

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 84

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CREATING THE NATIVE AMERICAN LANGUAGE EDUCATION PROGRAM UNIT; ALLOWING TRIBAL GOVERNMENTS TO RECEIVE DISTRIBUTIONS GENERATED BY THE NATIVE AMERICAN LANGUAGE EDUCATION PROGRAM UNIT; DEFINING "TRIBAL EDUCATION DEPARTMENT" AND "TRIBAL GOVERNMENT"; ALLOWING TRIBAL GOVERNMENTS TO RECEIVE DISTRIBUTIONS FROM THE PUBLIC SCHOOL FUND; INSTRUCTING THE PUBLIC EDUCATION DEPARTMENT TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH TRIBAL GOVERNMENTS; CHANGING THE AT-RISK PROGRAM COST CALCULATION; CLARIFYING THE STATE EQUALIZATION GUARANTEE DISTRIBUTION FOR TRIBAL GOVERNMENTS; ALLOWING FOR TRIBAL SOVEREIGNTY IN DEVELOPING AND EVALUATING NATIVE AMERICAN LANGUAGE PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Finance Act

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1 is enacted to read:

2 "[NEW MATERIAL] NATIVE AMERICAN LANGUAGE EDUCATION PROGRAM  
3 UNITS.--Tribal governments are eligible for Native American  
4 language education program units. The total number of Native  
5 American language education program units is determined by  
6 multiplying the full-time-equivalent MEM in programs in public  
7 schools teaching a Native American language and receiving  
8 program units for bilingual multicultural education by the cost  
9 differential factor of 0.5."

10 SECTION 2. Section 22-8-2 NMSA 1978 (being Laws 1978,  
11 Chapter 128, Section 3, as amended by Laws 2019, Chapter 206,  
12 Section 6 and by Laws 2019, Chapter 207, Section 6) is amended  
13 to read:

14 "22-8-2. DEFINITIONS.--As used in the Public School  
15 Finance Act:

- 16 A. "ADM" or "MEM" means membership;  
17 B. "membership" means the total enrollment of  
18 qualified students on the current roll of a class or school on  
19 a specified day. The current roll is established by the  
20 addition of original entries and reentries minus withdrawals.  
21 Withdrawals of students, in addition to students formally  
22 withdrawn from the public school, include students absent from  
23 the public school for as many as ten consecutive school days;  
24 provided that withdrawals do not include students in need of  
25 early intervention and habitual truants the school district is

.219848.1

1 required to intervene with and keep in an educational setting  
2 as provided in Section 22-12-9 NMSA 1978;

3 C. "basic program ADM" or "basic program MEM" means  
4 the MEM of qualified students but excludes the full-time-  
5 equivalent MEM in early childhood education and three- and  
6 four-year-old students receiving special education services;

7 D. "cost differential factor" is the numerical  
8 expression of the ratio of the cost of a particular segment of  
9 the school program to the cost of the basic program in grades  
10 four through six;

11 E. "department" or "division" means the public  
12 education department;

13 F. "early childhood education ADM" or "early  
14 childhood education MEM" means the full-time-equivalent MEM of  
15 students attending approved early childhood education programs;

16 G. "full-time-equivalent ADM" or "full-time-  
17 equivalent MEM" is that membership calculated by applying to  
18 the MEM in an approved public school program the ratio of the  
19 number of hours per school day devoted to the program to six  
20 hours or the number of hours per school week devoted to the  
21 program to thirty hours;

22 H. "operating budget" means the annual financial  
23 plan and educational plan required to be submitted by a local  
24 school board or governing body of a state-chartered charter  
25 school;

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1 I. "performance measure" means a quantitative  
2 indicator used to assess the output or outcome of an approved  
3 program;

4 J. "performance target" means the expected level of  
5 performance of a program's performance measure;

6 K. "program cost" is the product of the total  
7 number of program units to which a school district is entitled  
8 multiplied by the dollar value per program unit established by  
9 the legislature;

