

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE

BILL ANALYSIS

56th Legislature, 1st Session, 2023

Bill Number	<u>SB482/SJCS</u>	Sponsor	<u>SJCS</u>
Tracking Number	<u>.225724.3</u>	Committee Referrals	<u>SEC/SJC</u>
Short Title	<u>State-Tribal Education Compact Schools Act</u>		
Analyst	<u>Andrews</u>	Original Date	<u>3/13/2023</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

The Senate Judiciary Substitute for Senate Bill 482 (SB482/SJCS) creates the State-Tribal Education Compact Schools Act and authorizes the Public Education Department (PED) to enter into state-tribal education compacts with Indian nations, tribes, or pueblos in New Mexico to establish language- and culture-based schools.

SB482/SJCS requires PED to establish an application and approval process for state-tribal education compact schools—which may be initiated by the governing body of an Indian nation, tribe, or pueblo—by January 1, 2024. SB482/SJCS requires PED to convene government-to-government meetings to consider proposed state-tribal education compact schools; PED and the Indian nation, tribe, or pueblo that is submitting the resolution and application must determine the terms of the state-tribal education compact. SB482/SJCS specifies requirements for state-tribal education compact provisions, requires PED to promulgate rules for the implementation of the State-Tribal Education Compact Schools Act, and requires PED to post each state-tribal education compact to its website.

SB482/SJCS also specifies the terms of operation of state-tribal education compact schools, including creating a curriculum, conducting an educational program controlled and evaluated by the Indian nation, tribe, or pueblo, and is language- and culture-based. SB482/SJCS exempts state-tribal education compacts from all state statutes and rules regarding the curriculum, assessment, and evaluation of a school except for Section 22-10A-5 NMSA 1978 (licensed school employee background checks), Section 22-10A-5.2 NMSA 1978 (applications for school employment), Section 22-10A-22 NMSA 1978 (termination and notifications provisions), nondiscrimination laws, audits by the Office of the State Auditor, and statutes and rules made applicable pursuant to the State-Tribal Education Compact Schools Act. The bill would make state-tribal education compact schools tuition free and would provide for the prioritization of tribal members and siblings of students already enrolled at the school when capacity is insufficient to enroll all who apply.

SB482/SJCS requires state-tribal education compact schools to report student enrollment to PED to receive state or federal funding. SB482/SJCS specifies funding for state-tribal education

compact schools will be determined by the public school funding formula, and that funding cannot revert. Finally, SB482/SJCS allows state-tribal education compact schools to implement “a policy of preference to Indians in employment” and to prioritize the admission of tribal members when capacity of the school’s programs or facilities are not as large as demand.

The effective date of this bill is July 1, 2023.

FISCAL IMPACT

This bill does not contain an appropriation. However, SB482/SJCS would mean more students may be funded by the state equalization guarantee, potentially decreasing the amount school districts and charter schools receive per student.

The Public School Facilities Authority (PSFA), the agency responsible for staffing PSCOC, notes that while adding “state-tribal education compact schools” to the Public School Capital Outlay Act allows PSCOC to fund facility projects for these schools, PSFA does not have any data on potential “state-tribal education compact schools” and cannot calculate the potential cost of PSCOC-funded projects. PSFA notes that SB482/SJCS could make state-tribal education compact schools eligible for lease assistance awards if they lease facilities from public or private entities, but without data on the expected number of facilities, MEM, and lease amounts, it is impossible to determine the impact of the inclusion of state-tribal education compact schools on the lease assistance program.

SUBSTANTIVE ISSUES

State-Tribal Education Compacts in Other States. According to the National Conference of State Legislatures (NCSL), Alaska and Washington both have State-Tribal Education Compacts.

Washington’s state-tribal education compact was created by [HB1134](#) in 2013. The compact brings the Office of the Superintendent of Public Instruction and tribes, or already existing federal BIE schools, into an agreement that authorizes tribes to serve as proxy education agencies or school districts. There are currently seven tribes operating state-tribal education compact schools in Washington; all [compact agreements](#) are available on Washington’s Office of the Superintendent of Public Instructions website. In 2018, Evergreen State College completed a [case study](#) of three state-tribal education compact schools and how the compacts improved outcomes for Native American students.

Alaska enacted [SB34](#) in 2022, which allows five schools to enter into a state-tribal education pilot program. The compact agreements allow tribes to develop their own curriculum outside of current school district requirements. Alaska [began the process and examination of state-tribal compacts](#) in 2016.

