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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**56th Legislature, 1st Session, 2023**

<b>Bill Number</b>	<u>HB147</u>	<b>Sponsor</b>	<u>Lente</u>
<b>Tracking Number</b>	<u>.223439.3</u>	<b>Committee Referrals</b>	<u>HEC/H AFC</u>
<b>Short Title</b>	<u>Indian Education Fund Distributions</u>		
<b>Analyst</b>	<u>Andrews</u>	<b>Original Date</b>	<u>1/25/2023</u>
		<b>Last Updated</b>	<u>3/13/2023</u>

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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**BILL SUMMARY**

Synopsis of Bill

House Bill 147 (HB147) amends the Indian Education Act to designate 50 percent of funding from the Indian education fund to New Mexico tribes distributed via a weighted statutory formula. Beginning in FY24, 90 percent of distributions from the Indian education fund would be allocated equally to each tribe in New Mexico and the remaining 10 percent would be proportionally allocated to tribes based on the number of students from each tribe being served in New Mexico public schools.

The bill specifies that the Public Education Department (PED) may request quarterly spending reports from tribes, and may enter into agreements with tribes for the purposes of disbursing funds. Tribes may carry over unused portions of funds received, provided those funds are used for the purposes specified in the Indian Education Act.

The effective date of this bill is July 1, 2023.

**FISCAL IMPACT**

HB147 does not contain an appropriation. The Senate Finance Committee amendment to the House Appropriations and Finance Committee Substitute for House Bills 2 and 3 (HB2/HAFCS/aSFC) includes \$20 million from the general fund to the Indian education fund for expenditure in FY24.

In FY23, the Indian education fund received \$15 million, one-third of which was distributed by PED in the form of grants to tribes, school districts and charter schools to support the implementation of the Indian Education Act; two-thirds went toward special projects designed by PED.

HB147 designates no less than 50 percent of distributions from the Indian education fund to New Mexico tribes. That means of the \$20 million appropriation in the LESC and LFC budget recommendations, \$10 million would go to New Mexico’s sovereign tribes, pueblos, and nations; the appropriation would equate to an initial base allocation of approximately \$409 thousand for each sovereign entity. Mandating that 90 percent of the Indian education fund’s direct disbursements be allocated equally among the tribes enhances each sovereign entities’ ability to build capacity within their respective communities. Larger initial base allocations also increase the ability of smaller tribes to plan, build, and deliver integrated student supports, tribal community-based networks, and formal coordination with public schools. The additional 10 percent of allocations would depend on the number of students in each New Mexico tribe enrolled in New Mexico public schools. The following table provides an estimate for the Indian education fund distribution for each tribe, pueblo, or nation.

Tribe, Pueblo or Nation	FY22 Student Count	Total Appropriation	\$ 10,000,000.00
	Total	Base Amount (90% of appropriation)	Weighted Amount per Student (10% of appropriation)
Acoma	683	\$ 409,090.91	\$ 19,183.78
Cochiti	187	\$ 409,090.91	\$ 5,252.37
Isleta	606	\$ 409,090.91	\$ 17,021.04
Jemez	465	\$ 409,090.91	\$ 13,060.70
Jicarilla Apache	611	\$ 409,090.91	\$ 17,161.48
Laguna	943	\$ 409,090.91	\$ 26,486.53
Mescalero Apache	637	\$ 409,090.91	\$ 17,891.75
Nambe	170	\$ 409,090.91	\$ 4,774.88
Navajo	26,591	\$ 409,090.91	\$ 746,875.26
Ohkay Owingeh (formerly San Juan)	264	\$ 409,090.91	\$ 7,415.11
Picuris	35	\$ 409,090.91	\$ 983.06
Pojoaque	63	\$ 409,090.91	\$ 1,769.51
San Felipe	589	\$ 409,090.91	\$ 16,543.55
San Ildefonso	99	\$ 409,090.91	\$ 2,780.66
Sandia	55	\$ 409,090.91	\$ 1,544.81
Santa Ana	168	\$ 409,090.91	\$ 4,718.70
Santa Clara	126	\$ 409,090.91	\$ 3,539.03
Santo Domingo	859	\$ 409,090.91	\$ 24,127.18
Taos	274	\$ 409,090.91	\$ 7,695.98
Tesuque	53	\$ 409,090.91	\$ 1,488.64
Zia	162	\$ 409,090.91	\$ 4,550.18
Zuni	1,963	\$ 409,090.91	\$ 55,135.80
<b>Total</b>	<b>35,603</b>	<b>\$ 9,000,000.00</b>	<b>\$ 1,000,000.00</b>

**SUBSTANTIVE ISSUES**

Historically, the Indian education fund has allocated funds through grants to local education agencies and tribal education departments. Those funds are generally expended on educational services for Native American students that address the findings in the *Martinez-Yazzie* education sufficiency lawsuit, as well as the statutory requirements of the Indian Education Act. The fund also has been a primary source of funding for tribal education departments. While there have historically been federal grants for tribal education departments, those funds have usually been allocated through a competitive grant process for use in schools funded by the federal Bureau of

Indian Education. According to PED, the PED allocations from the Indian education fund are based on priorities established by the PED Secretary, Assistant Secretary of Indian Education in collaboration with tribal leaders, Tribal Education Directors, Indian Education Advisory Council members, and school personnel serving Native American students. PED notes that HB147 would change the way PED allocates funds from the Indian education fund, which could lead to insufficient funding for department priorities that are funded with Indian education funds, as there would be decreased funding available for awards to school districts and charter schools, higher education institutions, and other tribal entities that receive or would receive Indian Education Act grant awards.