10 L. "program element" is that component of a public  
11 school system to which a cost differential factor is applied to  
12 determine the number of program units to which a school  
13 district is entitled, including MEM, full-time-equivalent MEM,  
14 teacher, classroom or public school;

15 M. "program unit" is the product of the program  
16 element multiplied by the applicable cost differential factor;

17 N. "public money" or "public funds" means all money  
18 from public or private sources received by a school district or  
19 state-chartered charter school or officer or employee of a  
20 school district or state-chartered charter school for public  
21 use;

22 O. "qualified student" means a public school  
23 student who:

24 (1) has not graduated from high school;

25 (2) is regularly enrolled in one-half or more

1 of the minimum course requirements approved by the department  
2 for public school students; and

3 (3) in terms of age and other criteria:

4 (a) is at least five years of age prior  
5 to 12:01 a.m. on September 1 of the school year;

6 (b) is at least three years of age at  
7 any time during the school year and is receiving special  
8 education services pursuant to rules of the department;

9 (c) except as provided in Subparagraph

10 (d) of this paragraph, has not reached the student's  
11 twenty-second birthday on the first day of the school year; or

12 (d) has reached the student's twenty-  
13 second birthday on the first day of the 2019-2020 school year,  
14 is counted in a school district's or charter school's MEM on  
15 the third reporting date of the 2018-2019 school year, has been  
16 continuously enrolled in the same public school since that  
17 reporting date and is still enrolled in that school;

18 P. "rural population rate" means that proportion of  
19 the total population within a school district's geographic  
20 boundaries that lives in a rural area and not in an urban area  
21 as defined by the United States census bureau;

22 Q. "staffing cost multiplier" means:

23 ~~[(1) for fiscal year 2019, the instructional~~  
24 ~~staff training and experience index;~~

25 ~~(2) for fiscal year 2020, the weighted average~~

.219848.1

1 of the instructional staff training and experience index at  
2 seventy-five percent and the teacher cost index at twenty-five  
3 percent;

4 ~~(3)~~ for fiscal year 2021, the weighted average  
5 of the instructional staff training and experience index at  
6 fifty percent and the teacher cost index at fifty percent;

7 ~~(4)~~ (1) for fiscal year 2022, the weighted  
8 average of the instructional staff training and experience  
9 index at twenty-five percent and the teacher cost index at  
10 seventy-five percent; and

11 ~~(5)~~ (2) for fiscal year 2023 and subsequent  
12 fiscal years, the teacher cost index; ~~and]~~

13 R. "state superintendent" means the secretary of  
14 public education or the secretary's designee;

15 S. "tribal education department" means a tribal  
16 government office that oversees education programs within a  
17 federally recognized Indian nation, tribe or pueblo located  
18 wholly or partially in New Mexico; and

19 T. "tribal government" means the government of any  
20 federally recognized Indian nation, tribe or pueblo located  
21 wholly or partially in New Mexico."

22 SECTION 3. Section 22-8-14 NMSA 1978 (being Laws 1967,  
23 Chapter 16, Section 69, as amended) is amended to read:

24 "22-8-14. PUBLIC SCHOOL FUND.--

25 A. The "public school fund" is created.

1           B. The public school fund shall be distributed to  
2 school districts and state-chartered charter schools in the  
3 following parts:

- 4                   (1) state equalization guarantee distribution;  
5                   (2) transportation distribution; and  
6                   (3) supplemental distributions:  
7                         (a) out-of-state tuition to school  
8 districts;  
9                         (b) emergency; and  
10                        (c) program enrichment.

11           C. Tribal governments, on behalf of their tribal  
12 education departments, shall be eligible to receive  
13 distributions in accordance with the provisions of the Public  
14 School Finance Act; provided that a tribal government shall be  
15 able to spend the distribution in accordance with tribal  
16 priorities and nothing in that act shall be construed to waive  
17 or restrict the sovereign immunity of an Indian nation, tribe  
18 or pueblo.

