

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

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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 10, 2022
Bill No: HB87/aHEC/aHAFC

Sponsor: Rep. Lente
Indian Education Fund
Short Title: Distributions

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 removed 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
Total	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 88 (HB88), Yazzie Lawsuit Appropriations; House Bill 89 (HB89), Tribal Educational Resource Projects; House Bill 90 (HB90), Appropriations for Yazzie Lawsuit; 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 (HB87/aHEC/aHAFC) to HB87/aHEC strikes the language in the title related to “making an appropriation” and also strikes the entirety of section two, which is the \$20 million appropriation under HB87.

Synopsis of HEC Amendment: The House Education Committee amendment to House Bill 87 (HB87/aHEC) requires the Public Education Department to enter into an intergovernmental agreement (IGA) with tribes for funding disbursements rather than a joint powers agreement (JPA) under the original bill.

Synopsis of Original Bill: House Bill 87 (HB87) proposes to amend the New Mexico Indian Education Act by adding distribution requirements from the Indian Education Fund. Additionally, \$20 million is appropriated to the Indian Education Fund to provide funding for New Mexico tribes.

The effective date of the bill is July 1, 2023.

FISCAL IMPLICATIONS

HB87/aHEC would appropriate \$20 million from the general fund to the Indian Education Fund for expenditure in FY24 and subsequent years to provide funding for New Mexico tribes. Any unexpected or unencumbered balance at the end of a fiscal year shall not revert to the general fund. (The HAFC amendment removes the appropriation.)

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.

SIGNIFICANT ISSUES

Under the bill, no less than 70 percent of all distributions made from the Indian Education Fund would be required to be made to New Mexico tribes, beginning in FY24, in the following way:

- In FY24 – FY28, 90 percent of the total amount of distributions would be required to be provided in equal amounts to each New Mexico tribe; and 10 percent of the total amount of distributions would be required to be provided to each New Mexico tribe in an amount proportional to the total number of students served by the tribal education department within that New Mexico tribe.
- In FY29 – subsequent years, seventy percent of the total amount of distributions would be required to be provided in equal amounts to each New Mexico tribe; and thirty percent of the total amount of distributions would be required to be provided to each New Mexico tribe in an amount proportional to the total number of students served by the tribal education department within that New Mexico tribe.

Current Indian Education Fund Allocations

Currently, the Public Education Department (PED) allocations appropriations from the Indian Education Fund based on priorities established by the PED Secretary and Assistant Secretary of Indian Education. During the 2020-2021 school year, the PED allocated approximately \$2.19 million in Indian Education Act grants to tribes, nations, and pueblos. The PED allocates Indian Education Fund appropriations to all tribes, nations, and pueblos in the state with amounts ranging from \$75 thousand to \$200 thousand. See **Attachment 1** for details related to the amounts allocated to each tribe, nation, or pueblo for the 2020-2021 school year.

Moreover, during the 2020-2021 school year, the PED allocated approximately \$2.56 million in Indian Education Act grants to school districts and charter schools for one or more of the following priorities areas: (1) college, career, and life readiness; (2) culturally and linguistically relevant education and social emotional learning; (3) culture and identity development; and (4) increasing access to Native American language programs. The PED also allocated appropriations from the Indian Education Fund to school districts and charter schools who enroll a significant number of Native American students in the state with amounts ranging from \$25 thousand to \$90 thousand. See **Attachment 2** for details related to the amounts allocated to those school districts and charter schools.

Lastly, the PED also allocated Indian Education Funds to the following entities in FY22: (1) Diné College - \$250.4 thousand; (2) Keres Children's Learning Center - \$75 thousand; (3) Pueblo of Jemez - \$100 thousand; and the University of New Mexico - \$267.5 thousand.

If HB87/aHEC/aHAFC were enacted, it would change the way the department allocates funds from the Indian Education Fund. This could mean that the department's priorities would not be sufficiently funded from Indian Education Act appropriations as there would be decreased

funding available for awards to school districts, higher education institutions, and other tribal entities who currently receive, and in the future who could receive, Indian Education Act grant awards.

Joint Powers Agreements

Additionally, each tribe would be required to enter into a JPA with the department if HB87/aHEC were enacted (the HEC amendment changes this requirement to 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 as it is unclear what the joint power would be for both the department and the sovereign tribe, nation, or pueblo. 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.

Over the past two years, the PED has utilized the award letter process to award grants from the Indian Education Fund to entities who receive the funding for tribal education priorities and programs. The award letter process replaced the prior process where the PED entered into an 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, the 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, which is the beginning of the state fiscal year. The award letter process includes assurance forms for the tribe, nation, or pueblo to sign. The assurance forms include details related to payment, fund expenditures, and accountability measures.

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

The PED would need to create forms and establish a new system, if HB87/aHEC is enacted, to carry out the provisions related to the JPAs between the department and a tribe, nation, or pueblo (the HEC amendment changes this requirement to an IGA). Additionally, the PED's Indian Education Division would be required to allocate substantially different funding allocations to tribes, nations, and pueblos and other entities receiving Indian Education Act grants, which is a different funding structure than is currently being utilized.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB87/aHEC/aHAFC relates to HB60, Native American Language Certificate Salaries; HB88, Yazzie Lawsuit Appropriations; HB89, Tribal Educational Resource Projects; HB90, Appropriations for Yazzie Lawsuit; and HM12, Yazzie Lawsuit Plan & Reporting.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

Under the original HB87 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