

LFC Requester: Liu



**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2025 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: 01/23 /25

Bill No: SB13

Agency Name and Code: PED - 924

Sponsor: Shendo

PED Lead Analyst:

Phone: _____ Email: _____

Short Title: STATE-TRIBAL EDUCATION
COMPACT SCHOOLS ACT

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SECTION II: FISCAL IMPACT

(Parenthesis () Indicate Expenditure Decreases)

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	N/A	NFA

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None	N/A	NFA

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	None	N/A	NFA

Duplicates/Relates to Appropriation in the [General Appropriation Act](#): None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 13 (SB13) would create the State-Tribal Education Compact Schools Act, authorizing the Public Education Department (PED) to enter into state-tribal education compacts with Indian nations, tribes, or pueblos, located wholly or partially in New Mexico, to establish language- and culture-based schools, that will be known as “state-tribal education compact schools,” which the bill defines as schools established pursuant to the State-Tribal Education Compact Schools Act.

The bill would amend the [Public School Capital Outlay Act definition](#) of “school district” to include state-tribal education compact schools.

A state-tribal education compact would be exempt from all state statutes and rules applicable to school districts, state-chartered charter schools, local school boards or governing bodies of charter schools regarding the curriculum, assessment and evaluation requirements of a school, except for those statutes and rules made applicable pursuant to the provisions of the State-Tribal Education Compact Schools Act and in the state-tribal education compact.

FISCAL IMPLICATIONS

The bill does not contain an appropriation.

The bill may have fiscal implications for school districts and charter schools who lose students to state-tribal compact schools and may have effects upon the statewide calculation and distribution of state equalization guarantee funds.

The bill expands the reach of the Public School Capital Outlay Act by adding state-tribal education compact schools to the definition of “school district” but does not provide for funding or a method of determining local share requirement for compact schools.

The bill proposes potentially significant additional duties to PED that may require additional FTE to adequately administer, particularly for Indian Education staff.

SIGNIFICANT ISSUES

All actions, negotiations and business of PED and an Indian nation, tribe or pueblo entering into a state-tribal education compact would be required to be conducted pursuant to the provisions of the Open Meetings Act. To initiate a state-tribal education compact, the governing body of an Indian nation, tribe, or pueblo may submit a resolution and application to PED.

State-tribal education compacts would be established for terms of five years and would be required to include the following provisions:

1. compliance;
2. notices of violation;
3. dispute resolution, which may include nonjudicial processes such as mediation;
4. recordkeeping and auditing;
5. the delineation of the respective roles and responsibilities;

6. whether the compact is renewable; and
7. compact termination.

State-tribal education compact schools would be required to:

1. create a curriculum and conduct an educational program that is controlled and evaluated by the Indian nation, tribe or pueblo and is language and culture based
2. employ licensed school employees or language-proficient employees, as determined by the Indian nation, tribe or pueblo, who are seeking department licensure;
3. comply with the licensed school employee criminal history record check as provided in Section 22-10A-5 NMSA 1978 and comply with the provisions of Section 22-10A-5.2 NMSA 1978 and the termination and notification provisions of Section 22-10A-22 NMSA 1978;
4. comply with nondiscrimination laws;
5. adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance; and
6. be subject to and comply with legislation enacted after the effective date of the State-Tribal Education Compact Schools Act governing the operation and management of state-tribal education compact schools.

A state-tribal education compact school may implement a policy of preference to tribal members in employment and prioritize the admission of tribal members with the capacity of the school's programs or facilities is not as large as demand.

A state-tribal education compact school would be prohibited from:

- engaging in sectarian practices in the school's educational program, admissions or employment policies or operations;
- charging tuition, but would be allowed to charge fees for participation in optional extracurricular events and activities; and
- denying admission on any basis other than age group, grade level, or capacity, and shall otherwise enroll all students who apply.

If capacity is insufficient to enroll all students who apply, a state-tribal education compact school may prioritize the enrollment of tribal members and siblings of students who are already enrolled at the state-tribal education compact school.

Reporting. A state-tribal education compact school would be required to report student enrollment to PED. Reporting would be done in the same manner as reporting for and use the same definitions of enrolled students and annual average full-time equivalent enrollment as is required of school districts. A state-tribal education compact school would also be required to submit an annual report to the department. The annual report will be developed by the department in collaboration with the Indian nation, tribe, or pueblo that operates the school. Reporting is required for a school to receive state or federal funding that is allocated based on student enrollment and demographics.

Funding. Funding for a state-tribal education compact school would be determined by the public school funding formula pursuant to the provisions of the Public School Finance Act. Salary amounts for licensed school employees would be based on the salary amounts of the school district in which a state-tribal education compact school is located. A state-tribal education compact school would use the statewide salary minimums pursuant to the provisions of the

School Personnel Act, and would be eligible to apply for state grants on the same basis as a school district.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

No later than July 1, 2026, PED would be required to establish:

- an application and approval process;
- procedures and timelines for negotiations between the department and an Indian nation, tribe or pueblo; and
- approval or disapproval and execution of state-tribal education compacts.

