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FISCAL IMPACT REPORT

SPONSOR Lente ORIGINAL DATE 1/31/2021
 LAST UPDATED 2/1/2021 HB 86

SHORT TITLE Native American Library, Internet & Education SB _____

ANALYST Liu/Olson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$94,782.9	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$81.1	\$81.1	\$162.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB6, HB52, HB84, HB85, HB87, HB135, SB41

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)
 Public Education Department (PED)
 Public School Facilities Authority (PSFA)
 Department of Information Technology (DoIT)
 Department of Cultural Affairs (DCA)
 Higher Education Department (HED)

Other Responses

Tribal Education Alliance (TEA) – a coalition of tribal education leaders, experts, and advocates, including the Santa Fe Indian School Leadership Institute and the University of New Mexico Native American Budget and Policy Institute.

SUMMARY

Synopsis of Bill

House Bill 86 appropriates \$94.8 million from the general fund to IAD for expenditure in FY21 through FY25 for the following purposes:

- \$66.7 million to plan, design, renovate, expand, construct, equip, and furnish libraries and education centers statewide for Indian nations, tribes, and pueblos;
- \$4.6 million to match federal grants for high-speed Internet access and telecommunications for schools and libraries through a pueblo education network;
- \$6 million for high-speed Internet access on the Navajo Nation and the Internet to the Hogan project;
- \$500 thousand for high-speed Internet access on the Jicarilla Apache Nation;
- \$2.5 million for a curriculum and materials development center at Navajo Technical University (NTU);
- \$1.5 million for an early childhood practicum at NTU;
- \$1.5 million for a curriculum and materials development center for the Pueblo of Zuni;
- \$1.5 million for a curriculum and materials development center for the Mescalero Apache Tribe;
- \$1.5 million for an education resource center for the Dzil Ditol'looi School of Empowerment, Action, and Perseverance (DEAP) state-authorized charter school;
- \$2.5 million for an education resource center for the Pueblo of Jemez;
- \$1 million for an early childhood center at the Pueblo of Jemez; and
- \$5 million for the Kewa Child Care and Development Center.

Any unexpended or unencumbered balance for these projects will revert to the tribal infrastructure project fund within 6 months of completion of the project but no later than FY25.

FISCAL IMPLICATIONS

The appropriation of \$94.8 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 or within 6 months of project completion shall revert to the tribal infrastructure project fund (TIF). Construction and renovation of tribal libraries and education centers may increase recurring costs to operate and maintain facilities in future fiscal years. TEA notes the operational costs accompanying this bill are included in House Bill 85 and House Bill 87. Additionally, IAD notes provisions of this bill would require the department to employ an additional FTE at \$81.1 thousand per year to administer the grants.

Provisions of this bill revert remaining balances to TIF. The Tribal Infrastructure Act allows TIF allocations to “qualified projects.” The projects outlined are for broad-based infrastructure such as but not limited to water-related, electrical, communications, roads, and health. Qualified expenses include engineering, environmental studies, and land acquisition. TIF awards have included early childhood learning centers, social service complexes, and power line extensions. TIF funding requires a competitive application process, review, and board approval, and TIF balances have been fully awarded in past years, with multiple applications denied.

Substantial federal aid and proposed state appropriations for FY22 align or overlap with some appropriations within this bill, particularly for items relating to the expansion of tribal IT infrastructure and support for at-risk student populations (See Alternatives).

SIGNIFICANT 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.

IAD and TEA both note the bill is part of TEA's tribal remedy framework, which was developed collectively by tribal communities and indigenous education experts and endorsed by New Mexico's 23 nations, tribes and pueblos to address the findings of the *Martinez-Yazzie* lawsuit.

Tribal libraries. Tribal libraries received \$750 thousand for capital outlay in 2016 and another \$750 thousand in 2018 through general obligation bonds (GOB). Tribal libraries will receive \$500 thousand through 2020 GOB once bonds have been sold. According to the New Mexico State Library (NMSL), approximately \$313.9 thousand of the 2016 GOB (42 percent) and \$748 thousand of the 2018 GOB (99 percent) for tribal library capital outlay remains unspent to date. In comparison, approximately \$449 thousand of the 2016 GOB (15 percent) and \$3.2 million of the 2018 GOB (75 percent) for nontribal library capital outlay remains unspent to date.

TEA notes GOB funds must be used for acquisitions and equipment and underspending may be attributable to these requirements and small tribal library facilities that have no space for additional acquisitions or lack capacity to deliver up-to-date technologies and services. The alliance indicates the bill will provide \$4.5 million for the Acoma Learning Center and \$12 million for new construction of the Mescalero Community Library.

