

<b>LFC Requester:</b>	<b>Liu</b>
-----------------------	------------

**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** 01/25/23  
**Bill No:** HB149

**Sponsor:** Lente  
**Short**    PED NATIVE AMERICAN  
**Title:**    FUNDING

**Agency Name and Code**    PED - 924  
**Number:**    \_\_\_\_\_  
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		
None	None	Recurring	LGPF

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	\$12,200.0	\$12,200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to:

[House Bill 140 \(HB140\), Tribal Education Trust Fund](#)

[House Bill 147 \(HB147\), Indian Education Fund Distributions](#)

Duplicates/Relates to Appropriation in the General Appropriation Act: None

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House Bill 149 (HB149) would require the Public Education Department (PED) to calculate an amount equal to the voter-approved additional distribution from the land grant permanent fund (LGPF) for K-12 education, proportionate to the share of Native American students in public schools. The PED would be required to include the calculated amount in its annual proposed budget.

The Legislature would be empowered to appropriate the amount calculated to PED for distribution to the federally recognized Indian nations, tribes, and pueblos located wholly or partially in New Mexico to be expended only within New Mexico or to the tribal education trust fund if that fund is created pursuant to legislation ([House Bill 140, Tribal Education Trust Fund](#)) enacted during the current legislative session.

The effective date of the bill is July 1, 2025.

### **FISCAL IMPLICATIONS**

The bill does not contain an appropriation.

PED estimates the provisions of this bill would result in an annual appropriation of \$12.2 million.

HB149 would establish a new revenue source for a Tribal Education Trust Fund (to be established by companion bill HB140) by aligning funding for tribal education with a share of the income the state derives from the permanent land grant fund. The amount would be equal to the K-12 land grant permanent fund distribution, proportionate to the share of Native American students in New Mexico (approximately 13 percent). In November 2022, voters approved an additional 1.25 percent distribution from the Land Grant Permanent Fund (LGPF). Forty percent of this additional distribution, (approximately \$94 million), is earmarked for the amendment to Article 12, Section 7 of the state constitution to provide for additional annual distributions of the permanent school fund for enhanced instruction for students at risk of failure, extending the school year, teacher compensation and early childhood education. HB149 requires PED to budget an amount for tribal education departments that is equivalent to this additional distribution, proportionate to the share of the Native student population. This would result in an annual amount of upwards of \$12.2 million for tribal education starting in FY25.

The bill does not specify where PED must direct any funds appropriated pursuant to HB149. Instead, the Native nations, tribes, and pueblos, or administrators of the Tribal Education Trust Fund would have the autonomy to determine the greatest areas of need for Native American students and apply the additional funds accordingly.

### **SIGNIFICANT ISSUES**

HB149 would create a funding stream to sustain the Tribal Education Trust Fund in perpetuity. The Indian Education Fund (22-23A-8 NMSA 1978) is funded through the general fund.

### **PERFORMANCE IMPLICATIONS**

PED would be required annually to calculate the required amount and include it in its annually proposed department budget.

### **ADMINISTRATIVE IMPLICATIONS**

PED would be required to take on this additional responsibility, which could impact the need for

additional FTE.

With the elimination of the state's practice for taking credit for Impact Aid and other funding sources, in conjunction with the influx of COVID-related federal funding, there has been a significant increase in cash balances of the districts that would potentially benefit from this legislative initiative.

PED recommends that should HB149 be enacted, the method of distribution of the earmarked with the highest degree of accountability would be through a below-the-line appropriation and not the SEG.

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

Relates to HB140, which establishes the Tribal Education Trust Fund.

Relates to HB147, which establishes levels of disbursement from the Indian Education Fund, with 90 percent of distributions from the fund made in equal amounts to each New Mexico tribe, and the remaining 10 percent distributed to each New Mexico tribe in an amount proportional to the total number of New Mexico students served by the tribal education department within that New Mexico tribe.

### **TECHNICAL ISSUES**

The New Mexico Constitution's definition of Land Grant Permanent Fund beneficiaries (Article 12, Section 7), does not include Native American Tribes. Since Tribes are not designated beneficiaries of the LGPF, HB149 avoids a direct link to the LGPF and instead constructs an equivalence to be taken from the general fund. The legislature does not have the power to divert the funds for another purpose or beneficiaries than those stated in the Enabling Act. In 1997 Congress allowed New Mexico's voters to set the distribution amount through constitutional resolution, but it did not allow changing the 21 designated beneficiaries. For this reason, HB 149 does not propose to take funds for tribal education from the LGPF but instead instructs PED to calculate an equivalent amount to be taken from the General Fund.

### **OTHER SUBSTANTIVE ISSUES**

The Indian Education Fund (22-23A-8 NMSA 1978) is also funded through the general fund. The Tribal Education Alliance notes that both the Indian Education Fund and the proposed Tribal Education Trust Fund (HB 140) will support the purposes of the Indian Education Act. Additionally, according to the Tribal Education Alliance, the Indian Education Fund supports school-based learning, while the Tribal Education Trust Fund will support community-based learning.

HB149 does not state how the bill will benefit Native American students that do not live on tribal land or attend tribal community schools.

### **ALTERNATIVES**

N/A

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

If HB140 (the creation of the Tribal Education Trust Fund) does not pass this legislative session, the funds from HB149 would be distributed to the federally recognized Indian nations, tribes and pueblos, but not to the failed fund. However, HB149 does not specify how PED would/should decide which nations/tribes/pueblos the department would make distributions to, the amount of

those distributions, or for what intended purpose.

**AMENDMENTS**

Should passage of companion bill HB140 appear unlikely, the sponsor may wish to consider amending HB149 to provide for the calculation of distributions to New Mexico tribes.