Within 90 days of receiving a resolution and application, the PED would be required to convene a government-to-government meeting for the purpose of considering the resolution and application and initiating negotiations between the PED and the Indian nation, tribe, or pueblo. The government-to-government meeting would be between the identified executives within the department and the Indian nation, tribe, or pueblo who applied. The department and the Indian nation, tribe or pueblo submitting the resolution and application would determine the terms of the state-tribal education compact. The application would be required to indicate the grade or grades from pre-kindergarten through 12th grade that would be offered at the state-tribal education compact school and demonstrate that the school would operate in compliance with all applicable laws, any rules adopted pursuant to the provisions of the State-Tribal Education Compact Schools Act, and the terms and conditions set forth in the application.

PED would be required to post each state-tribal education compact on the department's webpage and to promulgate rules for the implementation of the State-Tribal Education Compact Schools Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

Section 3, Subsection C of the bill indicates that the process to establish a state-tribal education compact school "may be initiated by submission to the department of a resolution" by the tribal governing body. This suggests that either the resolution is not required, or that some other method may initiate the process. The sponsor may wish to clarify that the submission of the resolution is *required* to initiate the establishment and negotiation process.

Section 4 of the bill exempts compact schools from most state statutes and rules regarding curriculum, assessment, and evaluation requirements, but explicitly makes several sections of the School Personnel Act applicable to compact schools, including the notice and termination requirements of Section 22-10A-22 NMSA 1978. The bill does not, however, require compact schools to comply with other aspects of the reemployment and termination process, included in Sections 22-10A-24, 22-10A-25, and 22-10A-26, regarding termination decisions, appeals, and exceptions, respectively. Nor does the bill include any reference to parallel provisions and processes related to employee discharge, in Sections 22-10A-27 and 22-10A-28, regarding

discharge decisions and appeals, respectively. The sponsor may wish to consider including other aspects of the employment renewal or termination process to those provisions applicable to compact schools.

Sections 5, Subsection C and 7, Subsection B have nearly identical provisions regarding enrollment preference at compact schools. Both would permit state-tribal education compact schools to prioritize the enrollment of tribal members, though Section 5.C also permits the prioritization of siblings of already-enrolled students. The sponsor may wish to consider consolidating these provisions.

Note, also, that Section 5.C is not clear if the potential prioritization of enrollment of “tribal members” is limited to the members of the tribe that negotiated the compact and administrate the compact school. The sponsor may wish to clarify this language.

Section 4 of the bill prohibits state-tribal education compact schools from engaging in “sectarian practices in the school’s educational program, admissions, or employment practices, or operations. The bill does not define, “sectarian practices,” however, raising the possibility that certain tribal cultural or spiritual practices may be inadvertently included in what might be considered “sectarian.” The sponsor may wish to consider defining "sectarian practices" in such a way to permit tribal cultural practices be included in the compact school’s educational program.

The bill requires that the compact address the renewability and termination of the compact but does not address what happens to the school when a compact is terminated. Does a compact school become a solely tribal school? Does it default to being subject to the entirety of the public school-related law from which it had been exempted? Is this issue to be negotiated and addressed in each compact? Is it something that PED would include in its rules implementing the act? The sponsor may wish to clarify these requirements and eventualities.

OTHER SUBSTANTIVE ISSUES

While the bill clearly supports tribal sovereignty in the establishment and administration of the state-tribal education compact schools, wholesale exception from the body of law and regulation governing public education in New Mexico may raise unexpected consequences. For example, the bill presumably would exempt licensed personnel at compact schools from most requirements of the School Personnel Act, save a few explicitly noted sections, such as the requirement for background checks in Section 22-10A-5 MSA 1978. Would such licensed personnel be insulated from licensure actions, such as suspension or revocation, in cases where it would be appropriate for other teachers in the state? For another example, would compact schools be exempt from Section 22-1-9.1 requirements related to the New Mexico diploma of excellence? How would such an exemption affect a student’s chances of postsecondary education or employment? Might these contemplated exceptions, potentially creating different sorts of education-related foci and circumstances for students at compact schools, run afoul of the New Mexico constitutional right to a uniform education?

Presumably, some of these issues would or could be resolved in the compact negotiation process between the department and the tribe, nation, or pueblo, but that suggests a very lengthy and complicated process, to address many of the potential exceptions to the Public School Code and concomitant rules during this negotiation. Alternatively, the department might consider some way of addressing these issues through the promulgation of rules, but rule cannot contradict the blanket exemption provided by the bill. The sponsor may wish to more carefully and

incrementally consider which provisions of the Public School Code should not apply to compact schools, rather than executing an immediate blanket exemption from the majority of the Code.

According to the National Conference of State Legislatures, Alaska and Washington have State-Tribal Education Compacts.

- **Alaska.** In 2016, the State Board of Education and Early Development solicited and considered over 18,000 ideas, submitted by nearly 1,400 Alaskans in 109 communities, on improving education in the state. Ideas were consolidated into strategic priorities, one of which was to close the achievement gap by ensuring equitable educational rigor and resources, and recommended creating the option for self-governance compacting for the delivery of education between the State of Alaska and Tribes or tribally-empowered Alaska Native organizations. This resulted in the creation of state tribal education compact schools.
- **Washington.** In 2013, the Washington state Legislature passed a law authorizing state-tribal education compact schools, authorizing the Superintendent of Public Instruction to enter into state-tribal education compacts and:
 - exempting these schools from all existing state statutes and rules regarding school districts and district boards of directors;
 - establishing standards for teachers, staff, and curriculum;
 - outlining admissions policies and school funding; and
 - establishing reporting requirements on student enrollment.

Compact schools are encouraged to implement early learning pilot programs.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

See, “Technical Issues,” above, for potential amendments to the bill.