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FISCAL IMPACT REPORT

SPONSOR Pinto **LAST UPDATED** _____
ORIGINAL DATE 2/10/25
SHORT TITLE Tribal Education Trust Fund **BILL**
NUMBER Senate Bill 234
ANALYST Liu

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$100,000.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
	\$250.0	\$4,805.0	\$4,410.3	\$3,995.8	\$3,560.6	Recurring	Tribal Education Trust Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications				Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 13

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Legislative Education Study Committee (LESC) Files

Agency Analysis Received From

State Investment Council (SIC)

Indian Affairs Department (IAD)

Regional Education Cooperatives (REC)

Public Education Department (PED)

SUMMARY

Synopsis of Senate Bill 234

Senate Bill 234 (SB234) appropriates \$100 million from the general fund to create a tribal education trust fund (TETF), managed by the State Investment Council (SIC), that will make annual formulaic distributions for the Public Education Department (PED) to distribute to each New Mexico tribe based on recommendations from a temporary TETF disbursement formula task force composed of representatives from Native American tribes, pueblos and nations, PED, and the Indian Education Advisory Council. The bill establishes minimum distribution requirements, administrative and reporting responsibilities for PED, tribes, and SIC, and legislative authorization to tap the fund in the event of a general fund deficit and exhausted available reserves. The effective date of this bill is July 1, 2025.

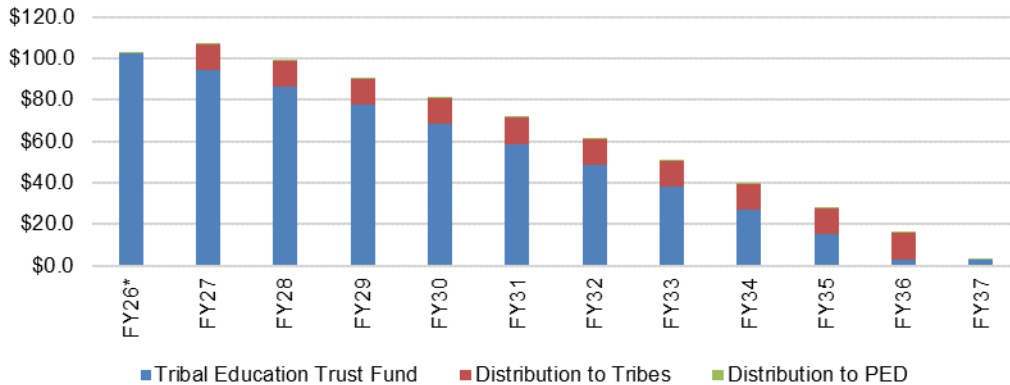
FISCAL IMPLICATIONS

The appropriation of \$100 million contained in this bill is a nonrecurring expense to the general fund to create a new trust fund. As such, any unexpended or unencumbered balance remaining at the end of any fiscal year will not revert to general fund. Provisions of the bill distribute TETF revenues from the fund annually (beginning in FY27) based on the greater of \$12.5 million or 5 percent of the average of year-end market values of the TETF for the preceding five calendar years. Additionally, the bill makes another TETF distribution to PED for administrative costs based on the lesser of \$100 thousand or 1 percent of the fund. PED will distribute the annual TETF to tribes based on tribal needs and tribal size in accordance with a distribution formula developed by a task force (See “Administrative Implications”).

The bill charges SIC with management of the fund. This allows higher investment earning potential than if managed as part of the state’s treasury balances. However, the balance of the fund, the annual distributions, and the reserve risk of the fund suggest investment returns will likely be minimal. Assuming a return of 5 percent for the size and distributional characteristics of the fund, LFC staff estimate the fund will provide relatively flat distributions of \$12.5 million to Indian nations, tribes, or pueblos and \$100 thousand to PED for about 10 years. Because the balance of the TETF is not expected to grow, the total distributions are likely to remain close to the minimum of \$12.5 million a year. To achieve a sustainable level of funding with a \$12.5 million minimum distribution, the annual return would need to be over 13 percent every year. SIC notes the TETF would need a five-year average value of \$250 million to maintain an annual spending policy of \$12.5 million without additional contributions. Double-digit returns for many years in a row on the onset is also unlikely.

The minimum distribution of \$12.5 million sets an aggressive spending policy, likely distributing more than 10 percent of the fund by FY27. Even with high market returns (i.e., greater than 7 percent) during early years of operation, without additional inflows or contributions to the TETF in future years, the corpus of the fund will erode with each year’s distributions and is ultimately on a terminal path. SIC notes the TETF’s risk and return profile could be invested conservatively to avoid potential market losses; however, low returns would shorten the life and benefits of the fund. Alternatively, the risk and return profile could be invested more aggressively to try to match or exceed the relatively high annual distribution rate.