19           ~~[G.]~~ D. The distributions of the public school fund  
20 shall be made by the department within limits established by  
21 law. The balance remaining in the public school fund at the  
22 end of each fiscal year shall revert to the general fund,  
23 unless otherwise provided by law."

24           SECTION 4. Section 22-8-15 NMSA 1978 (being Laws 1967,  
25 Chapter 16, Section 70, as amended) is amended to read:

.219848.1

1 "22-8-15. ALLOCATION LIMITATION.--

2 A. The department shall determine the allocations  
3 to each school district, [~~and~~] charter school and tribal  
4 government from each of the distributions of the public school  
5 fund, subject to the limits established by law.

6 B. The local school board in each school district  
7 with locally chartered charter schools shall allocate the  
8 appropriate distributions of the public school fund to  
9 individual locally chartered charter schools pursuant to each  
10 locally chartered charter school's school-based budget approved  
11 by the local school board and the department. The appropriate  
12 distribution of the public school fund shall flow to the  
13 locally chartered charter school within five days after the  
14 school district's receipt of the state equalization guarantee  
15 for that month."

16 SECTION 5. Section 22-8-17 NMSA 1978 (being Laws 1974,  
17 Chapter 8, Section 7, as amended) is amended to read:

18 "22-8-17. PROGRAM COST DETERMINATION--REQUIRED  
19 INFORMATION.--

20 A. The program cost for each school district, [~~and~~]  
21 charter school and tribal government shall be determined by the  
22 department in accordance with the provisions of the Public  
23 School Finance Act.

24 B. The department is authorized to require from  
25 each school district and charter school the information

1 necessary to make an accurate determination of the district's  
2 or charter school's program cost."

3 SECTION 6. Section 22-8-18 NMSA 1978 (being Laws 1974,  
4 Chapter 8, Section 8, as amended by Laws 2019, Chapter 206,  
5 Section 13 and by Laws 2019, Chapter 207, Section 13) is  
6 amended to read:

7 "22-8-18. PROGRAM COST CALCULATION--LOCAL  
8 RESPONSIBILITY.--

9 A. For a school district or charter school, the  
10 total program units for the purpose of computing the program  
11 cost shall be calculated by multiplying the sum of the program  
12 units itemized as Paragraphs (1) and (2) in this subsection by  
13 the staffing cost multiplier and adding the program units  
14 itemized as Paragraphs (3) through (16) in this subsection.  
15 The itemized program units are as follows:

- 16 (1) early childhood education;
- 17 (2) basic education;
- 18 (3) special education, adjusted by subtracting  
19 the units derived from membership in class D special education  
20 programs in private, nonsectarian, nonprofit training centers;
- 21 (4) bilingual multicultural education;
- 22 (5) fine arts education;
- 23 (6) elementary physical education;
- 24 (7) size adjustment;
- 25 (8) at-risk;

.219848.1

1 (9) enrollment growth or new district  
2 adjustment;

3 (10) special education units derived from  
4 membership in class D special education programs in private,  
5 nonsectarian, nonprofit training centers;

6 (11) national board for professional teaching  
7 standards certification;

8 (12) home school student;

9 (13) home school student activities;

10 (14) charter school student activities;

11 (15) K-5 plus; and

12 (16) extended learning time.

13 B. The total program cost calculated as prescribed  
14 in Subsection A of this section includes the cost of early  
15 childhood, special, bilingual multicultural, fine arts and  
16 vocational education and other remedial or enrichment programs.  
17 It is the responsibility of the local school board or governing  
18 body of a charter school to determine its priorities in terms  
19 of the needs of the community served by that board. Except as  
20 otherwise provided in this section, funds generated under the  
21 Public School Finance Act are discretionary to local school  
22 boards and governing bodies of charter schools; provided that  
23 the special program needs as enumerated in this section are  
24 met; ~~and~~ provided further that the department shall ensure  
25 that the local school board or governing body of a charter

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1 school is prioritizing resources for the public school toward  
2 proven programs and methods linked to improved student  
3 achievement; and provided further that the department shall  
4 ensure that resources linked to Native American students are  
5 used for school-based, community-based or tribal government-  
6 based programs that meet Native American students' needs,  
7 improve their achievement, including oral native language  
8 acquisition, and adhere to culturally appropriate methods  
9 determined by each Indian nation, tribe or pueblo.