Outcomes for Native American Students. Historically, educational outcomes for Native American students in New Mexico have been consistently below their non-Native peers. According to the 2021-2022 Tribal Education Status Report, proficiency rates for Native American students were considerably lower than those of students of other ethnicities:

- In reading, half as many proficient Native American students were proficient compared to the percentage of proficient Asian American students;
- In math, one-fifth of Native American students were proficient; and
- In science, just under one-third of Native American students were proficient.

Research suggests that incorporating Native American languages and cultures into academic settings can improve educational engagement and outcomes, including improved retention, graduation rates, college attendance rates, and standardized test scores.

ADMINISTRATIVE IMPLICATIONS

Government-to-Government. PED holds semiannual government-to-government meetings pursuant to subsection D of Section 22-23A-5 NMSA 1978. SB482 would require the department to conduct government-to-government meetings within 90 days of receiving a resolution and application for a state-tribal education compact school.

Facilities. PSFA noted several issues related to the public school capital outlay provisions of SB482/SJCS, which are laid out by topic below.

Facility Assessment Database. PSFA notes that their agency maintains the Facility Assessment Database (FAD), which collects data on all public schools in the state, based on assessments that collect condition and age-based data for all buildings and building systems, as well as measured educational spaces to compare against adequacy standard minimums. PSFA uses this data to calculate the weighted New Mexico Condition Index (wNMCI) score for each public school in the state, which is used to compile the annual statewide ranking, listing all public schools in order of their score to prioritize schools with the greatest need. Both the standards-based and systems-based funding programs use the wNMCI to determine eligibility for PSCOC funding. PSFA notes that once state-tribal education compact schools obtain facilities, PSFA will need to assess each one, and calculate each facilities wNMCI score, and the school will be added to the upcoming ranking cycles. PSFA notes that inserting new schools in the wNMCI, particularly those potentially housed in aged facilities, will displace schools in the current ranking, which could cause some schools to drop below the eligibility threshold, and therefore not be eligible for PSCOC funding for either standards-based or systems-based projects.

Statewide Adequacy Standards. PSFA also notes that per Subsection B of Section 22-24-4.1, all public schools are required to meet the statewide adequacy standards per 6.27.30 NMAC. Charter schools are granted waivers for certain adequacy standards due to the unique education they provide; it is unclear whether state-tribal education compact schools would be granted the same waivers. However, the standards related to life, health, safety, building quality security, and classroom space are not waived. PSFA suggests this rule could be applied to the state-tribal education compact schools, which would allow flexibility in the types of spaces needed to provide a unique education curriculum, while also meeting building quality standards.

Obtaining Facilities. PSFA notes SB482/SJCS does not define criteria, standards, or rules for the facilities these schools would obtain. Per Section 22-8B-4.2 NMSA 1978, a new charter school cannot move into and an existing charter school cannot relocate into a facility that does not have a wNMCI score that meets or exceeds the statewide average; SB482/SJCS does not require state-tribal compact schools to meet this minimum wNMCI requirement. PSFA notes this is intended to disallow charters from moving into sub-par facilities that would become a burden on the school and the state.

PSFA also notes that as written, SB482/SJCS does not specifically authorize state-tribal education compact schools to qualify for lease purchase arrangements, as the Lease Purchase Act is defined in Section 22-26A-3, not the Public School Capital Outlay Act.

State-Local Match. SB482/SJCS does not define a mechanism to determine the local share of project costs for state-tribal compact schools. The Public School Capital Outlay Act requires the financial responsibility of all PSCOC funded projects to be shared between the state and the local school district. Each school district has a local share percentage calculated each year in part using the property tax valuation of the district, as defined in Subsection B of Section 22-24-4.1 NMSA 1978.

Assuming the potential state-tribal education compact schools will be located on tribal land, the schools would not have a definable taxable base, nor a legal mechanism by which the schools could levy taxes on residents. Therefore, the schools may potentially have a 0 percent local share and be fully financed by the state, much like the Zuni school district. PSFA notes state-chartered charter schools are assigned the local share of the school district in which the charter school is geographically located, and it may be appropriate to apply the same rule to the state-tribal education compact schools.

OTHER SIGNIFICANT ISSUES

The Consolidated *Martinez-Yazzie* Education Sufficiency Lawsuit. In 2019, the 1st Judicial Court issued a final judgement and order in the consolidated *Martinez-Yazzie* education sufficiency lawsuit, finding New Mexico’s public education system failed to provide a constitutionally sufficient and adequate education for at-risk students, defined as English language learners, Native American students, students with disabilities, and students from low-income families. The court pointed to low high school graduation rates, low student test proficiencies, and high college remediation rates as indicators of how the state is not meeting its constitutional obligation to ensure all students are college, career, and civics ready. 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.

