe. There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

The HAFC Substitute for House Bill 2 includes \$15 million to the Indian education fund. PED notes this funding could possibly be used to develop, host, and maintain the web-based resource tool contemplated by this bill. This project could be integrated into the department's current efforts to create a dual-purpose online platform for Native American data, information, and resources. Additionally, PED notes this could be accomplished through current staffing in the department.

According to DoIT, PED will need a dedicated FTE or contracted service to maintain the tool. DoIT estimates the cost for an application developer at mid-point would be an average of \$100 thousand per year, depending on the level. Costs for contractual services may exceed more than \$250 thousand per year. Given the demand for information technology technical resources, DoIT notes obtaining a qualified technician may be a challenge. PED may want to collaborate with DoIT to potentially leverage existing IT resources.

## **SIGNIFICANT ISSUES**

PED's Indian Education Division hosts a resources platform on its webpage related to Native American education at the national, state, and local levels, including information on agencies, organizations, and digital education tools. The department notes under the State-Tribal Collaboration Act, Section 11-18-3 NMSA 1978, every state agency is required to develop and implement a policy that, among other things, promotes effective communication and collaboration between the state agency and Indian nations, tribes, and pueblos.

Provisions of the bill require each tribe sharing any intellectual property owned by such tribe to enter into a joint powers agreement (JPA) with PED. According to PED, a JPA may not be the best instrument to utilize for an agreement (the HEC amendment changes this to an intergovernmental agreement). It is clear the tribe, nation, or pueblo owns the intellectual property and thus the department would not share a power common to both. Traditionally, a JPA is only necessary when two or more public bodies jointly exercise a power common to both of them.

IAD notes the bill directs PED, in partnership with Indian nations, tribes, and pueblos in the state, to develop a web-based Native American resource tool as a repository for information on Native American-specific educational programs; educational experts; and modules, interventions, and educational approaches. The bill also ensures all IP offered by a tribal nation of the state will belong to that tribal nation through a joint powers agreement between PED and each tribe, nation, or pueblo (the HEC amendment changes this to an intergovernmental agreement).

Pursuant to Section 22-8-6 NMSA 1978, school districts and charter schools are currently required to report how federal Impact Aid revenues previously credited in the public school funding formula are used to consult with tribal entities or expended for purposes relating to the Indian Education Act. Additionally, provisions of the Indian Education Act require historically defined Indian impacted school districts and charter schools to conduct a needs assessment to

determine what supports are needed in public school, at home, and in the community to help Native American students succeed in public school, higher education, or the workforce.

### **PERFORMANCE IMPLICATIONS**

A 2021 LFC evaluation on implementation of the Indian Education Act found Native American students continue to perform well below peers on state and national measures of achievement, despite the availability of nearly \$147 million in state and federal funds at public schools and institutions of higher education for purposes aligned to the act. The report noted a history of understaffing at PED's Indian Education Division, difficulties with funding utilization, challenges with local collaboration, and a lack of specific, targeted outcomes have resulted in a system that has not served Native American students in a comprehensive and coordinated manner.

IAD notes centralizing Native American student-specific resources on PED's website could help Native American students share information, build community, and seek educational opportunities.

### **ADMINISTRATIVE IMPLICATIONS**

DoIT notes provisions of the bill require PED to enter into a joint power agreement in accordance with Section 11-1-3 NMSA 1978 with an Indian nation, tribe, or pueblo to receive any intellectual property (IP), which will belong to the nation, tribe, or pueblo (the HEC amendment changes this to an intergovernmental agreement). According to DoIT, the joint power laws impose prerequisites and processes may create obstacles to implementation or create unnecessary administrative burdens. The established legal instrument for the transfer or loan of IP is a license agreement. DoIT suggests revising the proposed bill to require PED to develop, in consultation with tribes, nations, and pueblos, a standard form of IP license that will facilitate administration and implementation of the system.

DoIT notes the portal and database would need to be secured if personally identifiable information is stored at PED.

### **RELATIONSHIP**

This bill relates to House Bill 87, which creates a formula for Indian education fund distributions to tribes; House Bill 88, which earmarks Indian education fund distributions for tribes; House Bill 89, which makes appropriations for tribal libraries and education centers; House Bill 90, which makes appropriations for Native American initiatives at higher education institutions; and House Bill 166, which creates a web-based tool for at-risk student services.

### **OTHER SUBSTANTIVE ISSUES**

On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* education sufficiency lawsuits, and found that New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English language learners, Native American students, and special education students. The court's findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court

enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

A March 2020 Public School Facilities Authority (PSFA) survey of school officials indicated 21.8 percent of students did not have access to Internet service at home and 31.9 percent of students did not have access to their own devices, such as a computer or smartphone. PSFA also found that 55 percent of students in Bureau of Indian Education (BIE) schools did not have access to the Internet, and 50 percent did not have access to their own device at home.

According to 2018 U.S. Census data, over 40 percent of families in the majority Native American school districts of Central Consolidated, Gallup-McKinley and Cuba Independent do not have access to a computer or similar device. A 2017 Concordia University study that found 23 percent of Native Americans in the United States live below the poverty level and are unable to afford Internet access. The Navajo Nation has worked with Verizon, AT&T, and other Internet service providers to reach their students' homes, but due to the terrain or low bandwidth of tower signals, some places still cannot receive adequate Internet access.

In FY21, the New Mexico Center on Law and Poverty, representing the *Yazzie* plaintiffs in the *Martinez-Yazzie* education sufficiency lawsuit, filed a new motion requesting further relief in the lawsuit for essential technology to at-risk students. The motion noted the state failed to provide students (particularly Native American students and students in rural districts) with reliable access to digital devices, high-speed Internet, and funding for district technical support while students were learning in remote settings and requested an order compelling the state to provide immediate funding for these purposes.

To assist in closing the digital divide, PED purchased and distributed wireless technology devices and equipment in FY20: 700 residential hotspots (Navajo Nation); 101 CradlePoint fixed and mobile hotspots for teacherages, chapter houses, inside buildings, buses, and indoor antennas (all tribes, nations, and pueblos); and 6,282 Chromebooks (all tribes, nations, pueblos, and schools with a significant Native American student population).

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