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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Shendo</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>1/28/25</u>
<b>SHORT TITLE</b> <u>State-Tribal Education Compact Schools Act</u>	<b>BILL NUMBER</b> <u>Senate Bill 13</u>
	<b>ANALYST</b> <u>Liu</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
STEC School Operations		\$0.0 - \$168,142.9	\$0.0 - \$168,142.9	\$0.0 - \$336,285.8	Recurring	General Fund
STEC School Facilities		\$0.0 - \$28,324.5	\$0.0 - \$538,166.2	\$0.0 - \$566,490.7	Nonrecurring	Public School Capital Outlay Fund
<b>Total</b>		<b>\$0.0 - \$196,467.4</b>	<b>\$0.0 - \$706,309.1</b>	<b>\$0.0 - \$902,776.6</b>		

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files  
 Legislative Education Study Committee (LESC) Files

Agency Analysis Received From  
 New Mexico Attorney General (NMAG)  
 Public School Facilities Authority (PSFA)

Agency Analysis was Solicited but Not Received From  
 Public Education Department (PED)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis of Senate Bill 13

Senate Bill 13 amends the Public School Code to create state-tribal education compact (STEC) schools, authorizing the Public Education Department (PED) to enter into a compact with an Indian nation, tribe, or pueblo located wholly or partially in New Mexico to create language- and culture-based STEC schools. The governing body for an Indian nation, tribe, or pueblo in New Mexico may submit a resolution to PED to create a STEC school serving any grades between prekindergarten and 12<sup>th</sup> grade, and PED shall convene a government-to-government meeting for

negotiating the terms of the compact. All actions, negotiations, and business of PED and the Indian nation, tribe, or pueblo entering the compact are subject to the Open Meetings Act.

The compacts shall have a term of 5 years and include provisions relating to compliance, notices of violation, dispute resolution, recordkeeping and auditing, delineation of responsibilities, compact renewability, and compact termination. STEC schools will operate according to the compact terms and are exempt from all state statutes and rules applicable to school districts and charter schools except for provisions of this bill and the negotiated compact terms. Each STEC school will create curriculum controlled and evaluated by the tribe, employ licensed school employees, comply with licensed school employee background checks, comply with nondiscrimination laws, and be subject to legal and fiscal audits. STEC schools will not engage in sectarian practices in educational programming, admissions, employment, or operations and cannot limit or restrict any enrollment or school choice options.

The bill prohibits STEC schools from charging tuition but allows the charging of fees for participation in optional extracurricular events and activities. STEC schools may prioritize admission to tribal members and siblings of enrolled students if enrollment capacity is insufficient; otherwise, STEC schools cannot deny student admission on any basis other than age, grade, or capacity. STEC schools may implement a policy of preference for hiring Indians or prioritizing admission of tribal members when the capacity of the school's programs or facilities are not as large as demand.

STEC schools must report enrollment to PED and funding shall be determined by the public school funding formula. STEC schools can apply for state grants, including awards from the public school capital outlay fund, on the same basis as a school district. Salary amounts for licensed school employees must be based on the salaries of the school district in which the STEC school is located. STEC schools will be allowed to retain any unused funding at the end of any budget year for use in subsequent fiscal years.

The effective date of this bill is July 1, 2025.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation but provides operational and capital outlay funding for STEC schools like school districts. The bill notes funding shall be determined by the public school funding formula, also known as the state equalization guarantee (SEG) distribution. The upper cost estimate of \$168 million for operational costs in this analysis assumes all federal Bureau of Indian Education (BIE) and tribally-controlled schools become STEC schools and experience 3 percent enrollment growth to nearly 9,900 students. Using the FY24 three-year average daily membership of these schools as a proxy for membership in the state funding formula, STECs could generate up to \$168 million in SEG funding based on the current unit value. Actual costs will vary depending on which schools enter a compact with the state.

