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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/07

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE American Indian Postsecondary Education Act SB 1049

ANALYST Williams

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$900.0	Recurring	General Fund
	\$100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 1044 and House Bill 97

Relates to Senate Bill 248 and House Bill 44 which create 8 different divisions within the HED.

Relates to Appropriation in the General Appropriation Act for the Higher Education Department, Policy Development and Institutional Financial Oversight program

Relates to 2006 General Appropriation Act of non-recurring funding of \$5 million for the higher education performance funding and related proposals in the LFC budget recommendation

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See text for discussion				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)

Public Education Department (PED)

Department of Indian Affairs (DIA)

SUMMARY

Synopsis of Bill

The bill creates a new section of statute entitled “American Indian Postsecondary Education Act” and specifies the following purposes:

- Assist in development of culturally relevant learning environments and post-secondary education opportunities for American Indian students;
- Ensure maintenance of native languages cultures;
- Provide for the study, development and implementation of post-secondary educational systems that positively affect the educational success of American Indian students;
- Provides for a formal relationship between the HED and tribal colleges and develop relationships with the Education Division of the Bureau of Indian Affairs and other entities;
- Provide a mechanism for specified stakeholders to work together.

The secretary of HED is authorized, in consultation with tribes, to promulgate rules and regulations and is authorized to enter into joint powers agreements and memoranda of understanding to administer the act and for data collection and data sharing.

The bill creates the American Indian post-secondary education division within HED. In Section 5, the bill identifies the division duties:

- Provide assistance to:
 - post-secondary institutions to meet higher education needs of American Indian students;
 - post-secondary institutions in planning, development, implementation and evaluation of recruitment and retention strategies;
- Seek funding for support services in the areas of recruitment, retention, academic support and transition program and academic financial support;
- Develop a system for data collection and sharing on enrollment, retention and graduation rates at colleges and universities (note this is not restricted to public institutions);
- Collaborate with PED on pre-K through 20 initiative, higher education grants and teacher education initiatives;
- Conduct, at least semiannually, a public meeting for stakeholders to discuss issues; and
- Ensure that two members of the Indian education advisory council are higher education representatives.

The bill requires each public post-secondary institution to submit a biannual American Indian status report. The bill prescribes the format for each report, and required reporting elements would include: student recruitment, retention, attrition, remediation programs, graduate rates, annual goals and objectives, financial aid reports and other issues as requested. The bill notes HED would “work with and encourage” tribal colleges and private educational institutions and others to submit status reports.

The bill creates the American Indian post-secondary education fund, a new, non-reverting fund in the state treasury to be administered by HED. Money in the fund is appropriated to HED for award grants. These grants would be awarded for special projects related to recruitment, retention and graduation of American Indian students, including student conferences, cultural

awareness training for faculty and staff at any higher education institution, academic support and transition programs and other projects. The Secretary of HED is authorized to develop criteria to apply for these grants along with other discretionary authority to administer the grant program.

FISCAL IMPLICATIONS

The total appropriation of \$1 million contained in this bill is a recurring expense to the general fund. The first element is an appropriation of \$900.0 thousand to a newly created, non-reverting fund called the American Indian post-secondary education fund for grant awards. The second element is an appropriation of \$100.0 thousand for HED operating expenses associated with administering the new statute. As well, the second appropriation provides for the cost of the first biannual meeting and development of a data collection and data sharing system for post-secondary educational institutions.

This legislation will lead to an additional division director position as well as staff for the division, requiring associated funding for personal services and employee benefits. As of December 1, 2006, agency reports specified 7 individuals held the title of division director. Senate Bill 248 and House Bill 44 would create 8 divisions, while this legislation would create a ninth division. The cost of this division would likely exceed at least \$100.0 thousand for personal services and employee benefits for a division director alone.

Continuing Appropriations language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

DIA notes: “The creation of the Indian Post-Secondary Education Division within the HED would seem to align with the 2003 Indian Education Act, NMSA 22-23A-1, *et seq.* The Indian Education Act created an Indian Education Division within the Public Education Department; that Division focuses on issues in Indian education as regard grades Pre-K-20. That Act also created an Indian Education Fund and an Indian Education Advisory Committee.”

