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| <b>LFC Requester:</b> | <b>Liu</b> |
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**AGENCY BILL ANALYSIS  
2023 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** 1/25/23  
**Bill No:** HB140

**Sponsor:** Lente  
**Short**        TRIBAL EDUCATION  
**Title:**        TRUST FUND

**Agency Name and Code**        PED - 924  
**Number:** \_\_\_\_\_  
**Person Writing**        Gregory Frostad  
**Phone:** 505-470-5752    **Email** Gregory.frostad@ped.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY23          | FY24 |                           |               |
|               |      |                           |               |
|               |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY23              | FY24 | FY25 |                           |               |
|                   |      |      |                           |               |
|                   |      |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

|              | <b>FY23</b> | <b>FY24</b> | <b>FY25</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: (For the Legislative Education Study Committee) House Bill 140 (HB140) would create the Tribal Education Trust Fund (TETF) to be used for purposes enumerated in the Indian Education Act or in intergovernmental agreements with nations, tribes, or pueblos. The bill would provide for annual distributions from the fund to the Public Education Department (PED) beginning in FY25, and would allow the fund to be expended, with certain restrictions, to avoid state deficit spending. HB140 would provide for accountability and reporting. Finally, the bill would include a section-specific definition for “New Mexico tribe,” which means an Indian nation, tribe, or pueblo partially or wholly located in New Mexico, where Native American students are being educated in New Mexico.

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

**FISCAL IMPLICATIONS**

The bill would appropriate \$50 million from the Public Education Reform Fund (PERF) to the TETF for expenditure in FY24 and subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public education reform fund.

**SIGNIFICANT ISSUES**

Section 1 of the bill addresses appropriations to and distributions from the TETF. Beginning in FY25, and in every subsequent year, thereafter:

- Distributions from the fund to PED shall be made on July 1 if available funds equal the greater of \$2.5 million, or 5 percent of the average year-end market value of the TETF for the preceding five years.
- On August 1, 2024, and on that date each year thereafter, PED shall disburse to each NM tribe, as follows: 90 percent of the TETF total shall be disbursed in equal amount to each tribe, while the remaining 10 percent shall be distributed to each tribe in proportion to the number of New Mexico students each tribe serves.
- Beginning in FY25, the lesser of one percent of the fund balance, or \$100,000, shall be appropriated to PED to administer the fund, including paying the cost of related staff salaries and expenses; any unencumbered balance from this amount at the end of the year reverts to the TETF.
- In addition to mandated distributions, to avoid a constitutional deficit, money in the fund may be appropriated to the General Fund if General Fund balances and balances in the

General Fund Operating Reserve, the Appropriation Contingency Fund, the Tobacco Settlement Permanent Fund, the State-Support Reserve Fund, and the Tax Stabilization Reserve will not meet appropriation levels authorized from the General Fund for the current fiscal year. Money appropriated from TETF to the General Fund under these circumstances may only be made in amounts necessary to meet General Fund obligations for that fiscal year, and only if the legislature authorizes necessary appropriations from the other named funds and exhaust those funds' balances.

Section 2 of the bill address accountability and reporting measures:

- Before April 15 annually, each tribal education department must submit a summary of its operating budget and plan for the coming fiscal year to PED based on tribal goals and needs:
- Before October 15, each tribal education department must submit a spending report to PED with an assessment of program impact, student engagement, and outcomes based on tribally determined criteria.
- By November 15, PED must report total disbursements for the previous fiscal year to the LESC, any other appropriate interim committee, and the tribes, with a projection of available disbursements for the following year.
- The bill explicitly guarantees that none of the accountability and reporting measures in Section 2 shall interfere with the sovereignty of federally recognized New Mexico tribes.
- PED would be allowed to establish procedures and adopt rules after formal consultation with tribes for administration of the TETF; enter into intergovernmental agreements with tribes for the disbursements; and solicit and report on the required tribal education budgets, plans and reports.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

PED may need to hire additional FTE, which the bill provides, along with the lesser of \$100 thousand or one percent of the TETF appropriated from the fund to PED annually for staff salary and benefits. PED may need to promulgate rule or negotiate and draft appropriate memoranda of understanding or intergovernmental agreements with New Mexico tribes for the distribution of moneys from the fund as required under the bill.

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

N/A

## **TECHNICAL ISSUES**

Section 3 of HB140 appropriates \$50 million from the PERF to the TETF, for expenditure in FY24 and subsequent fiscal years. However, the body of the bill only provides for expenditures and distributions from PED to the tribes, nations, and pueblos beginning in FY25. The sponsor may wish to consider amending Section 3 of the bill to clarify that the moneys are appropriated for expenditure in FY 25 and subsequent years. Alternatively, the sponsor may wish to consider making distributions to tribes, nations, and pueblos available beginning in FY24.

**OTHER SUBSTANTIVE ISSUES**

N/A

**ALTERNATIVES**

N/A

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

N/A

**AMENDMENTS**

N/A