The Zuni Lawsuit: History and Current Status. In 1999, the 11th Judicial District Court issued its initial ruling in the *Zuni* lawsuit, finding New Mexico did not have an equalized system of public school capital outlay funding, especially for school districts with significant amounts of federal Indian reservation land, such as the plaintiffs, Zuni Public Schools and Gallup McKinley County Schools. The court found the lack of equity in capital revenues violated the New Mexico Constitution, which requires a “uniform system of public schools sufficient for the education of all school age.”

Between 1999 and 2004, the state designed a system of public school capital outlay based on “adequacy,” such that schools in the worst condition in the state would be eligible for funding through a standards-based process. This system has been revised since 2004, but is still primarily based on the values of equity, uniformity, sufficiency, and adequacy. Between 2004 and 2013, no filings were made in the *Zuni* lawsuit, and the case was administratively dismissed.

The plaintiffs reopened the *Zuni* lawsuit shortly after it was closed, and a trial to hear new evidence began in 2016. However, the plaintiffs never concluded their case-in-chief and the trial was put on hold for nearly three years. The trial finally concluded in May 2019, with proposed Findings of Fact and Conclusions of Law filed by both parties in October 2019. The 11th Judicial District Court’s Decision and Order was issued more than a year later in December 2020.

The court’s six-page verdict did not cite specific facts on which it was based, and did not address recent actions the state had taken to account for historic inequities in the state’s capital outlay funding system. These actions included a host of awards for the plaintiff school districts as a result of the standards- and systems-based awards process, as well as direct legislative appropriations for “outside of adequacy” spaces and teacher housing. Following the ruling, the Legislature also eliminated the long-standing Impact Aid credit, returning more than \$80 million in annual revenue to Indian-impacted school districts.

The state filed a motion for the 11th Judicial District Court to reconsider its ruling given the new evidence in the case. The Court denied this motion. In July 2021, the state appealed the district court’s ruling to the New Mexico Supreme Court. The opening brief for the appeal was filed in August 2022.

Sovereignty and Indigenous Education. The Indian Affairs Department (IAD) notes that SB482/SJCS contributes to a growing, supportive body of state policy based on strengthening government-to-government relations and improving tribal education by granting Indian nations, tribes, or pueblos the ability to enter a compact to control their schools to promote and assert tribal educational sovereignty. According to IAD, SB482/SJCS affirms the state’s commitment to honor the government-to-government relationship between Tribes and reflects PED’s commitment to work with tribal leaders and provide guidance for the implementation of Indian Education Act ([State-Tribal Collaboration Act](#), 2022). IAD notes SB482/SJCS encourages tribes to exercise sovereignty by identifying for themselves how to meet the needs of their Native American children. Further, IAD notes tribal communities are most familiar with their history, language and culture and their lived experiences enrich the pedagogies for tribal education departments and support the development of early childhood education, culturally and linguistically relevant curriculum, and community-based education.

RELATED BILLS

Relates to HB140, Tribal Education Trust Fund, which creates a tribal education trust fund and provides a \$50 million initial investment with provisions detailing how investment returns on the fund would provide stable and consistent revenue for tribal education departments.

Relates to HB147, Indian Education Fund Distributions, which amends the Indian Education Act to designate 50 percent of funding from the Indian education fund to New Mexico tribes distributed via a weighted statutory formula.

Relates to HB148, Early Childhood Dept. Tribal Agreements, which requires the Early Childhood Education and Care Department to enter into intergovernmental agreements with Indian nations, tribes, pueblos, or tribal organizations to administer early childhood education and care programs using their own culturally and linguistically relevant standards, assessments, and evaluations.

Relates to HB149, Public Ed Dept. Native American Funding, which establishes a regular funding stream for tribal education which would flow into the tribal education trust fund.

Relates to HB198, Career Tech Funds for Indian Ed Schools, which would allow federal Bureau of Indian Education secondary schools to apply for and receive funding from the career technical education pilot.

Relates to HB280, American Indian Ed Tech Assistance Centers, which establishes two American Indian education technical assistance centers in geographically distinct regions of the state to serve all American Indian students and federally recognized Indian nations, tribes, and pueblos in New Mexico.

Related to SB131, Public School Funding Changes, which amends the Public School Capital Outlay Act to reduce school districts' local share of project costs, eliminate legislative offsets, and provide funding for school security, prekindergarten, career technical education, and local maintenance priorities.

SOURCES OF INFORMATION

- LESC Files
- Office of the State Auditor
- Indian Affairs Department
- Public School Facilities Authority

MCA/js/cf/mb/cf/tb/msb