The estimate assumes all STEC school students participate in a bilingual multicultural education program, reflect the same proportionate student populations for grade levels, special education, fine arts, charter school activities, and home school programming as their public school districts. Additionally, the analysis assumes each STEC school adopts the at-risk index and rural population density of a geographically close district and only operates two school facilities in each tribe for size adjustment factors. Estimated costs would increase further if the Navajo

Nation established more than the two STEC schools assumed in this model or STEC schools provided longer school calendars for K-12 Plus units, which were excluded from this analysis.

Provisions of this bill provide STEC schools access to public school capital outlay fund programs as well, but do not specify a local match rate (see Technical Issues). The Public School Finance Authority (PSFA) notes BIE and tribally-controlled schools may be located on tribal land that has no or very low taxable valuation. STEC schools may potentially have a 0 percent local match rate, which could place the full responsibility of school facility replacement on the state, much like Zuni Public Schools.

This fiscal analysis assumes a 50 percent local-state match rate, \$793 per square foot, and 144 square feet per student, making the upper cost estimate to the public school capital outlay fund as much as \$566 million for new construction in future fiscal years. A lower match rate would raise these costs to the state. Given the typical timeline for planning, design, and construction, initial costs in FY26 for building new facilities will likely be limited to planning and design—assumed to be 5 percent of the total out-year costs. Costs of initial facility construction may be deferred if the compact uses an existing tribal or BIE school to become a STEC school and leverage tribal or federal funding streams for facility replacement or renovation.

The executive, LESC, and LFC recommendations all include \$20 million in recurring general fund appropriations for the Indian education fund, which has been historically used to provide grants to schools serving Native American students, tribal libraries, and related programs at higher education institutions. The executive recommendation further includes a \$90 million nonrecurring general fund appropriation over three years for the Indian education fund, LESC recommends a \$5 million nonrecurring general fund appropriation for Indian education initiatives, and LFC recommends a \$15.5 million appropriation from the public education reform fund over three years for indigenous education pilot programs and to test a new funding formula for tribal schools.

## **SIGNIFICANT ISSUES**

For school year 2023-2024, approximately 31.9 thousand students attending public schools identified as American Indian, Alaskan Native, Native Hawaiian, or Native American, representing about 11 percent of statewide enrollment. According BIE, BIE and tribally-controlled schools generated federal operational dollars (known as ISEP) for 9,608 students that same year, based on a three-year average. Provisions of this bill would create an avenue for BIE or tribally-controlled schools to generate additional funding for operations through the SEG formula for public schools and capital dollars through Public School Capital Outlay Council (PSCOC) grant programs.

New Mexico has 23 sovereign tribes, including 19 pueblos and 44 BIE or tribally-controlled schools that general federal ISEP funds. Aside from certain PED grant programs, such as awards from the Indian education fund or career technical education fund, BIE and tribally-controlled schools do not receive other educational assistance from the state, relying primarily on federal funding sources for school operations. As noted in a 2024 New Mexico Advisory Committee report to the U.S. Commission on Civil Rights, Native American students often switch enrollment between public schools and BIE schools.

Native American students have historically reported lower achievement and graduation rates

than their peers in New Mexico, although recent statewide results suggest their performance is improving faster, thus closing some of the gap. Still, provisions of the New Mexico Indian Education Act stress the importance of maintaining Native languages and culture, and that programs providing these educational opportunities are currently limited within public schools. According to PED, approximately 7,651 Native American students participated in a bilingual multicultural education program within public schools in FY24, up from 7,163 students in the prior year. However, nearly 24 thousand Native American students in public schools were reportedly not participating in a bilingual multicultural education program.

Of the eight Native American languages spoken in New Mexico, only seven are taught in school districts (language programs for Mescalero Apache were not reported). PED reports 8,416 students participated in a Native American language program in FY24, up from 7,434 students the prior year. Despite increased enrollment in these programs, the number of students tested for Native language proficiency in FY24 has decreased, and only 209 (or 9 percent) of students assessed were proficient in either Keres, Navajo (Diné), Tiwa, Tewa, or Zuni.

