

<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** January 25, 2023  
**Bill No:** HB147

**Sponsor:** Lente  
**Short**        INDIAN EDUCATION FUND  
**Title:**        DISTRIBUTIONS

**Agency Name and Code**        PED - 924  
**Number:** \_\_\_\_\_  
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**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 Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

- [HB140, Tribal Education Trust Fund](#)
- [HB149, Calculation of Distribution to Nations, Tribes, and Pueblos](#)

Duplicates/Relates to Appropriation in the permanent school fund: N/A

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House Bill 147 (HB147) would amend the [Indian Education Act](#) to change the [Indian Education Fund](#) distributions and procedures. The bill would require no less than 50 percent of all Indian Education Fund distributions to be made to New Mexico tribes on a monthly basis.

The bill would allow tribes to carry over unused portions of funds received, provided the funds are used for the purposes of the Indian Education Act.

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

**FISCAL IMPLICATIONS**

The bill does not contain an appropriation.

The Executive budget recommendation for FY24 includes:

- \$25 million for the Indian Education Act Fund
- \$13 million for Tribal and Rural Extended Learning Programs
- \$20 million for Tribal Libraries (Capital Outlay)
- \$3 million for Salary Parity for Native American Language and Culture Certificate Staff
- \$2.25 million for Indigenous Education Technical Assistance Centers

The Legislative Finance Committee budget recommendation for FY24 includes:

- \$20 million for the Indian Education Act Fund
- No salary parity

**SIGNIFICANT ISSUES**

The bill would require no less than 50 percent of distributions made from the Indian Education Fund to be made to New Mexico tribes and to be distributed as follows:

- 90 percent of the total amount of distributions to be provided in equal amounts to each tribe; and
- 10 percent of the total amount of distributions to be provided to each NM tribe in an amount proportional to the total number of NM students served by the tribal education

department within the New Mexico tribe.

The remaining funds, at most 50 percent of distributions, could be distributed to school districts, charter schools, and other entities, for which the bill requires the Public Education Department (PED) develop procedures and rules to award to those entities.

**Indian Education Fund Allocations.** The PED allocations from the Indian Education Fund are based on priorities established by the PED Secretary, Assistant Secretary of Indian Education in collaboration with Tribal Leaders, Tribal Education Directors, Indian Education Advisory Council members, and school personnel serving Native American Students.

- Refer to [Investments and Programs FY23](#) for a breakdown of funding per grant.
- Refer to [Detail of Grantees- Investments Programs FY23](#) for a breakdown of the above.

If enacted, the bill would change the way PED allocates funds from the Indian Education Act Fund, which could lead to insufficient funding for department priorities that are funded with Indian Education Act funds, as there would be decreased funding available for awards to school districts and charter schools, higher education institutions, and other tribal entities that receive or would receive Indian Education Act grant awards.

**Award letter process.** Over the past two years, PED has utilized the award letter process to award grants from the Indian Education Fund to entities that receive the funding for tribal education priorities and programs. The award letter process replaced the prior process where 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, 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. The award letter process includes assurance forms for the tribe, nation, or pueblo to provide input and sign. The assurance forms include details related to payment, fund expenditures, and accountability measures.

- **Outcomes for Native American students.** Historically, educational outcomes for Native American students have been consistently below their non-Native peers. According to the 2021-2022 Tribal Education Status Report, proficiency rates for Native American students were considerably lower than those of students of other ethnicities
- in reading, half as many proficient Native American students were proficient compared to the percentage of proficient Asian American students;
- in math, one-fifth of Native American students were proficient; and
- in science, just under 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 bill would require PED to develop procedures and rules for the award money from the fund for school districts, charter schools, and other entities. PED would be required to issue monthly distributions to tribes.

This bill would require additional FTE to complete this work.

The bill would allow PED to request quarterly spending reports from tribes and to enter into agreements with tribes for the purposes of disbursing funds.

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

Relates to HB149, Public Ed Dept. Native American Funding, which proposes to require PED to calculate annually an amount of funding equal to a percentage of the permanent school fund annual distribution for public schools found in Paragraph 1 of Subsection H of Section 7 of Article XII of the New Mexico Constitution. This amount is to be determined by dividing the total number of Native American students by the total student population and multiplying by 40 percent of the additional distribution. PED is to include the calculated amount in its annual proposed budget, after which the legislature may appropriate that amount to the Tribal Education Trust Fund, if HB140 is enacted and the Tribal Education Trust Fund is created.

House Bill 140 (HB140) would create the Tribal Education Trust Fund, to be used for purposes enumerated in the Indian Education Act or in intergovernmental agreements with nations, tribes or pueblos, makes a non-reverting appropriation of \$50.0 million from the Public Education Reform Fund to the Tribal Education Trust Fund for FY24 and subsequent years. The bill provides for annual distributions from the fund to PED beginning in FY25, and allows the fund to be expended, with certain restrictions, to avoid state deficit spending. HB140 provides for accountability and reporting. Finally, the bill includes 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.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

The Legislature passed the Indian Education Act in 2003 to provide Native American students in New Mexico with opportunities for an equitable and culturally appropriate education in public schools. The law establishes the Indian Education Division of the PED as well as the Indian Education Advisory Council and lays out systems for the state and school districts and charter schools to collaborate with tribal governments on matters related to curricula, teaching, support services, and other programs to meet the needs of Native American students - [Indian Education Act Implementation](#). The purpose of the Act is to ensure equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for American Indian students enrolled in public schools.

## **ALTERNATIVES**

N/A

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

N/A

**AMENDMENTS**

N/A