10 C. For tribal governments, the total program units  
11 for the purpose of computing the program cost shall be  
12 calculated as follows:

13 (1) the department shall calculate the total  
14 number of program units for all tribal governments by adding  
15 the number of Native American language education program units  
16 and at-risk program units pursuant to Subsection E of Section  
17 22-8-23.3 NMSA 1978; and

18 (2) the department shall enter into an  
19 intergovernmental agreement with each tribal government  
20 establishing that portion of the total program units from  
21 Paragraph (1) of this subsection to be allocated to each tribal  
22 government. Funds generated under the Public School Finance  
23 Act shall be discretionary to tribal governments and their  
24 tribal education departments."

25 **SECTION 7.** Section 22-8-23.3 NMSA 1978 (being Laws 1997,

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1 Chapter 40, Section 7, as amended) is amended to read:

2 "22-8-23.3. AT-RISK PROGRAM UNITS.--

3 A. A school district is eligible for [~~additional~~]  
4 at-risk program units if it establishes within its department-  
5 approved educational plan identified services to assist  
6 students to reach their full academic potential. A school  
7 district receiving additional at-risk program units shall  
8 include a report of specified services implemented to improve  
9 the academic success of at-risk students. The report shall  
10 identify the ways in which the school district and individual  
11 public schools use funding generated through the at-risk index  
12 and the intended outcomes. For purposes of this section, "at-  
13 risk student" means a student who meets the criteria to be  
14 included in the calculation of the three-year average total  
15 rate in Subsection B of this section. The number of additional  
16 units to which a school district is entitled under this section  
17 is computed in the following manner:

18 
$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

19 where MEM is equal to the total district membership, including  
20 early childhood education, full-time-equivalent membership and  
21 special education membership and where the at-risk index is  
22 calculated in the following manner:

23 
$$\text{Three-Year Average Total Rate} \times 0.30 = \text{At-Risk}$$
  
24 
$$\text{Index.}$$

25 B. To calculate the three-year average total rate,

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1 the department shall compute a three-year average of the school  
 2 district's percentage of membership used to determine its Title  
 3 1 allocation, a three-year average of the percentage of  
 4 membership classified as English language learners using  
 5 criteria established by the office for civil rights of the  
 6 United States department of education and a three-year average  
 7 of the percentage of student mobility. The department shall  
 8 then add the three-year average rates. The number obtained  
 9 from this calculation is the three-year average total rate.

10 C. The department shall recalculate the at-risk  
 11 index for each school district every year.

12 D. A school district or charter school is eligible  
 13 for additional at-risk program units if it provides to Native  
 14 American public school students identified services, programs  
 15 or activities pursuant to Section 22-23A-11 NMSA 1978. The  
 16 number of program units pursuant to this subsection is computed  
 17 in the following manner:

$$18 \quad \quad \quad \underline{0.15 \times \text{Native American MEM} = \text{Units}}$$

19 where Native American MEM is equal to the number of public  
 20 school students in the school district or charter school that  
 21 are Native American.

22 E. A tribal government is eligible for at-risk  
 23 program units if its tribal education department provides to  
 24 Native American public school students identified services,  
 25 programs or activities pursuant to Section 22-23A-11 NMSA 1978.

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1 The total number of program units for all tribal governments  
2 pursuant to this subsection is computed in the following  
3 manner:

$$4 \quad \quad \quad \underline{0.15 \times \text{Native American MEM} = \text{Units}}$$

5 where Native American MEM is equal to the total number of  
6 public school students in all school districts and charter  
7 schools that are Native American.