Estimated TETF Balance and Contributions
(in millions)



*Includes \$2 million in estimated gains for FY26 on top of the \$100 million endowment

The TETF differs substantially in resources and beneficiaries from other funds, such as the land grant permanent fund (LGPF), and, therefore, may need to be invested with a different risk and return profile. For example, the LGPF receives ongoing cash inflows from the revenue earned on state trust land, whereas the TETF will be funded with a one-time appropriation. This difference may lead to different tolerance for risk and long-term investment goals. Given the inflows, the LGPF can absorb short-term losses without impacting distributions to beneficiaries, whereas large swings in the investment returns of the TETF may cause fluctuations in distributions.

In setting the risk and return profile for the workforce development and apprenticeship fund (which was created in the 2024 legislative session), SIC and the Workforce Solutions Department ultimately decided on a more conservative approach. For the apprenticeship fund, SIC placed a substantial portion of the fund in cash and lower-risk liquid assets, and the expected compound returns are currently at 4.9 percent.

Provisions of this bill permit the Legislature to appropriate from the TETF to the general fund to avoid an “unconstitutional deficit.” However, this emergency appropriation is only authorized after exhausting available funds from the appropriation contingency fund, general fund operating reserve, tax stabilization reserve, state-support reserve, and tobacco settlement permanent fund.

SIGNIFICANT ISSUES

Indian Education Fund. Annually, tribes, pueblos, and nations receive recurring distributions from the Indian education fund (IEF), and the Legislature has increased appropriations in recent years for IEF distributions. In FY18, IEF appropriations totaled \$2.5 million; in FY25 the appropriation was \$20 million. PED makes IEF distributions based on priorities established by the PED secretary and assistant secretary of Indian education to implement the Indian Education Act. In FY25, PED reported the following budgeted amounts:

Indian Education Fund Grant Name	FY23 Awards (in thousands)	FY24 Budget (in thousands)	FY25 Budget (in thousands)
Indian Education Grant – Tribes, Nations, Pueblos	\$2,053.2	\$4,000.0	\$2,990.4
Indian Education Grant – Districts, Charters	\$2,853.8	\$5,000.0	\$5,097.9
Indigenous Language Fellow	\$2,871.5	\$2,871.5	\$2,902.0

Native American Community-Based Immersion Schools	\$954.8	\$954.8	\$400.0
Curriculum, Instruction, and Assessment	\$200.0	\$200.0	\$200.0
Native American Language Program	\$250.0	\$250.0	\$300.0
Indigenous Education Initiative	\$1,500.0	\$1,500.0	\$1,600.0
Native Language Teacher Pipeline	\$693.0	\$693.0	
Recruit and Retain Indigenous Personnel	\$974.0	\$3,250.0	
Pay Parity for 520 Certificate Teachers*	\$419.7	\$4,000.0	\$1,325.0
Total	\$12,770.0	\$22,719.3	\$14,815.3

*PED also allocated \$1.5 million from general fund appropriations from the General Appropriation Act of 2022
 Source: LESC, PED Files

In FY23, PED requested a budget adjustment to carryover \$10 million in unspent IEF awards from FY23 for expenditure in FY24. In FY24, PED again requested an adjustment to use \$3.3 million in unspent IEF awards for tribal library capital outlay. In previous years, the IEF has accumulated balances from significant reversions, reflecting challenges for tribes and recipients to spend or obligate PED awards. Tribes contend the department has historically issued late award notifications, and other problems, such as delays in getting signatures or approvals, have contributed to unspent IEF awards. At the current budgeted amount of \$14.8 million, it appears the \$20 million IEF will not be fully spent and result in reversions for FY25.

Indian Education Fund Balances

(in thousands)

	FY19	FY20	FY21	FY22	FY23	FY24*	FY25*
Beginning Balance	\$1,640.7	\$1,294.7	\$2,026.8	\$3,085.7	\$4,271.7	\$10,177.2	\$730.7
Appropriation	\$1,824.6	\$6,000.0	\$5,250.0	\$5,250.0	\$14,988.6	\$20,000.0	\$25,500.0 ¹
Expenditures	\$(2,170.7)	\$(5,267.8)	\$(4,191.1)	\$(4,064.0)	\$(9,083.1)	\$(18,843.1)	\$(4,446.2)
Encumbrances						\$(10,603.4)	\$(13,939.6)
Ending Balance	\$1,294.7	\$2,026.8	\$3,085.7	\$4,271.7	\$10,177.2	\$730.7	\$7,844.9