In 2022, Alaska enacted a law authorizing the establishment of five STEC schools but did not provide initial funding to start up the schools. Funding for establishing the STEC schools will be negotiated between tribes and the Alaska Department of Education and Early Development and then requested to the Alaska Legislature.

In 2013, the state of Washington enacted legislation authorizing STEC schools. The state has since established seven STEC schools. A 2021 report from Washington's Office of Superintendent of Public Instruction noted the state continued to experience challenges with identifying students, reporting data efficiently, addressing Covid-19 disruptions, and reducing staff turnover at the department. A 2018 survey of Washington STEC schools by Evergreen State College highlighted initial issues with establishing STEC schools, as tribes did not have access to data on student demographics and test scores and struggled to meet state and federal reporting deadlines and accountability metrics. The survey indicated STEC schools increased Native culture and language practices, brought in more cultural experts, improved attendance and graduation rates, and had access to more resources through state and federal sources. However, STEC schools continue to struggle with integrating state standard curricula and providing culturally responsive instruction.

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 that 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.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill require PED to establish an application, approval process, procedures, and timelines for compact negotiations with the tribes by July 1, 2026, one year after the effective date of the bill. The governing body of an Indian nation, tribe, or pueblo in New Mexico can initiate a government-to-government meeting for the purpose of negotiating compact terms for a

STEC school by submitting a resolution and application. PED must convene the government-to-government meeting within 90 days of receipt of the resolution and application and post each state-tribal education compact on the department's website. All actions, negotiations, and business of PED and the Indian nation, tribe, or pueblo entering a compact must be conducted pursuant to the Open Meetings Act.

Provisions of the bill require STEC schools to report student enrollment to PED in the same manner as required of school districts, particularly reporting for purposes of receiving state or federal funding that is allocated based on student enrollment and demographics. PED will need to develop new budget codes and accounts for STEC schools, like state charter schools that are newly authorized. OSA notes STEC schools would need to be audited annually like other school districts.

Provisions of the bill define STEC schools as school districts under the Public School Capital Outlay Act, requiring PSFA to account for STEC schools under the current ranking system for school facility replacement or improvement awards. PSFA may need to conduct site assessments if STEC schools are placed in an existing facility to measure the educational adequacy of the building.

## TECHNICAL ISSUES

Provisions of this bill include STEC schools under the definition of "school district" in the Public School Capital Outlay Act, subjecting STEC schools to the local-state match formula that determines the share of local funding required for public school capital outlay fund projects. The local-state match formula is calculated using the property tax valuation of the district; however, STEC schools do not have a defined taxable base under this bill. As such, it is unclear if STEC school capital projects would be completely financed by the state, have an alternative match rate set by the PSCOC, or be relegated to leasing or purchasing existing facilities through PSCOC awards.

## 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.

In December 2024, the New Mexico Supreme Court issued an order sending the 1999 *Zuni* capital outlay adequacy lawsuit back to district court for re-evaluation. The 1999 lawsuit found the practice of locally funded school construction was unfair to property-poor districts, and it led to the creation of the public school capital outlay fund. The Supreme Court ruling resulted from the state's appeal of a 2015 ruling from the 11<sup>th</sup> Judicial Court that inequities still existed despite the state's investment of billions of dollars since the ruling to improve school facilities and a significant improvement in the average condition of New Mexico schools. The justices determined the case to be moot because the funding system for school capital outlay that was ruled unconstitutional in the original 1999 case has changed so much it no longer exists.

In recent years, applications to the state's public school capital outlay fund had dwindled, while growth in oil and gas revenue expanded the state's capacity to finance school facility projects. Legislative changes to funding formulas, improvements in overall school facility conditions, and pandemic-related disruptions all contributed to reduced demand for state funding and rising uncommitted balances in the public school capital outlay fund.

Legislation enacted in 2023 changed the state-local match formula to entice more school districts to seek support for projects from the public school capital outlay fund. The effect was to reduce the cost burden on school districts and increase the cost burden to the state. The changes have increased demand for the fund but have collided with dramatic increases in construction costs.

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