According to DCA, \$239.7 thousand was appropriated in FY19 to tribal libraries, or 24 percent of \$990 thousand authorized for statewide library grants. In FY20, the appropriation to tribal libraries increased to \$277.7 thousand, or 35 percent of \$790 thousand authorized for statewide library grants.

NMSL supports libraries in applying for federal broadband funding. The Federal Communications Commission's (FCC) supplies funding to offset the cost of internet access for schools and libraries, often providing matching funds of 80 percent to 90 percent on internet service fees, fiber infrastructure, and networking equipment. Prior to this program, 60 percent of the 98 New Mexico public and tribal libraries did not have a connection faster than 30 megabytes per second, 68 percent did not take advantage of federal E-rate funding, and 53 percent did not have a fiber optic connection. Over the past two years, NMSL has worked with over 25 libraries

to provide them with upgrades to their broadband equipment and improved broadband speeds and hired a federal E-rate consultant to work directly with tribal libraries on federal applications for broadband funds.

According to PSFA, the bill's proposed \$4.6 million in matching funds to federal grants could potentially leverage \$41.4 million in E-rate funding, for a total of \$46 million. Improvements in broadband capacity at schools and libraries typically benefit the entire region, particularly when paired with effective coordination with other similar efforts. DCA notes Santa Clara and Jicarilla Apache received \$27.9 thousand in E-rate funding for tribal library broadband and anticipates Jemez Pueblo, Mescalero Apache, San Ildefonso, and Zia to leverage \$272 thousand from E-rate for current projects.

Education centers. TEA notes the bill will help construct, expand or equip tribal education facilities that further the goal of providing a culturally and linguistically relevant education from prekindergarten to college. The bill will provide appropriations for an early childhood educator training facility at NTU, which trains early childhood professionals in culturally and linguistically relevant methods.

In FY21, PED, IAD, and ECECD developed and implemented a request for application for early childhood education, culturally and linguistically responsive instruction, and facilities development. The IAD received a \$1 million interagency transfer from PED for this specific initiative. Through this process, each tribe, nation, and pueblo in the state was able to determine how funds would be used to meet each tribal government's local, unique educational needs.

Education technology access. A March 2020 PSFA survey of school officials indicated 21.8 percent of students did not have access to Internet service at home and 31.9 percent of students did not have access to their own devices, such as a computer or smartphone. PSFA also found that 55 percent of students in Bureau of Indian Education (BIE) schools did not have access to the Internet, and 50 percent did not have access to their own device at home.

TEA notes over half of rural tribal families lack access to broadband, and most have no Internet subscription. According to 2018 U.S. Census data, over 40 percent of families in the majority Native American school districts of Central Consolidated, Gallup-McKinley and Cuba Independent do not have access to a computer or similar device. HED cites a 2017 Concordia University study that found 23 percent of Native Americans in the United States live below the poverty level and are unable to afford Internet access. TEA notes for many Native students, tribal libraries are the primary source of technology access and support.

In the summer of 2020, LFC estimated 66.2 thousand, or 21 percent, of students in public schools did not have an Internet subscription (assuming 1.5 children per household, approximately 44.1 thousand households). Of the 66.2 thousand students, approximately:

- 19 thousand students (or 12 thousand households) live in areas with existing broadband infrastructure but no household Internet subscription, likely due to the monthly cost. In response to the Covid-19 public health emergency, many Internet service providers offered low-cost broadband to families during the pandemic—some as low as \$10 per month—and PSFA deployed an online quote portal for schools and districts to easily shop for quotes. Using a high-end estimate of \$30 per month for subsidized Internet service, providing one year of broadband service to 12 thousand households would cost \$4.3 million each year.

- 45.8 thousand students live in areas outside of current broadband reach but can access basic cell service for texting, file sharing, and low-resolution video streaming. (See maps of 3G, 4G and LTE coverage at <https://nmbbmapping.org/mapping/>). While not as fast as broadband, residential cellular hotspots can provide Internet access that is immediately available to students without any additional infrastructure build-out. Providing each student with a hotspot and a year's data subscription would cost approximately \$300, or \$13.7 million statewide each year.
- 1,410 students live both outside of adequate cell and broadband coverage. For these students, satellite Internet is still an option but can be slow and cost-prohibitive. A household connection for satellite Internet can cost \$1,200 per year, or \$1.1 million statewide each year.

IAD notes the Navajo Nation has worked with Verizon, AT&T, and other Internet service providers to reach their students' homes, but due to the terrain or low bandwidth of tower signals, some places still cannot receive adequate Internet access.

In FY21, the New Mexico Center on Law and Poverty, representing the *Yazzie* plaintiffs in the *Martinez-Yazzie* education sufficiency lawsuit, filed a new motion requesting further relief in the lawsuit for essential technology to at-risk students. The motion noted the state failed to provide students (particularly Native American students and students in rural districts) with reliable access to digital devices, high-speed Internet, and funding for district technical support while students were learning in remote settings and requested an order compelling the state to provide immediate funding for these purposes.