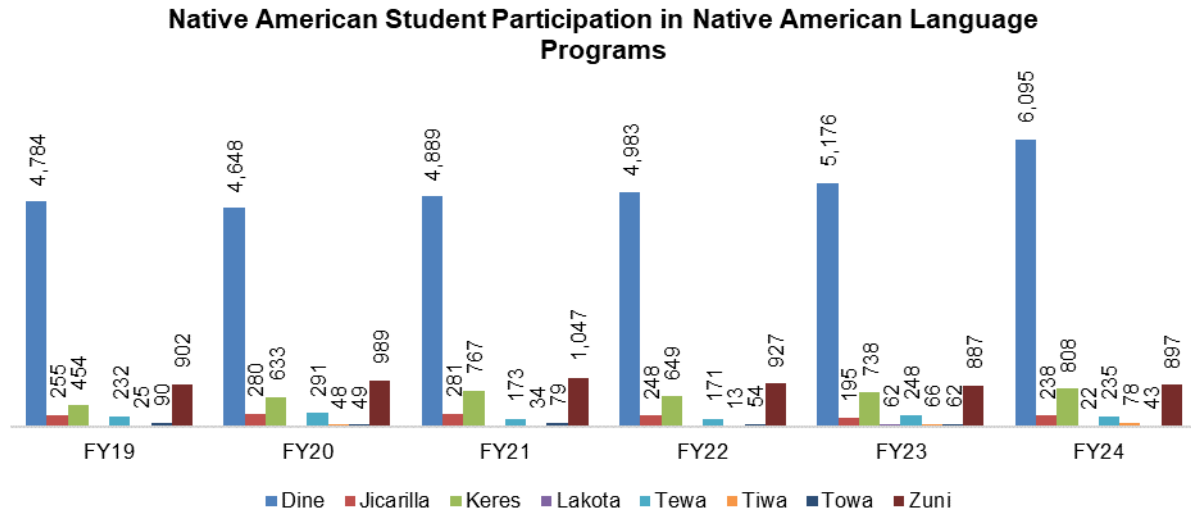
*Unaudited, budgeted expenditures, encumbrances, and pre-encumbrances
 1. Appropriation includes a \$500 thousand nonrecurring appropriation to IEF and a \$5 million appropriation to Navajo and Zuni
 Source: OSA, SHARE, LFC Files

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.

The LFC evaluation found Native American student enrollment in public schools fell to 32.4 thousand students in FY19, an 8.5 percent decrease over the prior five years. Four-year high school graduation rates for Native American students increased to 69 percent in FY19, an 11-percentage point improvement over the prior five years, but still 6 percentage points lower than the statewide average of 75 percent. For FY23, the graduation rate for Native American students was 74.7 percent, only 2 percentage points below the statewide average of 76.7 percent.

Similarly, Native American student reading and math proficiency rates improved marginally over the same period but remained below statewide averages. This trend remains the same for FY24, with Native American students reported as 25.3 percent proficient in reading and 12.8 percent proficient in math compared to the statewide average proficiencies of 38.9 percent in reading and 23.1 percent in math. Notably, more students statewide are participating in Native American language programs in FY24.



Source: PED

ADMINISTRATIVE IMPLICATIONS

TETF Disbursement Formula Task Force. The bill requires PED to temporarily establish and support a TETF disbursement formula task force between December 1, 2025, until July 1, 2032. Membership would include nine representatives nominated by the leadership of New Mexico’s Indian nations, tribes and pueblos and appointed by the assistant secretary of Indian education, including:

- Three Navajo Nation representatives,
- One Mescalero Apache Tribe representative,
- One Jicarilla Apache Nation representative,
- One southern pueblo representative,
- One northern pueblo representative,
- One western pueblo representative, and
- The chair of the Indian education advisory council.

The assistant secretary of Indian education will also serve on the task force in an advisory function. The task force will consult with SIC on investment of TETF monies and develop a disbursement formula for PED to use that is equitable for each Indian nation, tribe, and pueblo in New Mexico and considers tribal needs, tribal size, base funding amounts, and student counts. Recommendations for the formula will be reported to the governor, Legislature, and PED prior to July 1, 2026. On July 1, 2031, the task force will reconvene to assess the equity and functionality of the formula and provide additional recommendations, if necessary, prior to July 1, 2032. Task force members may receive per diem and mileage as provided for nonsalaried public officers.

The bill requires each tribe to summarize operating budget, plan, goals, and needs for the ensuing fiscal year by April 15 of each year. Spending reports, impact assessments, and student outcomes

are due to PED by October 15 annually. PED will in turn report to appropriate legislative committees and New Mexico tribes by November 15 each year, summarizing all disbursements and tribal reports. PED may need to hire additional staff and promulgate rules or negotiate and draft intergovernmental agreements with New Mexico tribes for the distribution of moneys from the fund as required under the bill.

The prudent investor rule referenced in the bill directs an investment manager to implement “an investment strategy having risk and return objectives reasonably suited to the trust.” The prudent investor rule itself, however, does not dictate the appropriate level of risk for any particular trust. In the case of TETF, SIC would likely advise a conservative portfolio of investments to avoid substantial losses, as the fund is structured with high and unsustainable spending policies.

The bill requires the state investment officer to report quarterly to the Legislative Education Study Committee (LESC) and SIC on investment results of TETF beginning in FY26 on October 1 of each year. SIC is now managing 12 different funds, growing the total assets under management to over \$58 billion. The agency notes expanding this asset portfolio will require additional staff time and more FTE.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to Senate Bill 13, which creates state-tribal compact schools, and to appropriations in the executive, LESL, and LFC budget recommendations for the General Appropriation Act. The executive recommendation includes \$90 million for three years to the Indian education fund, the LESL recommendation includes a one-time \$5 million appropriation for Indian education initiatives, and the LFC recommendation includes a \$15.5 million appropriation for a tribal formula and indigenous initiatives for three years. All recommendations further include \$20 million in recurring appropriations for the Indian education fund.

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.