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| 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 type="checkbox"/> | Amendment | <input checked="" type="checkbox"/> | Date | February 10, 2022 |
| Correction | <input type="checkbox"/> | Substitute | <input type="checkbox"/> | Bill No: | HB88/aHEC |

| | | | |
|---------------------|----------------|-------------------------------------|-----------------------|
| Sponsor: | Rep. Lente | Agency Name and Code Number: | PED - 924 |
| | Yazzie Lawsuit | Person Writing | John Sena |
| Short Title: | Appropriations | 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 | | |
| N/A | \$21,500.0 | Recurring | 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 | 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 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: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of HEC Amendment: The House Education Committee (HEC) amendments (HB88/aHEC) to the bill strikes the language in the title related to the consolidated Yazzie/Martinez lawsuit and replaces it with “to serve New Mexico’s Native American students”; strikes the following language on page 1, line 19 of “and subsequent fiscal years”; and strikes the requirement of a joint powers agreement (JPA) and replaces it with “an intergovernmental agreement” (IGA) on page 3, lines 6-7.

Synopsis: House Bill 88 (HB88) proposes an appropriation from the general fund to the Indian Education Fund for the following amounts for expenditure in FY23 and subsequent years:

- (1) \$5.75 million for tribal education departments (TEDs) to build capacity to fully develop and implement education blueprints and governance structures to serve the state’s American Indian students, to engage in collaborations with schools and school districts, and to plan community-based education programs and social services for Native American students;
- (2) \$5.75 million for tribal libraries’ education operations; and
- (3) \$10 million for tribal education programs for extended learning and Native language programs.

Additionally, the Public Education Department would be required to enter into a joint powers agreement with each tribe, nation, or pueblo according to Section 11-1-3 NMSA 1978. (The HEC amendment removes this requirement and replaces it with an IGA.)

The PED’s analysis of this bill focuses on the implications for Native American students in public schools.

FISCAL IMPLICATIONS

The bill proposes an appropriation of \$21.5 million from the general fund to the Indian Education Fund for expenditure in FY23 and subsequent years. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

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, for education blueprints and governance structures, for IEA implementation, to enhance the Native language ecosystem, and 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 Section 22-23A-8 NMSA 1978, the Public Education Department (PED) is charged with ensuring that funds appropriated from the Indian Education Fund are used for the purposes state in the Indian Education Act and shall not be used to correct for previous reductions of program services. The purposes of the Indian Education Act are detailed in Section 22-23A-2 NMSA 1978 and include, among other things: ensure maintenance of Native American languages; and ensure that the PED partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities.

Under the bill, the proposed appropriation of \$10 million for TEDs for extended learning and Native American language programs would be expended in the following manner:

- 90 percent of the total amount is required to be distributed to each tribe, nation, and pueblo in an equal amount; and
- the remaining 10 percent is required to be distributed to each tribe, nation, and pueblo in an amount proportional to the total number of students served by the TED within each tribe, nation, or pueblo.

Background. If enacted, HB88/aHEC 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.

Current Indian Education Fund Allocations. Currently, the PED allocates 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 HB88/aHEC were enacted, it could mean that tribes, nations, and pueblos would receive double funding for tribal language programs, as they will likely receive Indian Education Act grant awards for the same purpose.

Joint Powers Agreements. Additionally, each tribe would be required to enter into a joint powers agreement (JPA) with the department if HB88 were enacted. (The HEC amendment removes this requirement and replaces it with a requirement for 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 intergovernmental agreement (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.

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.

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 be charged with distributing the allocations based on the provisions of HB88/aHEC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB88/aHEC relates to HB60, Native American Language Certificate Salaries; HB87, Indian Education Fund Distributions; 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

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A