To assist in closing the digital divide, PED purchased and distributed wireless technology devices and equipment in FY20: 700 residential hotspots (Navajo Nation); 101 CradlePoint fixed and mobile hotspots for teacherages, chapter houses, inside buildings, buses, and indoor antennas (all tribes, nations, and pueblos); and 6,282 Chromebooks (all tribes, nations, pueblos, and schools with a significant Native American student population).

PERFORMANCE IMPLICATIONS

The court ruled that New Mexico's education system was insufficient, in the *Martinez-Yazzie* lawsuit, based on lower PARCC test scores, lower high school graduation rates, and higher college remediation rates for Native American students in public schools. The state has limited evidence on whether capital appropriations in this bill will directly improve these performance outcomes.

PED notes the appropriations could assist in building educational infrastructure in tribal communities to support student learning and academic achievement. Community-based libraries and educational resource centers could provide the space and opportunities for extended learning, after school enrichment and tutoring, and summer school. The education infrastructure could potentially assist in improving academic outcomes for Native American students who need additional academic support and who lack transportation to attend school-based classes or activities. Community-based libraries and educational resource centers would also potentially provide culturally relevant materials and curriculum. This could assist Native American students in gaining skills necessary for mainstream academic success and to develop knowledge and skills in their home cultures and tribal languages.

Two 2020 LFC evaluations on remote learning and school reopening found lower student engagement and lost learning time from school closures. The reports noted the lack of access to devices and Internet for at-risk students could further widen the achievement gap this year. A 2020 LFC presentation on broadband found many students lacking computers or Internet connectivity during school closures lived within Impact Aid districts, and highlighted the need to target additional resources to these areas, particularly with the substantial amount of federal aid and growth in local school cash balances.

ADMINISTRATIVE IMPLICATIONS

IAD would administer appropriations in this bill in a similar way as capital outlay and tribal infrastructure projects are administered on a reimbursement basis. The department noted an additional accountant position will support the department's capacity to oversee these appropriations. The position would be responsible for administering the funding, monitoring each project's progress; and assisting tribes in completing reporting procedures. However, even without this additional position, the department would partner with other state agencies and identify other short term solutions to ensure appropriations are disbursed efficiently.

PSFA notes broadband work requires a long-term commitment, as projects are slow to get started. Funding and implementation for major upgrades routinely span three to five years, so the date of reversion for unexpended funds (FY25) may need to be revisited. The federal E-rate process is complex and requires constant specialized work, with eligible entities working on previous, current, and next year's funding applications. To be effective, E-rate applications require specialized support in project planning, procurement, contracting and implementation. PSFA's specialized support for public schools and libraries doubled New Mexico's E-rate funding approval, from \$30 million to \$60 million per year.

PSFA indicates pueblo education network that is adequately resourced can better develop local technical resources. However, the pueblo education network should align with and fit within the long-term broadband infrastructure and operations plan for public schools, higher education institutions, and state government.

DoIT notes the appropriations appear to be "pass-through" to IAD, but bill does not include detail how IAD will be required to manage the funds. IAD notes each proposed project will be overseen by tribal education departments, tribal colleges, and libraries. DoIT notes these appropriations may be more appropriate to include in the capital outlay framework to ensure sufficient oversight of taxpayer funds.

DoIT works closely with IAD and PED on "Homework Gap" issues. The bill does not mention collaboration or coordination with PED for the curriculum and materials development centers for the various tribal entities. As a result of DoIT's involvement in the "Homework Gap" initiative, there could potentially be additional responsibilities for DoIT's Office of Broadband. In addition, if IAD processes procurements on behalf of the tribal entities for internet services or access, DoIT has the responsibility for reviewing IT professional service contracts.

There may be some overlap with the Department of Cultural Affairs (DCA) State Library's current Library Broadband Program that provides state matching funds for eligible Federal E-rate program projects. It is DoIT's understanding the program is intended to cover all libraries throughout the state, including those for Indian nations, tribal, and pueblo entities. The bill

includes funds for an early childhood center and childcare and development center, so coordination with the Early Childhood Education and Care Department may also be needed.

RELATIONSHIP

This bill relates to House Bill 6, which eliminates the Impact Aid credit in the funding formula; House Bill 52, which establishes a bilingual multicultural education advisory council; House Bill 84, which creates a native language education program factor in the funding formula; House Bill 85, which appropriates funding to tribal education departments for blueprints, curriculum development, extended learning programs, and IT departments; House Bill 87, which appropriates funding to Native American programs at higher education institutions; House Bill 135, which includes a Native American demographic factor in the at-risk index of the funding formula; and Senate Bill 41, which eliminates the Impact Aid credit in the funding formula.

