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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/21

SPONSOR Lente /Louis/ Johnson LAST UPDATED _____ HB 87

SHORT TITLE Yazzie Lawsuit Higher Ed Funding SB _____

ANALYST Becerra

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
\$0	\$26,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB85, HB86, HB52, HB84, HB135, and SB41.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico State University (NMSU)
 University of New Mexico (UNM)
 Higher Education Department (HED)
 Indian Affairs Department (IAD)

No Response Received

New Mexico Highlands University (NMHU)
 Northern New Mexico College (NNMC)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 87 (HB87) appropriates \$26.2 million from the general fund to public colleges and universities and tribal colleges to utilize higher education programs to increase the capacity of schools, school districts, and tribes to meet the needs of Native American students. The bill appropriates the funds as follows:

- \$12.2 million to the University of New Mexico,

- \$3.1 million to New Mexico Highlands University,
- \$950 thousand to New Mexico State University,
- \$950 thousand to Northern New Mexico College, and
- \$9 million to the Higher Education Department for
 - Navajo Technical University
 - Diné College
 - Southwestern Indian Polytechnic Institute.

HB87 specifies the appropriations be used for the following purposes:

- Pipelines for recruiting, training, and retaining Native teachers, administrators and educational leaders;
- College and career readiness programs for Native students;
- Indigenous curriculum and materials development centers;
- Indigenous technical assistance centers;
- Social and health support services for Native students; and,
- Technical assistance for shared responsibility in education governance.

Any unexpended or unencumbered balance at the end of the fiscal year 2022 for state institutions (New Mexico Highlands University, New Mexico State University, and Northern New Mexico College, and Tribal Colleges) shall revert to the general fund. Any funds remaining at the end of the fiscal year 2023 for the University of New Mexico shall revert to the general fund.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

HB87 appropriates \$26.2 million to public colleges and universities and tribal colleges to address the court's rulings in the consolidated *Martinez-Yazzie v. the State of New Mexico* lawsuit through a variety of capacities, despite *Martinez-Yazzie* addressing constitutional requirements to educate kindergarten through 12th-grade students, not college students. Although the bill does not specify future appropriations, funding various programs within higher education institutions across the state could create an expectation the program will continue in future fiscal years, therefore this cost is identified as recurring.

Investments. The House Appropriations and Finance Committee substitute for House Bill 2 appropriates \$13.4 million from the general fund for purposes of addressing the findings of the *Martinez-Yazzie* lawsuit, also known as the tribal remedy framework. These funds include

- \$5.25 million from the Indian education fund for tribal departments of education and libraries to develop education blueprints and governance structures,
- \$5.1 million from PED special appropriations for indigenous education initiatives, and
- \$3 million from HED RPSPs to provide culturally and linguistically relevant programming for Native American students.

The HAFC substitute for House Bill 2 also includes:

- \$230 million to provide extended learning time programs for all students and K-5 Plus extended school year programs for all at-risk elementary students;
- \$66 million for Impact Aid schools to meet the needs of Native American students and implement provisions of the Indian Education Act;
- \$296 million for at-risk students through the public school funding formula; and
- \$2 million to ECECD for early childhood workforce expansion, with a focus on Native American educators.

Additionally, a proposal for supplemental spending includes \$9 million from the public education reform fund for Native American curricula development and instructional programs, and the capital outlay framework includes \$5 million for tribal broadband from severance tax bond authorizations.

In addition to the state appropriations for the tribal remedy framework, the U.S. Congress is providing \$1 billion for tribal broadband nationwide, and New Mexico schools will receive \$439 million in federal aid, which can be used to support at-risk student populations.

Overall, the HAFC substitute for HB2 and other spending bills include a total of \$621.4 million to support a statewide response to the *Martinez-Yazzie* findings. When accounting for the federal aid mentioned above, there will be a total of \$1.06 billion dedicated to improving the state public education system with a focus on Native American and other at-risk student populations.

Staff recommends associated language requiring collection and reporting of performance data for the framework to include the number of Native American teachers working in public schools and the number of Native American public school students demonstrating proficiency or nearing proficiency in their native language. This information is necessary to track programs addressing implementation of the Indian Education Act and findings from the *Martinez-Yazzie* lawsuit.

SIGNIFICANT ISSUES

Martinez-Yazzie. 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 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.

The court's findings in the *Martinez-Yazzie* ruling suggested public school funding levels, financing methods, implementation of existing laws, and PED oversight were deficient. However,

the court did not specify remedies and deferred decisions on how to achieve education sufficiency to the executive and legislative branch. Additionally, the findings were directed specifically toward kindergarten through 12th-grade education, this bill appropriates funds for the expansion of services to higher education institutions.

PERFORMANCE IMPLICATIONS

The bill does not outline specific performance measures for accountability. HED notes tribal colleges and public postsecondary institutions funded by the legislation should develop board-of-regents-approved performance measures in coordination with the HED for the purpose of reporting to the executive and the Legislature.

ADMINISTRATIVE IMPLICATIONS

The boards of regents at UNM, NMHU, NMSU and NNMC will administer these funds as outlined in the bill. HED will administer the funds involving receipt, disbursement, and tracking to NTU, Diné College, and SIPI.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB85, Yazzie Lawsuit Response Funding, that appropriates \$21.7 million from the general fund to tribal education departments for blueprints, curriculum development, extended learning programs, and IT departments.

Relates to HB86, Native American Library, Internet & Education, that appropriates \$94.8 million from the general fund to IAD for libraries, education centers and broadband internet statewide for Indian nations, tribes, and pueblos.

Relates to HB52, Bilingual, Multicultural Education Advisory Council, which establishes a bilingual multicultural education advisory council.

Relates to HB84, Native Language Education Program Unit, which creates a native language education program factor in the funding formula.

Relates to HB135, School Opportunity and Equity Index, which includes a Native American demographic factor in the at-risk index of the funding formula.

Relates to SB41, School Funding Changes, which eliminates the Impact Aid credit in the funding formula.

ALTERNATIVES

There is already an established process through which institutions of higher education request funding for research and other projects, such as the funding appropriated in HB87. Institutions should use that process and leverage their existing funds to prioritize these programs.