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## FISCAL IMPACT REPORT

SPONSOR Lente LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/1/23  
BILL \_\_\_\_\_  
SHORT TITLE Public Ed Dept. Native American Funding NUMBER House Bill 149  
ANALYST Liu

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$0.0 - \$4,037.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to HB149

Is a companion to HB140

### Sources of Information

LFC Files

Legislative Education Study Committee (LESC) Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Indian Affairs Department (IAD)

#### No Response Received

Public Education Department (PED)

## SUMMARY

### Synopsis of House Bill 149

House Bill 149 requires PED to request an appropriation as part of its annual operating budget submission equal to 40 percent of the 1.25 percent land grant permanent fund distribution to public schools (recently approved by voters in 2022), multiplied by the proportion of Native American students to total public school student population. The bill allows the Legislature to appropriate this amount to PED for distribution to federally-recognized Indian nations, tribes, and pueblos in New Mexico or the tribal education trust fund. The effective date of this bill is July 1, 2025.

## FISCAL IMPLICATIONS

The bill does not contain an appropriation but requires PED to request a \$4 million appropriation as part of its operating budget submission each year based on the following formula:

$$\frac{S_N}{S_P}(0.4D) = \frac{33,790}{314,716}[0.4(\$94,000,000)] = \$4,036,986$$

Where  $S_N$  is the total number of Native American students,  $S_P$  is the total public school student population, and  $D$  is the additional distribution for public schools authorized by voters from the land grant permanent fund in 2022. First reporting date counts for FY23 show 33.8 thousand Native American students in schools statewide (including private, homeschool, central office, off-site, and state-supported schools). The total public school student population is 314.7 thousand (not including private, homeschool, central office, off-site, and state-supported schools). As such, the ratio in this formula is 10.7 percent. The estimated additional distribution for public schools—40 percent of the 1.25 percent land grant permanent fund distribution—is expected to be \$94 million. The bill multiplies this “additional distribution” by another 40 percent.

Provisions of this bill allow the Legislature to appropriate the requested amount to PED for distribution to federally-recognized Indian nations, tribes, and pueblos located wholly or partially in New Mexico or the tribal education trust fund. IAD notes the bill does not specify how the funding would be allocated to nations, tribes, or pueblos. The bill does not specify a funding source for this appropriation, but the amount is presumed to be from the general fund.

## SIGNIFICANT ISSUES

Paragraph (1) of Subsection H of Section 7 of Article 12 of the New Mexico Constitution allocates 40 percent of the 1.25 percent land grant permanent fund distribution to public schools for enhanced instruction for students at risk of failure, extending the school year, and public school teacher compensation. Provisions of this bill require PED to request a percentage of that distribution amount, proportional to the Native American student population, for consideration by the Legislature for appropriation to tribes or the tribal education trust fund contemplated in House Bill 140.

The LFC and LESC FY24 budget recommendations appropriate \$20 million from the general fund to the Indian education fund (IEF), a \$5 million increase from the \$15 million IEF appropriation in FY23. The executive FY24 recommendation for IEF is \$25.2 million. A portion of IEF distributions already go to Indian nations, tribes, and pueblos, which may duplicate the purposes of the appropriation considered in this bill.

The state enacted the Indian Education Act in 2003 to provide Native American students in New Mexico with opportunities for an equitable and culturally appropriate education in public schools. The law establishes the Indian Education Division of PED as well as the Indian Education Advisory Council and lays out systems for the state and school districts and charter schools to collaborate with tribal governments on matters related to curricula, teaching, support services, and other programs to meet the needs of Native American students.

In FY23, PED made the following IEF allocations:

- \$2.8 million for school districts and charter schools,

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- \$2.4 million for indigenous language fellows,
- \$1.2 million for indigenous education initiatives,
- \$974 thousand for educator recruitment in Native American communities,
- \$955 thousand for immersion schools,
- \$693 thousand for Native language teacher pipeline grants,
- \$200 thousand for Native language programs, and
- \$150 thousand for curriculum, instruction, and assessment.

