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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/13

SPONSOR Alcon LAST UPDATED _____ HB 245

SHORT TITLE Stop Some Indian Impact Aid Credits SB _____

ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	See Fiscal Implications		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		(\$4,200.0)	(\$4,200.0)	(\$8,400.0)	Recurring	School District Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Bill 245 prohibits the state from taking credit in the public education funding formula for federal Impact Aid received by a school district that is located entirely within the boundaries of Indian reservation or pueblo land grants.

FISCAL IMPLICATIONS

HB 245 would exclude only federal Impact Aid payments made to the Zuni Public School District from the computation of the SEG distribution. PED indicates loss of this revenue would result in the dilution of the unit value to accommodate the loss of credits equaling \$4.2 million. Currently, Zuni Public School District receives almost 10 percent more funding per student than the statewide average.

The Public Education Department notes an unintended consequence of this bill is that New Mexico may not meet the disparity test required in order to take credit for 75 percent of the basic impact aid payments to districts. If this were to occur, the state would immediately be liable for an additional \$52.7 million needed to keep the unit value stable. This would also mean that the state would cease to be an equalized state, resulting in students from different parts of the state with similar need generating differing dollar amounts.

SIGNIFICANT ISSUES

A key feature of New Mexico's Public School Finance Act's operational funding scheme is the state equalization guarantee distribution, which is a formula that is meant to apportion federal and local revenue for schools equitably among the state's school districts.

Impact Aid is a federal program that provides revenue to local governmental entities including school districts in lieu of property taxes not received from federal lands. These lands include property owned by the U.S. Forest, the Bureau of Land Management, National Laboratories, Indian reservations, and any other federally owned property. School districts directly receive 100 percent of federal Impact Aid payments. The objective of the Public School Finance Act is to equalize educational opportunity at the highest possible revenue level and guarantee each public school student equal access to programs and services appropriate to educational need, despite geographic location or local economic conditions. This is accomplished by accumulating revenue at the state level and distributing appropriations to districts based on a program cost determined through the Public School Funding Formula. Because New Mexico is an equalized state, all revenue sources are considered in meeting the annual program cost. As a result, the state takes credit for 75 percent of federal Impact Aid payments to the districts, the local 0.5% mil levy and federal forest reserve payments to the districts. This ensures that total district revenue received through the state equalization guarantee (SEG) remains consistent with the amount calculated to meet student need and that each public school student receives equal access to programs and services appropriate to educational need. There are four parts to Impact Aid: basic payment, Indian set-aside, special education add-on, and construction funds. The state takes credit for the basic payment portion of Impact Aid only.

The "Indian set-aside" portion of Impact Aid is a payment to school districts based on the number of Native American students enrolled and receiving educational services. This payment meets the Congressional trust responsibility for educating Native American students. The state does not take credit for this portion of Impact Aid. Districts are required to consult with local Pueblos, Tribes, and Nations as to those programs that will be most beneficial to Native American students enrolled in the local district. Pueblos, Tribes, and Nations acknowledge this collaboration through the Indian Policies and Procedures agreement with the local district.

According to the Indian Affairs Department:

According to a presentation entitled “Impact Aid-Title VIII: A 50 State Comparison” presented by the Indian Affairs Department in 2011: Impact Aid is a means to provide federal funds to public schools on Indian reservations. There are two reasons for Impact Aid: lack of local tax revenue and the unique needs of a predominantly Native American population-specifically to strengthen education programs in general. Impact Aid funds can be used for salaries for teachers and teacher aides; purchasing of text books, computers, and other equipment; after-school programs; remedial tutoring; advanced placement classes; and special enrichment programs. There are 89 public school districts in New Mexico. 23 public school districts have significant Native American student populations. 20 public school districts apply for Impact Aid funds. Some public school districts have opted not to apply for Impact Aid funds.

According to the National Indian Impacted Schools Association: Many local school districts across the United States include within their boundaries parcels of land that the federal government either owns or has removed from the local tax rolls-including Indian lands. These school districts face special challenges; they must provide a quality education to the children living on Indian and other federal lands, while sometimes operating with less local revenue than other school districts have, because the federal property is exempt from local property taxes.

Since 1950, Congress has provided financial assistance to these local school districts through the Impact Aid Program. Impact Aid was designed to assist local school districts that have lost property tax revenue due to the presence of tax-exempt federal property, or that have experienced increased expenditures due to the enrollment of federally conducted children, including children living on Indian lands. The Impact Aid law assists local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other federal properties. To a lesser extent, the Act also supports school districts with children who have parents in the uniformed services or employed on eligible federal properties but who do not live on federal property.

Impact Aid is often an extremely important source of revenue for school districts that serve children living on Indian reservations and other Indian lands, because these districts frequently have a very small local property tax base from which to raise revenue for schools. School districts may use their Impact Aid payments for whatever they choose, such as teacher salaries, utilities, facilities maintenance, and supplies, in accordance with their local and state requirements. Districts may even use the funds for capital improvements. The only limitations on the use of Impact Aid funds are those payments made for children with disabilities; these funds must be used for the increased costs of educating these children.

DUPLICATION

Senate Bill 325 is a duplicate.

OTHER SUBSTANTIVE ISSUES

Both the PED and the Indian Affairs Department note the potential for legal challenge. If Zuni School District is the only district whose funding formula would be affected by HB 245 provisions, then HB 245 could be subject to challenge. The requirement of a school district having to be located entirely within the boundaries of recognized Indian reservations or pueblo grant lands could be challenged as an arbitrary limitation.

Additionally, the bill creates the potential for schools located within the boundaries of recognized Indian reservation or pueblo grant lands to be encouraged to form their own school districts in order to take advantage of the provision in HB 245. This would create administrative burden as well as a fiscal burden on PED and the state, including creating duplicate administrative structures to serve these students.

RSG/bm