

<b>LFC Requester:</b>	<b>Liu</b>
-----------------------	------------

**AGENCY BILL ANALYSIS  
2021 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 2/9/2021  
**Bill No:** HB84

**Sponsor:**    Reps. Derrick J. Lente, Georgene Louis, & D. Wonda Johnson

**Agency Name and Code Number:**    PED - 924

**Short Title:**    NATIVE LANGUAGE EDUCATION PROGRAM UNIT

**Person Writing:**    John Sena

**Phone:**    505-570-7816    **Email:**    John.Sena@state.nm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		

NFI	Unknown	Unknown	Recurring	General Fund (certain SEG components)

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Unknown	Unknown	Unknown	Recurring	PED's operating budget

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB29, No School Discrimination for Hair; HB52, Bilingual Multicultural Ed Advisory Council; HB85, Yazzie Lawsuit Response Funding; HB86, Native American Library, Internet & Education; HB87, Yazzie Lawsuit Higher Ed Funding; HB135, School Opportunity & Equity Index; HB227, Ethnic Studies Definition; HB231, Native American Polling Place Protection; SB80, No School Discrimination for Hair; SB210, Ethnic Studies Education; and SB225, Use of Some Revenue for School Funding

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House Bill 84 (HB84) proposes a new section of the Public School Finance Act (PSFA) to create native language education program units, which would be determined by multiplying the full-time equivalent MEM in native language education programs, whether the programs are school-based, community-based, or tribal government-based, implemented in accordance with the provisions of the Indian Education Act (IEA) and the Bilingual Multicultural Education Act (BMEA) by the cost differential factor of 0.5. Additionally, tribal education departments (TEDs) shall be eligible to receive distributions generated by native language education program units.

The bill also amends the definition section of the PSFA. Specifically, the “public money” or “public funds” definition in the PSFA is amended to include “tribal education department[s].” Moreover, “tribal education department” is included in the PSFA definitions to mean “a tribal government unit within a federally recognized tribe, as cited in Subsection H of 22-23A-2 NMSA 1978 and Section 22-23A-4.1 NMSA 1978.”

Additionally, HB84 amends the public school fund statutory language, Section 22-8-14 NMSA 1978, to include: “Tribal education departments shall be eligible to receive distributions generated by at-risk program units, early childhood education program units and native language education program units in accordance with the provisions of the Public School Finance Act; provided that nothing in that act shall be construed to waive or restrict the sovereign immunity of a tribe.” Moreover, the bill proposes including TEDs in the following provisions of the PSFA: allocation limitation; program cost determination; program cost calculation; and at-risk program units.

The total program cost calculated under the proposed provisions of HB84 would require the PED to ensure that resources linked to Native American students are used for school-based, community-based, or tribal government-based programs that meet Native American student needs, improve their achievement, including oral native language acquisition, and adhere to culturally appropriate methods determined by each tribe.

Finally, under HB84, the Public Education Department (PED) would be authorized to enter into intergovernmental agreements (IGAs) with each tribe for the purposes of agreeing upon a TED's program cost.

## **FISCAL IMPLICATIONS**

HB84 does not contain an appropriation.

The executive's FY22 budget recommendation includes \$30 million (\$15 million over two years) 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's FY22 budget recommendation also includes an interagency transfer from the PED to IAD of \$1 million, which comes from PED's request for indigenous, multilingual, multicultural, and special education, for TEDs to develop early childhood CLR curriculum, to design CLR assessment tools, and culturally appropriate teacher and program evaluation instruments, to conduct needs assessments of ECE facilities, and to develop plans for constructing needed facilities.

## **SIGNIFICANT ISSUES**

If enacted, HB84 would potentially assist in building educational success in tribal communities to support student learning, academic achievement, and the development of knowledge and skills in students' home cultures and tribal languages. Much of the funding generated by program units proposed in the bill could assist in improving student academic and tribal language achievement for Native American students. However, since the proposed actions would be directed at TEDs, it is unclear whether they would impact Native American students in the public school setting.

Under HB84, the bill proposes to amend who is eligible to receive at-risk program units. Specifically, the bill allows TEDs to become eligible to receive at-risk program units, assuming the TED can establish within its PED-approved educational plan identified services to assist students to reach their full academic potential. Currently, TEDs do not submit educational plans to the PED. The sponsor may wish to amend this particular section of law to ensure that TEDs would also be required to submit educational plans.

Additionally, the bill proposes to amend the at-risk program unit calculation to include a three-year average of the percentage of Native American students. It is unclear who will be included as a "Native American" student at the school district or charter school level. Currently, Native American students are self-reported when parents or legal guardians register the student for public school. Additionally, if a Native American student is both Hispanic and Native American, the Hispanic indicator will override the Native American indicator in the STARS system and the student will be identified as Hispanic. If the student is identified as at least three races, including

Native American, the student will be identified as multicultural in the STARS system. Thus, a mechanism would need to be in place for the PED's system to capture the Native American students as part of the three-year average of the at-risk program unit calculation.

