

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2022 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	January 20, 2022
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	HB89

Sponsor:	Rep. Lente	Agency Name and Code Number:	PED - 924
	Tribal Educational Resource	Person Writing	John Sena
Short Title:	Projects	Phone	505-570-7816
		Email:	John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	See fiscal implications	For FY23-FY26	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Unknown	Possibly will impact IAD's operating budget

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: House Bill 60 (HB60), Native American Language Certificate Salaries; House Bill 61 (HB61), Tribal Agreements with Early Childhood Dept.; House Bill 87 (HB87), Indian Education Fund Distributions; House Bill 88 (HB88), Yazzie Lawsuit Appropriations; and House Bill 90 (HB90), Appropriations for Yazzie Lawsuit.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 89 (HB89) proposes an appropriation of approximately \$89.4 million from the general fund to the Indian Affairs Department (IAD), including the following amounts for expenditure in FY23-FY26:

- (1) \$66.7 million to plan, design, renovate, expand, construct, equip, and furnish libraries and education centers statewide for tribes, nations, and pueblos;
- (2) \$2.5 million for a curriculum and materials development center at Navajo Technical University (NTU);
- (3) \$1.5 million for an early childhood center at NTU;
- (4) \$1.5 million for a curriculum and materials development center and \$3.7 million to plan, design, construct, equip, and furnish the A:shiwí College and Career Readiness Center at the Pueblo of Zuni;
- (5) \$1.5 million for a curriculum and materials development center for the Mescalero Apache Tribe;
- (6) \$1.5 million for an education resource center for the Dził Dítł'łooi School of Empowerment, Action, and Perseverance (DEAP);
- (7) \$2.5 million for an education resource center at the Pueblo of Jemez; and
- (8) \$8 million for the Kewa Child Care and Development Center at the Kewa Pueblo.

The Public Education Department's (PED) analysis of this bill focuses on the implications for Native American students who attend public schools.

FISCAL IMPLICATIONS

HB89 would appropriate a total of about \$89.4 million from the general fund to the IAD for expenditure in FY23 through FY26. Any unexpended or unencumbered balance of an appropriation made for a project pursuant to HB89 shall revert to the Tribal Infrastructure Project Fund within six months of completion of the project, but no later than FY26.

The executive's FY23 budget recommendation includes the following related appropriation requests:

- \$9.75 million from the Indian Education Act Fund, which would be used to support

education efforts in tribal communities in the state. The appropriation would be used to support Indian Education Act (IEA) grants, education blueprints and governance structures, IEA implementation, and enhance the Native language ecosystem to support tribal sovereignty and provide resources for locally-determined needs.

- \$10.25 million, which would enable the department to meet the unique needs of the state's Native American student population by working in collaboration and partnership with tribal education departments (TEDs), tribal communities, and tribal education institutions. Through these state-tribal partnerships, TEDs have the opportunity to build the internal capacity to meet the educational needs of each tribal community in the state. The funding proposal promotes a shared responsibility for the education of tribal students by relying on TEDs as experts while at the same time upholding the premise of tribal education sovereignty.

In 2021, House Bill 2 (HB2), General Appropriations, from the Second Special Session appropriated \$10 million to the PED for expenditure in FY22 through FY25 to plan, design, construct, renovate, and equip libraries and broadband infrastructure for Native American communities statewide. The bill was signed into law by Governor Michelle Lujan Grisham on December 21, 2021.

SIGNIFICANT ISSUES

During the Covid-19 pandemic, access to the internet became synonymous with access to education. The PED has made significant progress in helping school districts identify disconnected students and providing immediate connectivity solutions, including Wi-Fi hotspots and “datacasting” technology (see “**Other Substantive Issues**”). However, the department's work to identify disconnected students has also revealed an absence of internet infrastructure among the tribes, nations, and pueblos in the state. School districts' work to employ immediate solutions has provided a temporary stop-gap, but the tribes, nations, and pueblos in the state will need significant investments in infrastructure to ensure internet access is sufficient for high-quality educational experiences.

The PED does not typically administer appropriations for tribal infrastructure and libraries. Since 2005, the IAD has overseen expenditures from the Tribal Infrastructure Project Fund. As laid out in Section 6-29-2 NMSA 1978, the Tribal Infrastructure Project Fund was created to provide “adequate infrastructure” in rural Native American communities, including communications and infrastructure needed for economic development. As a result of the IAD's years of experience improving tribal infrastructure, the PED entered into a memorandum of understanding (MOU) with the IAD on January 12, 2022 to transfer the \$10 million appropriation the PED received during the Second Special Session. Currently, the PED is in the process of transferring the \$10 million appropriation to the IAD to allocate the appropriation for tribal libraries and broadband infrastructure for Native American communities statewide. As a result of the MOU, the IAD will provide annual reports to the PED on the status of the funds and expenditures, which shall demonstrate that the funds were used for the planning, design, construction, renovation, and equipment of libraries and broadband infrastructure for Native American communities statewide.

Background

If enacted, HB89 could assist in building educational infrastructure in tribal communities to support student learning and academic achievement. Community-based libraries and educational resource centers could provide the space and opportunities for extended learning, after school enrichment and tutoring, and summer school. The education infrastructure could potentially

assist in improving academic outcomes for Native American students who need additional academic support and who lack transportation to attend school-based classes or activities. Community-based libraries and educational resource centers would also potentially provide culturally relevant materials and curriculum. This could assist Native American students in gaining skills necessary for mainstream academic success and to develop knowledge and skills in their home cultures and tribal languages.

