

<b>LFC Requester:</b>	<b>Liu</b>
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**AGENCY BILL ANALYSIS  
2022 REGULAR SESSION**

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

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

*and*

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*{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** February 11, 2022  
**Bill No:** HB165/aHEC/aHAFC

**Sponsor:** Rep. Romero  
Web-Based Native American  
**Short Title:** Student Tool

**Agency Name and Code Number:** PED – 924  
**Person Writing** John Sena  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	(HAFC amendment strikes the appropriation.)		

(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
<b>Total</b>	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: House Bill 60 (HB60), Native American Language Certificate Salaries; House Bill 87 (HB87), Indian Education Fund Distributions; House Bill 88 (HB88), Yazzie Lawsuit Appropriations; House Bill 89 (HB89), Tribal Educational Resource Projects; House Bill 90 (HB90), Appropriations for Yazzie Lawsuit; HB166, Web-Based At-Risk Student Resource Tool; and House Memorial 12 (HM12), Yazzie Lawsuit Plan & Reporting.

Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis of HAFC Amendment: The House Appropriations and Finance Committee (HAFC) amendment (HB165/aHEC/aHAFC) to the bill strikes the \$250 thousand appropriation from the original bill.

Synopsis of HEC Amendment: The House Education Committee (HEC) amendment to the bill (HB165/aHEC) strikes the requirement for a joint powers agreement (JPA) and replaces it with an intergovernmental agreement (IGA) on page 2, line 12; and page 2, lines 14-15.

Synopsis: House Bill 165 (HB165) would require the Public Education Department (PED) to develop, in collaboration with tribes, nations, and pueblos, a Native American web-based resource tool that provides resources for Native American students.

The web-based resource tool may include: (1) information on educational programs focused on the needs of Native American students; (2) modules, interventions, and educational approaches conducive to the educational needs of Native American students; and (3) information on local and regional Native American educational experts.

Under the bill, all intellectual property provided by a tribe, nation, or pueblo shall belong to the respective tribe, nation, or pueblo and is required to be provided to the PED through a joint powers agreement (JPA) with each individual tribe, nation, or pueblo. As such, HB165 would require the PED to enter into a JPA with each tribe, nation, and pueblo to receive any intellectual property provided for the web-based resource tool. (The HEC amendment removes this requirement and replaces it with an IGA.)

Lastly, the bill would appropriate \$250 thousand from the general fund to the PED for expenditure in FY23. (The HAFC amendment strikes the appropriation.)

#### **FISCAL IMPLICATIONS**

HB165 would appropriate \$250 thousand from the general fund to the PED for expenditure in FY23 to develop and host the Native American web-based resource tool and to hire a full-time employee to oversee the web-based resource tool. (The HAFC amendment strikes the appropriation.) Any unexpended or unencumbered balance remaining at the end of FY23 shall revert to the general fund.

The HAFC committee substitute for House Bills 2 and 3 (HAFC/CS for HB2/HB3) would appropriate \$14,988.6 million from the general fund to the Indian Education Fund to meet the requirements of the Indian Education Act. The assistant secretary for Indian education would be required to develop a methodology to allocate the general fund appropriation to tribal education departments, tribal libraries, Native American language programs, school districts, and charter schools based on operational needs and student enrollment.

The appropriation from HAFC/CS for HB2/HB3 to the Indian Education Fund could possibly be utilized to develop, host, and maintain the web-based resource tool. This project could be integrated into the department's current streamline efforts to create a dual-purpose online platform for Native American data, information, and resources. Additionally, this could be accomplished through current staffing in the department.

## **SIGNIFICANT ISSUES**

Currently, the PED's Indian Education Division hosts a resources platform on its [webpage](#) related to Native American education at the national, state, and local levels, including information on agencies, organizations, and digital education tools.

Additionally, the PED included a request for an appropriation to build a Native American language database in the executive's FY23 budget recommendation. In the proposed database, the intent is to catalog the level of fluency, findings, progress, and current state of Native American languages in the state. It is possible for this database to include the provisions of HB165/aHEC/aHAFC, if necessary.

### Joint Powers Agreements

Additionally, each tribe sharing any intellectual property owned by such tribe, would be required to enter into a joint powers agreement (JPA) with the department if HB165 were enacted. (The HEC amendment removes this requirement and replaces it with an IGA.) According to PED staff, a JPA may not be the best instrument to utilize for an agreement between the PED and a tribe, nation, or pueblo. It is clear that the tribe, nation, or pueblo owns the intellectual property and thus the department would not share a power common to both. Traditionally, a JPA is only necessary when two or more public bodies jointly exercise a power common to both of them. DFA released a [memo](#) in November 2007 related to the limited use of joint powers agreements, which details the limited uses for joint powers agreements.

Historically, educational outcomes for Native American students have been consistently below their non-Native peers. According to the 2019-2020 Tribal Education Status Report, proficiency rates for Native American students were considerably lower than those of students of other ethnicities. When compared to the percentage of proficient Asian students, Native American students compare as follows: in reading, there were almost half as many proficient Native American students; in math, one-fifth of Native American students were proficient; and in science, almost 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.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

Under provisions of the bill, the PED would be required to develop and host the web-based resource tool as well as hire a full-time employee to oversee and maintain the web-based resource tool. Additionally, the department would be required to collaborate with Indian nations, tribes, and pueblos in the state on the development of the web-based resource tool. Lastly, the department would be required to enter into JPAs with a tribe, nation, or pueblo to receive any intellectual property that would be hosted on the web-based resource tool. (The HEC amendment removes this requirement and replaces it with an IGA.)

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

HB165/aHEC/aHAFC relates to HB60, Native American Language Certificate Salaries; HB87, Indian Education Fund Distributions; HB88, Yazzie Lawsuit Appropriations; HB89, Tribal Educational Resource Projects; HB90, Appropriations for Yazzie Lawsuit; HB166, Web-Based At-Risk Student Resource Tool; and HM12, Yazzie Lawsuit Plan & Reporting.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

### State-Tribal Collaboration Act

Under the State-Tribal Collaboration Act (STCA), Section 11-18-3 NMSA 1978, every state agency is required to develop and implement a policy that, among other things, promotes effective communication and collaboration between the state agency and Indian nations, tribes, and pueblos. The PED's STCA collaboration and communication policy can be found [here](#).

### Martinez-Yazzie Consolidated Lawsuit

In February 2019, the First Judicial District Court found 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 department oversight were deficient. As such, the court enjoined the state to provide sufficient resources 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 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.

## **ALTERNATIVES**

Under the original bill analysis, the sponsor may wish to remove the requirement for the department and the tribe, nation, or pueblo to enter into a JPA. See discussion above related to “Joint Powers Agreements.”

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

N/A

## **AMENDMENTS**

N/A