8 ~~[D-]~~ F. For purposes of this section, "services"  
9 means research-based, ~~[e-]~~ evidence-based or community-based,  
10 culturally appropriate social, emotional or academic  
11 interventions, such as:

12 (1) case management, tutoring, reading  
13 interventions and after-school programs that are delivered by  
14 social workers, counselors, teachers or other professional  
15 staff;

16 (2) culturally relevant professional and  
17 curriculum development, including those necessary to support  
18 language acquisition, bilingual and multicultural education;

19 (3) additional compensation strategies for  
20 high-need schools;

21 (4) whole school interventions, including  
22 school-based health centers and community schools;

23 (5) educational programming intended to  
24 improve career and college readiness of at-risk students,  
25 including dual or concurrent enrollment, career and technical

1 education, guidance counseling services and coordination with  
2 post-secondary institutions; ~~and~~

3 (6) services to engage and support parents and  
4 families in the education of students; and

5 (7) tribal community-based programming, such  
6 as after-school extended learning and summer school."

7 **SECTION 8.** Section 22-8-25 NMSA 1978 (being Laws 1981,  
8 Chapter 176, Section 5, as amended) is amended to read:

9 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--  
10 DEFINITIONS--DETERMINATION OF AMOUNT.--

11 A. The state equalization guarantee distribution is  
12 that amount of money distributed to each school district to  
13 ensure that its operating revenue, including its local and  
14 federal revenues as defined in this section, is at least equal  
15 to the school district's program cost. For state-chartered  
16 charter schools, the state equalization guarantee distribution  
17 is the difference between the state-chartered charter school's  
18 program cost and the two percent withheld by the department for  
19 administrative services. For tribal governments, the state  
20 equalization guarantee distribution is equal to the tribal  
21 government's program cost.

22 B. "Local revenue", as used in this section, means  
23 seventy-five percent of receipts to the school district derived  
24 from that amount produced by a school district property tax  
25 applied at the rate of fifty cents (\$.50) to each one thousand

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1 dollars (\$1,000) of net taxable value of property allocated to  
2 the school district and to the assessed value of products  
3 severed and sold in the school district as determined under the  
4 Oil and Gas Ad Valorem Production Tax Act and upon the assessed  
5 value of equipment in the school district as determined under  
6 the Oil and Gas Production Equipment Ad Valorem Tax Act.

7 C. "Federal revenue", as used in this section,  
8 means receipts to the school district or state-chartered  
9 charter school, excluding amounts that, if taken into account  
10 in the computation of the state equalization guarantee  
11 distribution, result, under federal law or regulations, in a  
12 reduction in or elimination of federal school funding otherwise  
13 receivable by the school district, derived from the following:

14 (1) seventy-five percent of the school  
15 district's share of forest reserve funds distributed in  
16 accordance with Section 22-8-33 NMSA 1978; and

17 (2) seventy-five percent of grants from the  
18 federal government as assistance to those areas affected by  
19 federal activity authorized in accordance with Title 20 of the  
20 United States Code, commonly known as "PL 874 funds" or "impact  
21 aid".

22 D. To determine the amount of the state  
23 equalization guarantee distribution, the department shall:

24 (1) calculate the number of program units to  
25 which each school district or charter school is entitled using

1 an average of the MEM on the second and third reporting dates  
2 of the prior year; or

3 (2) calculate the number of program units to  
4 which a school district or charter school operating under an  
5 approved year-round school calendar is entitled using an  
6 average of the MEM on appropriate dates established by the  
7 department; or

8 (3) calculate the number of program units to  
9 which a school district or charter school with a MEM of two  
10 hundred or less is entitled by using an average of the MEM on  
11 the second and third reporting dates of the prior year or the  
12 fortieth day of the current year, whichever is greater; and

13 (4) using the results of the calculations in  
14 Paragraph (1), (2) or (3) of this subsection and the staffing  
15 cost multiplier from the October report of the prior school  
16 year, establish a total program cost of the school district or  
17 charter school;

