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FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/2007

SPONSOR Begaye LAST UPDATED 3/04/2007 HB 892/aHEC/aHFL#1

SHORT TITLE Public Education Dept. Consulting with Tribes SB _____

ANALYST Dearing

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	*None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Relates to House Bill 97
 Duplicates Senate Bill 1044

Responses Received From

Attorney General's Office (AGO)
 Higher Education Department (HED)
 Public Education Department (PED)
 Indian Affairs Department (IAD)

SUMMARY

Synopsis of House Floor Amendment #1

Action on the House Floor amends House Bill 892/aHEC such that;

1. Strike House Education Committee Amendments 1 and 2.
2. On page 2, line 8, strike "tribal" and insert "New Mexico tribe".
3. On page 2, line 12, after "to", insert "urban Indians who are residents of New Mexico or to".
4. On page 2, line 14, after the subsection designation "E.", strike the opening quotation mark and insert in lieu thereof ""New Mexico".

5. On page 2, line 16, strike "tribal" and after "member", insert "of a federally recognized tribe or an Alaska native who lives in an off-reservation urban area and is a New Mexico resident", strike the remainder of the line and strike line 17 up to the period.
6. On page 3, line 18, after "department", insert "and work to expand appropriate Indian education for tribal students in preschool through grade twenty".
7. On page 4, line 6, strike "tribal".
8. On page 4, line 19, before "tribes", insert "New Mexico".
9. On page 4, line 22, after "by", insert "New Mexico".
10. On page 5, line 5, before "tribes", insert "New Mexico".
11. On page 5, line 18, after "each", insert "New Mexico", after "or", insert "its" and strike "tribal".
12. On page 5, line 25, after "each", insert "New Mexico" and after "or", insert "its" and strike "tribal".
13. On page 6, line 5, after "the", insert "New Mexico" and strike the second "tribal" and insert in lieu thereof "their".
14. On page 6, line 7, after "the", insert "New Mexico".
15. On page 8, line 10, after "from", insert "New Mexico" and after "tribes", insert "and organizations involved in the education of tribal students".
16. On page 8, line 12, after "representatives", strike the remainder of the line and strike line 13 through "representatives".
17. On page 8, line 22, after "all", insert "New Mexico".
18. On page 9, line 15, before "tribes", insert "New Mexico".
19. On page 9, line 19, after "all", insert "New Mexico".

House Floor amendments make minor changes to the proposed legislation, thereby clarifying its intention. The intent of the changes are such that the relationship of tribal entities to New Mexico is clarified.

Synopsis of HEC Amendment

The House Education Committee amends House Bill 892 such that;

- 1.) On page, 2, line 16, strike “tribal” and after “member” insert “of a federally recognized tribe, community or group pursuant to 25 U.S.C. Section 1903”.
- 2.) On page 3, line 18, after “department” insert “and work to expand appropriate Indian

education for tribal and urban Indian students in preschool through grade twenty.”

3.) On page 5, line 4, after “districts” insert “, public post-secondary schools”.

4.) On page 7, line 16, strike “seventeen” and insert in lieu thereof “sixteen”.

5.) On page 7, line 25, strike “four” and insert in lieu thereof “three”.

House Education Committee amendments make minor changes to the proposed legislation, thereby clarifying its intention. The bill is amended to specify collaboration and effort of the Higher Education department, and to reduce the overall number of proposed council members to 16 from 17, and to subsequently reduce representation of urban Indian council members from 4 to 3.

Synopsis of Original Bill

House Bill 892 amends the Indian Education Act, NMSA 1978, §§ 22-23A-1 through 22-23A-8 (2003). It prescribes expanded responsibility for the Assistant Secretary for Indian Education at the Public Education Department (PED) and includes language to ensure that collaborative implementation efforts among divisions at the department are undertaken.

Specifically, the amendments would add several sections to the Act that mandate the Public Education department consult with the Indian Education Advisory Council prior to New Mexico Administrative Code (NMAC) rulemaking. The amended Act also mandates that PED’s Indian Education division initiate semi-annual government-to-government meetings to solicit input from tribal entities and arrange separate semi-annual meetings inclusive of representatives from New Mexico’s nations, tribes, pueblos, and relevant cabinet-level agencies to coordinate tribal education and peripheral services.

FISCAL IMPLICATIONS

**One of the newly proposed provisions requires the division to collaborate with the department to provide distance learning and could significantly increase costs related to services provided through the Indian Education Act. The amendments to the act do not provide a scope of distance learning services to be offered online, however, the bill specifies that the services are to be provided to the best of the department’s abilities, regarding available resources.*

*Although this bill does not carry an appropriation, the Indian Education division at the Public Education department has received annual appropriations for the Indian Education division through the Public School Support budget. Since the initial passage of the Indian Education Act in the 2003 legislative session, the program has received \$9.5 million over four years. The LFC has had initial concerns with the division’s effectiveness at timely, directed expenditure of appropriated funding. The LFC accepted a substantial \$4.1 million budget adjustment request (BAR) from the agency in 2005 in order to allow expenditures in that year using appropriations from previous years. The following table illustrates highlights of appropriations and expenditures over this period.

Indian Education Division Appropriation				
Fiscal Year	Appropriation	Other Revenue	Expenditure*	Balance
FY04	\$2,000,000.0		\$84,700.0	\$1,915,300.0
FY05	\$2,500,000.0		\$349,200.0	\$2,150,800.0
FY06	\$2,500,000.0		\$2,591,000.0	-\$91,500.0
*FY07	\$2,497,400.0	\$500.0	\$5,068,400.0	-\$2,071,000.0
	\$9,497,400.0	\$500.0	\$8,093,300.0	\$1,903,600.0

Figure 1. *FY07 budgeted funds, including sanding action.