TECHNICAL ISSUES

TEA notes the bill includes an early childhood educator training center at NTU; however, language in the bill states the \$1.5 million appropriation to NTU will be used for an early childhood practicum. The sponsor may want to consider amending the bill to clarify the purpose of this appropriation on line 2 of page 5.

DoIT notes the bill does not define the terms “security operations and a data center.” Such a data center would require cyber security and cyber risk mitigation services, as cyber threats against public networks are increasing and very complex in nature. Cyber security operations require establishing certain critical cyber functions, such as cyber vulnerability management programs that include regular scanning and monitoring of digital assets, cyber security awareness training programs for staff and users, a cyber incident response program, and a cyber governance, risk and compliance program. Lack of support in creating such programs may lead to ineffective security operations.

DoIT also notes the bill does not clearly define the use of funds for “high-speed internet access.” For example, internet services to homes or businesses is the gap that may define the use of these funds.

DCA notes the bill specifically limits broadband infrastructure connecting Indian nations, tribes, and pueblos to the Santa Fe Indian School’s Pueblo Education Network to “fiber optic broadband”. On tribal lands, wireless distribution networks may be technically feasible and a desirable alternative to laying fiber optic cable. The agency recommends striking the phrase “a fiber optic” in line 13 on page 4 of the bill.

ALTERNATIVES

The executive’s FY22 budget recommendation includes \$30 million (\$15 million over two years) and the LFC’s recommendation includes \$4 million for the tribal remedy framework, which would be used to support education efforts in the state’s tribal communities. The appropriation would support implementation of the tribal remedy framework, support tribal sovereignty, and provide resources for locally determined needs. The executive and LFC FY22 budget recommendations also include \$4.6 million for indigenous, multilingual, multicultural, and special education initiatives and \$5.25 million for Indian education fund grants.

The executive and LFC FY22 budget recommendations for public school support include \$52 million to eliminate the federal Impact Aid credit, which will substantially increase operational revenue for school districts with significant numbers of students living on tribal land. Most Impact Aid funds, except for the additional payments for children with disabilities and construction payments, are considered general aid to the recipient school districts. These funds may be used in whatever manner the school districts choose, so long as it is in accordance with local and state requirements. Most recipients use funding for daily expenditures, but recipients may use the funds for other purposes such as capital expenditures. School districts are required by federal regulations to consult with tribal governments and parents under the Indian Policies and Procedures about how these monies are spent.

The executive's FY22 budget recommendation includes \$10 million for statewide digital access for students and \$10 million for statewide broadband expansion. The LFC's FY22 budget recommendation includes \$20 million for statewide broadband expansion. Given the significant costs of providing broadband to extremely rural areas of the state and progress toward reopening schools following the rollout of the Covid-19 vaccine, the state may want to consider leveraging federal funds to address immediate connectivity and device needs.

Federal aid from the Coronavirus Aid, Relief, and Economic Security (CARES) Act and Consolidation Appropriations Act (CAA) of 2021 will provide New Mexico schools over \$520 million by early 2021 to address pandemic-related costs, such as expanding educational technology, and provide services to support high-need student populations. According to PED, New Mexico has budgeted nearly \$46 million from federal CARES Act funds to provide students access to education technology in response to school closures in FY20 and FY21. Additionally, the governor directed \$2.9 million of CARES Act coronavirus relief funds to Cochiti Pueblo for broadband infrastructure.

The federal CAA includes \$3.2 billion to subsidize home Internet for low income families nationally by \$50 per month for most households or up to \$75 per month for households on tribal land. Initial estimates suggest New Mexico's portion of this funding could be \$16 million, equivalent to a \$75 Internet subscription for 213 thousand households. The CAA also includes \$1 billion in grants to tribes to build out broadband infrastructure, at least a portion of which will be available to tribes and pueblos in New Mexico. New Mexico tribes could potentially generate up to \$200 million from these grants to address IT infrastructure provisions of this bill.

Tribal schools and libraries are eligible for federal E-rate funding, which provides on average 80 percent to 90 percent of the cost to upgrade broadband infrastructure and related services. While tribal schools are not covered under PSFA's broadband deficiencies correction program, the PSFA broadband team assisted and coordinated the development of two successful broadband partnerships – Middle Rio Grande and Jemez-Zia – that took advantage of E-rate funding and improved broadband connectivity for six pueblos. According to PSFA, further expansion and upgrades are needed for a functional network. In addition, tribal libraries are also currently eligible for broadband infrastructure funding from the New Mexico State Library, in collaboration with the Department of Information Technology and PSFA, through the broadband for libraries program funded by the library broadband infrastructure fund.