18 (5) for school districts and state-chartered  
19 charter schools, calculate the local and federal revenues as  
20 defined in this section;

21 (6) deduct the sum of the calculations made in  
22 Paragraph (5) of this subsection from the program cost  
23 established in Paragraph (4) of this subsection;

24 (7) deduct the total amount of guaranteed  
25 energy savings contract payments that the department determines

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1 will be made to the school district from the public school  
2 utility conservation fund during the fiscal year for which the  
3 state equalization guarantee distribution is being computed;  
4 and

5 (8) deduct ninety percent of the amount  
6 certified for the school district by the department pursuant to  
7 the Energy Efficiency and Renewable Energy Bonding Act.

8 E. Reduction of a school district's state  
9 equalization guarantee distribution shall cease when the school  
10 district's cumulative reductions equal its proportional share  
11 of the cumulative debt service payments necessary to service  
12 the bonds issued pursuant to the Energy Efficiency and  
13 Renewable Energy Bonding Act.

14 F. The amount of the state equalization guarantee  
15 distribution to which a school district is entitled is the  
16 balance remaining after the deductions made in Paragraphs (6)  
17 through (8) of Subsection D of this section.

18 G. The state equalization guarantee distribution  
19 shall be distributed prior to June 30 of each fiscal year. The  
20 calculation shall be based on the local and federal revenues  
21 specified in this section received from June 1 of the previous  
22 fiscal year through May 31 of the fiscal year for which the  
23 state equalization guarantee distribution is being computed.  
24 In the event that a school district or charter school has  
25 received more state equalization guarantee funds than its

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1 entitlement, a refund shall be made by the school district or  
2 charter school to the state general fund."

3 SECTION 9. Section 22-23-6 NMSA 1978 (being Laws 1973,  
4 Chapter 285, Section 6, as amended) is amended to read:

5 "22-23-6. BILINGUAL MULTICULTURAL EDUCATION PROGRAMS--  
6 ELIGIBILITY FOR STATE FINANCIAL SUPPORT.--

7 A. To be eligible for state financial support, each  
8 bilingual multicultural education program shall:

9 (1) provide for the educational needs of  
10 linguistically and culturally different students, including  
11 Native American children and other students who may wish to  
12 participate, in grades kindergarten through twelve, with  
13 priority to be given to programs in grades kindergarten through  
14 three, in a district;

15 (2) fund programs for culturally and  
16 linguistically different students in the state in grades  
17 kindergarten through three for which there is an identifiable  
18 need to improve the language capabilities of both English and  
19 the home language of these students before funding programs at  
20 higher grade levels;

21 (3) use two languages as mediums of  
22 instruction for any part or all of the curriculum of the grade  
23 levels within the program;

24 (4) use teachers who have specialized in  
25 elementary or secondary education and who have received

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1 specialized training in bilingual education conducted through  
2 the use of two languages. These teachers or other trained  
3 personnel shall administer language proficiency assessments in  
4 both English and in the home language until proficiency in each  
5 language is achieved;

6 (5) emphasize the history and cultures  
7 associated with the students' home or heritage language;

8 (6) establish a parent advisory committee,  
9 representative of the language and culture of the students, to  
10 assist and advise in the development, implementation and  
11 evaluation of the bilingual multicultural education program;  
12 and

13 (7) provide procedures to ensure that parental  
14 notification is given annually prior to bilingual multicultural  
15 education program placement.

16 B. Bilingual multicultural education programs  
17 teaching a Native American language shall be developed, taught  
18 and evaluated in accordance with tribal priorities and  
19 sovereignty.

20 [~~B.~~] C. Each bilingual multicultural education  
21 program shall meet each requirement of [~~Subsection A~~]  
22 Subsections A and B of this section and be approved by the  
23 department to be eligible for state financial support."

24 SECTION 10. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2021.

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