The bill proposes an amendment to the calculation for the three-year average total rate component of the at-risk index. In addition to the amendment, the bill details the three-year average total rate will include the following: (1) a three-year average of the school district's percentage of membership used to determine its Title I allocation; (2) a three-year average of the percentage of membership classified as English language learners using criteria established by the Office for Civil Rights of the U.S. Department of Education; (3) a three-year average of the percentage of student mobility; and (4) a three-year average of the percentage of Native American students. For the TED allocation, it is unclear which school district or school districts' averages will be used as part of the calculation.

Currently, the PED's Language and Culture Division tracks the number of Native American students who participate in BMEA programs in school. During the 2018-2019 school year, 6,742 Native American students participated in the school-based, BMEA programs. The PED's Indian Education Division (IED) does not currently track the number of Native American students who participate in tribal- or school-based language programs. However, if HB84 is enacted, the IED will begin to track the number of Native American students who participate in tribal- or school-based language programs. This tracking can be accomplished at IED's current staffing capacity.

It is important to note that school-based language programs can both currently receive funding from the IEA and the BMEA to operate. If HB84 is enacted, these school-based language programs could potentially receive funding from three separate funding sources.

Currently, the PED enters into IGAs with each tribe, nation, and pueblo on an annual basis. To date, 21 of the 22 tribes in the state have an IGA with the PED; the Navajo Nation is in the process of signing the IGA signed. If HB84 is enacted, the PED could consider multi-year IGAs with each tribe, nation, and pueblo for IEA and at-risk funds, and funding from native language education program units to reduce staffing time from the Indian Education Division and Administrative Services Division.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

The PED would be required to enter into an IGA with each tribe, nation, and pueblo annually to determine the "program cost" agreed upon by the department and each tribe, nation, or pueblo.

Additionally, the PED's School Budget and Finance Analysis Bureau would be required to incorporate the provisions of HB84 into its computation of the public school funding formula (PSFF) with current existing staffing capacity. It is unclear how much each TED would receive from this annual allocation.

Finally, the PED would be required to ensure that resources linked to Native American students are used for school-based, community-based, or tribal government-based programs that meet Native American student needs, improve their achievement, and adhere to culturally appropriate

methods determined by each tribe. This could possibly be accomplished in partnership between the PED; each tribe, nation, or pueblo; and the local school community through the American Indian and Alaska Native student needs assessment, which is a requirement under the IEA. This requirement under HB84 would occur with the current IED staffing capacity.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB84 relates to HB29, No School Discrimination for Hair; HB52, Bilingual Multicultural Ed Advisory Council; HB85, Yazzie Lawsuit Response Funding; HB86, Native American Library, Internet & Education; HB87, Yazzie Lawsuit Higher Ed Funding; HB135, School Opportunity & Equity Index; HB227, Ethnic Studies Definition; HB231, Native American Polling Place Protection; SB80, No School Discrimination for Hair; SB210, Ethnic Studies Education; and SB225, Use of Some Revenue for School Funding.

## **TECHNICAL ISSUES**

On page 6, lines 16-19, “tribal education department” is defined; however the sections cited within the definition do not contain “tribal education department.” The sponsor may wish to more thoroughly define “tribal education department.”

On page 9, line 5, “program cost” is used. It is assumed the “program cost” in this subsection only references native language education program units, early childhood education program units, and at-risk program units. The sponsor may wish to identify specific PSFF components in which the TEDs are eligible for, as this will avoid any confusion that the TEDs would be eligible for “program cost,” which includes all components of the PSFF.

On page 13, lines 6-7, the sponsor may wish to insert “tribal education departments” after “school district” to ensure this recalculation occurs on an annual basis for TEDs, similar to the requirement for each school district.

## **OTHER SUBSTANTIVE ISSUES**

The PED’s IED allocates funds from the Indian Education Fund to tribes, nations, pueblos, school districts, and charter schools related to tribal language programs annually. According to the Tribal Education Status Report for the 2019-2020 school year, IED allocated approximately \$1.9 million in grants to tribes, nations, and pueblos for tribal language programs. Specifically, grants were awards to tribes, nations, and pueblos to develop programs in at least one of four the following priority areas: (1) college, career, and life readiness; (2) culturally and linguistically responsive education and social and emotional learning; (3) culture and identity development; and (4) increasing access to Native American language programs.

It is assumed the IGA between the PED and each tribe, nation, and pueblo would include provisions related to audits of funds, similar to the audits conducted by the PED for school districts and charter schools.

Under HB84, a school district may contract with TEDs for the provisions off identified at-risk services, including programs, services, and activities pursuant to the IEA’s Section 22-23A-11 NMSA 1978.

## **ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

N/A

**AMENDMENTS**

N/A