Tribal libraries

As of November 2021, the New Mexico State Library served and supported 19 tribal libraries through its Tribal Libraries Program (TLP). The TLP provides continuing educational opportunities, funding, leadership, and consulting services to library directors and staff that serve tribes, nations, and pueblos across the state. Typically, tribal libraries do all the things traditional libraries do; however, they often play a more active and involved role in the cultural and language preservation for their tribal communities. For example, at the San Felipe Community Library, the library director may lead story time for tribal children in Keres, the traditional language of the community; while at the Pueblo of Santo Domingo, the library director may work closely with the Head Start program as well as conduct weekly outreach that support early literacy for the tribal community. Additionally, other tribal libraries may build digital archives organizing language material, tribal history, and photographs. Thus, tribal libraries serve as a crucial gathering place for all ages to learn about tribal culture, traditional languages, and tribal history. The Library Services Program, located within the Department of Cultural Affairs, noted the TLP awarded grants totaling \$96 thousand in FY20 to 18 of the 19 tribal libraries. Each tribal library received a \$5,400 grant, and one developing library received \$4,300. Additionally, the New Mexico State Library continues to support libraries as they apply for federal broadband funding. The Federal Communications Commission's (FCC) supplies funding to offset the cost of internet access for schools and libraries, often providing matching funds of 80 percent to 90 percent on internet service fees, fiber infrastructure, and networking equipment. Prior to this program, 60 percent of the 98 New Mexico public and tribal libraries did not have a connection faster than 30 Mbps, 68 percent did not take advantage of federal E-rate funding, and 53 percent did not have a fiber optic connection. Over the past two years, the New Mexico State Library has worked with over 25 libraries to provide them with upgrades to their broadband equipment and improved broadband speeds. Beyond this, the Broadband for Libraries program participates in consortia of school and libraries in multiple regions of the state through a partnership with the Public Schools Facilities Authority (PSFA).

Tribal information technology

Across the country, the majority of people have internet access readily available. However, there is a digital divide in states, such as New Mexico, that are rural, and on Native American reservations where access to internet is limited or nonexistent. A lack of access to the internet and a reliable device can hinder a student's educational attainment. Some research indicates that students who have access to a home device such as a computer are more likely to graduate from high school than their peers who do not have a home computer. To assist in closing the digital divide, the PED's Indian Education Division purchased and distributed in FY20 the following wireless technology devices and equipment: 700 residential hotspots (Navajo Nation); 101 CradlePoint fixed and mobile hotspots for teacherages, chapter houses, inside buildings, buses, and indoor antennas (all tribes, nations, and pueblos); and 6,282 Chromebooks (all tribes, nations, pueblos, and schools with a significant Native American student population).

According to a PSFA analysis of a similar bill in 2020, tribal schools and libraries are eligible for federal E-rate funding. While tribal schools are not covered by PSFA's broadband deficiencies

correction program, the PSFA broadband team assisted and coordinated with the development of two successful broadband tribal consortia (Middle Rio Grande and Jemez-Zia) that utilized the E-rate funding and improved broadband connectivity to schools and libraries for six pueblos. Further expansion and updates are needed for a functional network, according to PSFA.

Educational facilities

In FY21, the PED, the IAD, and the Early Childhood Care and Education Department worked in collaboration to develop and implement a request for application (RfA) process that focused, among other things, on early childhood tribal facilities development. The IAD received a \$1 million interagency transfer from the PED for this specific initiative. Through this process, each tribe, nation, and pueblo in the state was able to determine how funds would be used to meet each tribal government's local, unique educational needs.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

HB89 does not contain any specific administrative implications for the PED.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB89 relates to HB60, Native American Language Certificate Salaries; HB61, Tribal Agreements with Early Childhood Dept.; HB87, Indian Education Fund Distributions; HB88, Yazzie Lawsuit Appropriations; and HB90, Appropriations for Yazzie Lawsuit.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

On May 18, 2021, Judge Wilson issued a ruling in the *Martinez* and *Yazzie* consolidated lawsuit ordering the PED to immediately provide students in the 23 focus school districts with devices, connectivity, and sufficient IT staff support. Following the ruling, the department has helped school districts identify disconnected students and author plans to connect those students. The PED has worked with school districts to help them take advantage of two expansions of the federal E-Rate program:

- the emergency Broadband Benefit (EBB), which provides internet subscription subsidies to low income families, and
- the Emergency Connectivity Fund (ECF), which expands the federal E-Rate program to help schools cover the costs of hotspots, modems, routers, and devices.

The PED's work to immediately connect students was largely successful. Over 52 thousand families qualified for EBB, receiving over \$2.6 million monthly in subsidized internet access. Additionally, New Mexico school districts have applied for and will receive \$66.7 million from

the ECF to provide devices and hotspots to disconnected students.

The PED has also begun piloting a technique called “datacasting” in areas with severe infrastructure deficiencies. Datacasting involves using a device that interfaces with public television signals to provide access to educational resources. While the solution does not provide full-scale internet access, students who rely on datacasting are able to download and upload course content and participate in their educational experience from home. Currently, the PED is piloting the datacasting project in five school districts and plans to scale the project statewide by March 2022.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A