Over the past two years, PED has utilized the award letter process to award grants from the Indian education fund to entities that receive the funding for tribal education priorities and programs. The award letter process replaced the prior process where PED entered into an intergovernmental agreement (IGA) with each tribe, nation, or pueblo. The prior process took a considerable amount of time for the final IGA to be signed by both parties. Sometimes, the tribe did not complete the signature process in time for the grant to be awarded, thus losing funds for that fiscal year. To remedy this situation, PED began to utilize the award letter process, which proved to be the best option because it was a less complicated process and allowed the funds to be distributed on July 1 of the calendar year. The award letter process includes assurance forms for the tribe, nation, or pueblo to provide input and sign. The assurance forms include details related to payment, fund expenditures, and accountability measures. Tribal representatives have noted this process limits the flexibility of local leaders to design programming independent of PED requirements. By transitioning to an agreement with PED, tribal communities hope to gain additional flexibility in programs and initiatives they see as the best fit for their communities.

**Tribal Remedy Framework.** The report [Pathways to Education Sovereignty: Taking a Stand for Native Children](#) presented by the Tribal Education Alliance (TEA), which builds upon the [Tribal Remedy Framework](#) by taking the recommendations made by tribal leaders and community members in response to the *Martinez* and *Yazzie* court ruling and describes how New Mexico's tribes, nations, and pueblos can reclaim education of their children, proposes "shared responsibility and increased tribal control over the schooling of Native children" as the first of three strategic solutions to address historical injustices and ensure equitable outcomes for Native American students. HB147 is in alignment with this strategic solution presented by TEA by creating much-needed capacity to enable school districts and tribal education departments to collaborate in serving Native students.

TEA notes that HB147 [amends the Indian Education Act to match the funding strategy with the purposes of the Act](#) and is part of the tribal remedy framework.

**Outcomes for Native American Students.** Historically, educational outcomes for Native American students have been consistently below their non-Native peers. According to the 2021-2022 Tribal Education Status Report, proficiency rates for Native American students were considerably lower than those of students of other ethnicities:

- In reading, half as many proficient Native American students were proficient compared to the percentage of proficient Asian American students;
- In math, one-fifth of Native American students were proficient; and
- In science, just under one-third of Native American students were proficient.

Research suggests that incorporating Native American languages and cultures into academic settings can improve educational engagement and outcomes, including improved retention, graduation rates, college attendance rates, and standardized test scores.

### **ADMINISTRATIVE IMPLICATIONS**

According to PED, HB147 would require an additional FTE to develop procedures and rules for the award money from the Indian education fund for school districts, charter schools, and other entities, as well as to issue monthly distributions to tribes.

### **OTHER SIGNIFICANT ISSUES**

In 2019, the 1<sup>st</sup> Judicial Court issued a final judgement and order on the consolidated *Martinez-Yazzie* education sufficiency lawsuit, finding New Mexico’s public education system failed to provide a constitutionally sufficient and adequate education for at-risk students, defined as English learners, Native American students, students with disabilities, and students from low-income families. The court pointed to high school graduation rates, student test proficiencies, and college remediation rates as indicators of how the state is not meeting its constitutional obligation to ensure all students are college, career, and civics ready. 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.

The Indian Affairs Department notes the Legislature passed the Indian Education Act in 2003 to provide Native American students in New Mexico with opportunities for an equitable and culturally and linguistically relevant education in public schools. The law establishes the Indian Education Division of PED as well as the Indian Education Advisory Council and lays out systems for the state and school districts and charter schools to collaborate with tribal governments on matters related to curricula, teaching, support services, and other programs to meet the needs of Native American students. The purposes of the Act are to establish equitable and culturally relevant learning systems, conservation of Native languages, and tribal immersion and control over schools.

### **RELATED BILLS**

Relates to HB140, Tribal Education Trust Fund, which creates a tribal education trust fund and provides a \$50 million initial investment with provisions detailing how investment returns on the fund would provide stable and consistent revenue for tribal education departments.

Relates to HB148, Early Childhood Dept. Tribal Agreements, which requires the Early Childhood Education and Care Department to enter into intergovernmental agreements with Indian nations, tribes, pueblos, or tribal organizations to administer early childhood education and care programs using their own culturally and linguistically relevant standards, assessments, and evaluations.

Relates to HB149, Public Ed Dept. Native American Funding, which establishes a regular funding stream for tribal education which would flow into the tribal education trust fund.

Relates to HB198, Career Tech Funds for Indian Ed Schools, which would allow federal Bureau of Indian Education secondary schools to apply for and receive funding from the career technical education pilot.

Relates to HB280, American Indian Ed Tech Assistance Centers, which requires the Higher Education Department to establish two American Indian educational technical assistance centers to serve all American Indian students and federally recognized Indian nations, tribes, and pueblos in New Mexico.

**SOURCES OF INFORMATION**

- LESC Files
- New Mexico Attorney General
- Indian Affairs Department
- Public Education Department

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