SIGNIFICANT ISSUES

An achievement gap exists among the performance of Native American students and other ethnic groups in New Mexico on standardized assessment tests and No Child Left Behind (NCLB) measures of Adequate Yearly Progress (AYP). The intended outcome from the initial passage of the Indian Education Act was to concentrate efforts in multiple state and federal agencies and tribal groups to direct resources to close this performance gap.

Both the LFC and executive recommendation for the Public School Support’s FY08 budget contain continued funding at previous years’ level of \$2.5 million.

PERFORMANCE IMPLICATIONS

The Public Education department is urged to create specific program goals and criteria for assessing effectiveness and to provide suggestions for outputs, outcomes and performance measures to evaluate the performance of the Indian Education Act as prescribed in the Accountability in Government Act. The department now has at least one performance measure to track the funding of teacher scholarships paid through the Indian Education fund. The Public Education department maintains this measure is necessary due to a shortage of Native American teachers and administrators throughout the state. A prominent program goal is to increase the number of teachers holding professional endorsements in Reading, Teachers of English to Speakers of Other Languages (TESOL), and Bilingual Education as well as graduate level teachers of Special Education teaching within schools having a significant percentage of Native American attendance.

Many services to implement the provisions of the Indian Education Act are provided by outside contractors. Because of this, additional performance measures are necessary to monitor the effectiveness of these service providers.

TECHNICAL ISSUES

House Bill 892 requires the assistant secretary for Indian Education to provide direction to school districts and tribes for developing, deploying and evaluating culturally relevant curricula. The amendment or additional new items that are italicized and underlined are expected to increase operating costs. In the case of four of these five items, the division would absorb these additional costs in their operating budget, so they carry no additional fiscal impact.

*However, the provision that requires the division to provide distance learning could increase expenditures related to the Indian Education Act.

The proposed Enactment of House Bill 892 would make numerous changes to the provisions of Sections 22-23A-1 through 22-23A-8 NMSA 1978.

New Section; new section with provisions requiring the Indian Education division coordinate with the Higher Education department, the State’s higher education institutions, tribal colleges, teacher education programs, and tribal education departments to promote enrollment by Native American students at post-secondary institutions.

Clauses in Section 22-23A-3; add definitions that define the assistant secretary, government-to-government, indigenous, tribal, tribe, and urban Indian.

New Section 22-23A-4 (a); add language requiring the secretary to ensure collaboration among all divisions at the Public Education department to improve Native American performance.

New Section 22-23A-4 (b); add language mandating the secretary consult on proposed rules with the Indian Advisory Council; presenting these rules at semi-annual government-to-government meetings for review and comment by the council.

Clauses in Section 22-23A-5 (a) add language requiring the assistant secretary to advise the Public Education Secretary and to coordinate with Higher Education department.

New Section 22-23A-5 (b); re-iterates Section 22-23A-4 (a).

New Section 22-23A-5 (c); re-iterates Section 22-23A-4 (a).

New Section 22-23A-5 (d); mandates that the secretary and assistant secretary initiate semi-annual government-to-government meetings to solicit input from tribal entities.

New Section 22-23A-5 (e) 1-4; adds multiple clauses and sections. Section 22-23A-4 mandates the assistant secretary to budget resources in order to provide advisement on resource allocation and curricula adoption to districts and tribes. The curricula is to be based on indigenous best practices and (not stated) based on established research. The division is to provide assistance to districts in developing these culturally relevant curricula featuring Native American language, culture and history. The amended act extends education services to pre-kindergarten students.

New Section 22-23A-5 (e) 5; mandates the division conduct research and evaluation.

**Clauses in Section 22-23A-5 (e) 6 mandate the division to provide distance learning.*

**Clauses in Section 22-23A-5 (e) 7 mandate the division to support and maintain the advisory council.*

Clauses in Sections 22-23A-5 (e) 8-14; language clean-up to make the Act parallel with new definitions. A significant addition to this passage is the addition of the terms recruit “highly qualified teachers and administrators,” and “student and community wellness and mental health training” to the listing of approved services that appropriated funding would accomplish.

Clauses in Sections 22-23A-5 (e) 11 a-g; provide a list of services that funding would be used for. Language is missing that would clarify this passage.

**Clause in Section 22-23A-6 (a) 1; increases the number of Tribal Advisory Council members to 17 from 14.*

The language in this section further specifies the statewide locations from which representing Council members must originate.

The language in sub-section 22-23A-6 (a) 5 specifies three “at-large” representatives from the Bureau of Indian Affairs, a head-start organization, and one from the general public. Language is missing that would clarify this passage.

New Section 22-23A-6 (b); is added to delineate Council member appointment terms.

New Section 22-23A-6 (c); is added to allow the Council members to appointment a chair.

Clauses in Section 22-23A-7 (a) are amended such that the division is to compile its annual report regardless of whether outside entities have contributed necessary information.

Clauses in Section 22-23A-7 (c) 1-11 are amended to clarify and make language parallel to the new definitions.

**Clauses in Section 22-23A-7 (c) 12 and 13; are new and add “tribal student wellness and tribal mental health status” and “indigenous research and evaluation measures and results” to the list of items that the division must report on annually.*

New Section 22-23A-8 (b); is added and includes language mandating state appropriations to the Indian Education fund cannot be used to supplant federally provided funds and services.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Consultation with tribes on issues relating to Indian education will remain discretionary. The role of Assistant Secretary of Indian Education will continue to be limited.

PD/nt:csd