The FY23 IEF distribution also included a \$2 million allocations to tribal education departments (Pojoaque, Mescalero Apache, and Tesuque did not apply for funds) as such:

Pueblo, Tribe, or Nation	Est.Number of Children (Ages 5-17)	FY23 IEF Distribution (in thousands)
Acoma	729	\$ -
Cochiti	210	\$ 120.9
Isleta	663	\$ 100.0
Jemez	557	\$ 108.4
Jicarilla	619	\$ -
Laguna	1,072	\$ 113.7
Mescalero	654	\$ -
Nambe	182	\$ 97.7
Navajo Nation	27,306	\$ 300.0
Ohkay Owingeh	282	\$ 97.2
Picuris	37	\$ 100.5
Pojoaque	64	\$ -
San Felipe	599	\$ 100.9
San Ildefonso	105	\$ 100.0
Sandia	59	\$ 99.3
Santa Ana	169	\$ 102.5
Santa Clara	134	\$ 102.0
Santo Domingo	889	\$ 113.0
Taos	307	\$ 104.6
Tesuque	58	\$ -
Zia	160	\$ 100.0
Zuni	2,007	\$ 110.3
<b>Total</b>	<b>36,862</b>	<b>\$ 1,970.9</b>

Over the past two years, PED has utilized the award letter process to award grants from the Indian education fund to entities that receive the funding for tribal education priorities and programs. The award letter process replaced the prior process where PED entered into an intergovernmental agreement (IGA) with each tribe, nation, or pueblo. The prior process took a considerable amount of time for the final IGA to be signed by both parties. Sometimes, the tribe did not complete the signature process in time for the grant to be awarded, thus losing funds for that fiscal year. To remedy this situation, PED began to utilize the award letter process, which proved to be the best option because it was a less complicated process and allowed the funds to be distributed on July 1 of the calendar year. The award letter process includes assurance forms for the tribe, nation, or pueblo to provide input and sign. The assurance forms include details

related to payment, fund expenditures, and accountability measures.

## **PERFORMANCE IMPLICATIONS**

A 2021 LFC evaluation on implementation of the Indian Education Act found Native American students continue to perform well below peers on state and national measures of achievement, despite the availability of nearly \$147 million in state and federal funds at public schools and institutions of higher education for purposes aligned to the act. The report noted a history of understaffing at PED’s Indian Education Division, difficulties with funding utilization, challenges with local collaboration, and a lack of specific, targeted outcomes have resulted in a system that has not served Native American students in a comprehensive and coordinated manner.

The LFC evaluation found Native American student enrollment in public schools fell to 32.4 thousand students in FY19, an 8.5 percent decrease over the prior 5 years. Four-year high school graduation rates for Native American students increased to 69 percent in FY19, an 11 percentage point improvement over the prior five years, but still 6 percentage points lower than the statewide average of 75 percent. Similarly, Native American student reading and math proficiency rates improved marginally over the same period but remained below statewide averages. The evaluation noted, however, changes in high school graduation requirements (allowing alternative demonstrations of competency) likely contributed to increased graduation rates and changes to statewide standardize assessments complicated measures of progress in these areas.

## **ADMINISTRATIVE IMPLICATIONS**

The bill may require PED to develop procedures and rules for distributions to tribes if the Legislature does not establish a tribal education trust fund and appropriations the amount to PED.

## **COMPANIONSHIP, RELATIONSHIP**

This bill is a companion to House Bill 140, which establishes the tribal education trust fund. Providing annual distributions to the tribal education trust fund may improve the sustainability of the fund’s balance over the long run. The bill relates to House Bill 147, which requires 50 percent of IEF distributions to be allocated to tribes in an equalized manner.

## **TECHNICAL ISSUES**

The bill’s formula does not clarify whether the total number of Native American students should include individuals served in nonpublic schools, despite the denominator of the ratio only including public school students. The total number of Native American students in public schools is 32.9 thousand (rather than the 33.8 thousand used in this analysis).

As the bill’s formula is written, the Native American student ratio is multiplied by “40 percent of additional distribution,” which references the additional distribution in Paragraph (1) of Subsection H of Section 7 of Article 12 of the New Mexico Constitution. This additional distribution in the Constitution is already 40 percent of a 1.25 percent land grant permanent fund

distribution. As such, the calculation multiplies 40 percent of the 1.25 percent land grant permanent fund distribution by another 40 percent. The sponsor may want to clarify if this formula, as written, was intended to apply the 40 percent multiplier twice.

## OTHER SUBSTANTIVE 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.

SL/rl/ne/mg