The March 28, 2006 *Quick Response Review of Implementation of Indian Education Act* can be found at the LFC website.

HED notes: “American Indians in general are among the most underrepresented and underserved groups in higher education. Fifty one out of every 100 American Indians graduate from high school. Of this number, only 37 percent will enroll in college and ultimately earn a bachelor’s degree within six years.” According to the New Mexico Office of Education Accountability Report, 66% of American Indian students entering college require extensive academic remediation literacy and numeracy courses.

PERFORMANCE IMPLICATIONS

HED notes its strategic priorities include increasing student access and success by improving the retention and completion rates of all students in higher education; raising the minority

representation in higher education to be reflective of the state’s population, and improving the minority participation and graduation rates in graduate and professional programs.

DIA notes despite accounting for more than 10 percent of New Mexico’s population, only 7.5 percent of undergraduate enrollees are Indians. Participation rates for this population were stagnant between 1999 and 2004.

HED reports quarterly and annual performance information to LFC and DFA; the agency has had difficulty achieving targeted results for existing operations; specific details are located in the LFC and executive budget recommendations.

The requirement for a biannual status report is in addition to the requirements of the Accountability in Government Act and language included in the General Appropriations Act. The executive vetoed the following language from the 2006 General Appropriation Act:

By September 1, 2006, the higher education department shall report time-series data to the office of the governor, public education department, department of finance and administration and legislative finance committee on performance measures and targets for recruitment, enrollment, retention and graduation rates for Native American and Hispanic students. The higher education department shall provide an action plan by institution to achieve targeted results.

ADMINISTRATIVE IMPLICATIONS

The following shows the total authorized FTE for HED in the 2006 General Appropriation Act:

Higher Education Department

Permanent	28.5
Term	5.5
Total	34.0

TECHNICAL ISSUES

PED notes: “Developing culturally relevant learning environments; ensuring maintenance of native languages and cultures; and providing an educational system that positively affects American Indian students’ educational success are stated as purposes of the American Indian Postsecondary Education Act. Therefore, it is recommended that consideration to include tribal consultation and protocol be afforded the tribes/pueblos to ensure tribal approval and support of these educational initiatives.”

Page 12, lines 12-14, needs clarification regarding membership of the Indian Education Advisory Council. The Indian Education Act does not identify membership from higher education.

OTHER SUBSTANTIVE ISSUES

The authorizing statutes for the Higher Education Department specifies in Section 9-25-6 NMSA 1978 that division directors are exempt from the State Personnel Act. The statute also specifies in 9-25-7 NMSA 1978 that bureau chiefs and “all subsidiary employees of the department” shall be covered by the Personnel Act (10-9-1 NMSA 1978). As such, this organizational structure

and future changes by the Secretary may impact the proportion of exempt and classified employees within the agency.

HED notes: The State of New Mexico has no jurisdiction over tribal higher education. Tribal colleges and universities in New Mexico are governed and supported by tribal and federal entities.

NMHED has already signed a Memorandum of Agreement (MOA) with the tribal colleges in New Mexico: Navajo Technology College, Dine College, Institute of American Indian Arts, and Southwestern Indian Polytechnic Institute. The MOA establishes new working relationships among the tribal colleges and HED that will shape the development of effective communication and policies for increased accessibility, enrollment, retention, and graduation rates across New Mexico postsecondary institutions.

Under the existing MOU, HED and tribal colleges will share data, collaborate on projects that promote American Indian student success, and report annually on key performance measures through the Data Editing and Reporting (DEAR) system.

POSSIBLE QUESTIONS

1. How does this organizational design maximize effectiveness and accountability?
2. Why is a data sharing system needed? What are the start-up and ongoing maintenance, training and software operating costs of such a system?
3. What is the cost and purpose of the biannual meeting noted in the bill?
4. How would best practices and accountability be addressed for the grant award program?
5. What private funding sources are available for grant awards?
6. Could a private funding match be required to maximize state resources?

AW/nt