

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE
24th NAVAJO NATION COUNCIL -- First Year, 2019

AN ACTION

RELATING TO NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING NEW MEXICO SENATE BILL 172 TITLED "AN ACT RELATING TO PUBLIC SCHOOL FINANCE; EXCLUDING IMPACT AID FROM THE DEFINITION OF "FEDERAL REVENUE" FOR THE PURPOSE OF DETERMINING THE STATE EQUALIZATION GUARANTEE DISTRIBUTION"

WHEREAS:

- A. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered the Naabik'íyáti' Committee to coordinate all state programs, including education in public schools. See 2 N.N.C. §§ 700 (A), 701 (A) (6). See also CO-45-12.
- B. The Navajo Nation has a government-to-government relationship with the State of New Mexico.
- C. Senators George K. Munoz and Clemente Sanchez introduced New Mexico Senate Bill 172 to the 54th Legislature of the State of New Mexico. See New Mexico SB 172 attached hereto as **Exhibit A**.
- D. Senate Bill 172 seeks to amend the definition of "federal revenue" of the "STATE EQUALIZATION GUARANTEE DISTRIBUTION" by deleting certain sections that include "PL 874" or "Impact Aid" funds provided by the federal government. *Id.*
- E. It is in the best interest of the Navajo Nation that Impact Aid Funds shall not be used to fulfill the State of New Mexico legal responsibilities pursuant to the Yazzie/Martinez v. State of New Mexico decision.
- F. The Speaker of the Navajo Nation Council and the President of the Navajo Nation have issued a joint statement supporting SB 172 and is attached hereto as **Exhibit B**.

THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation hereby supports New Mexico Senate Bill 172 titled "AN ACT RELATING TO PUBLIC SCHOOL FINANCE; EXCLUDING IMPACT AID FROM THE DEFINITION OF "FEDERAL REVENUE" FOR THE PURPOSE OF DETERMINING THE STATE EQUALIZATION GUARANTEE DISTRIBUTION" attached hereto as **Exhibit A**.

- B. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council, President of the Navajo Nation, and their designees, to advocate the Navajo Nation's support of the New Mexico Senate Bill 172.
- C. It is the official position of the Navajo Nation that Impact Aid cannot be used by the State of New Mexico to fulfill its legal responsibility pursuant to the Yazzie/Martinez v. State of New Mexico decision.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 17 in Favor, and 00 Opposed, on this 30th day of January 2019.



Honorable Seth Damon, Chairman
Naabik'íyáti' Committee

Motioned: Honorable Nathaniel Brown
Second : Honorable Vince James

Chairman Seth Damon not voting



SENATE BILL 172

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

George K. Munoz and Clemente Sanchez

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; EXCLUDING IMPACT AID FROM
THE DEFINITION OF "FEDERAL REVENUE" FOR THE PURPOSE OF
DETERMINING THE STATE EQUALIZATION GUARANTEE DISTRIBUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-8-25 NMSA 1978 (being Laws 1981,
Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is
that amount of money distributed to each school district to
ensure that its operating revenue, including its local and
federal revenues as defined in this section, is at least equal
to the school district's program cost. For state-chartered
charter schools, the state equalization guarantee distribution

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underscored material = new
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underscored material = new
[bracketed material] = delete

1 is the difference between the state-chartered charter school's
2 program cost and the two percent withheld by the department for
3 administrative services.

4 B. "Local revenue", as used in this section, means
5 seventy-five percent of receipts to the school district derived
6 from that amount produced by a school district property tax
7 applied at the rate of fifty cents (\$.50) to each one thousand
8 dollars (\$1,000) of net taxable value of property allocated to
9 the school district and to the assessed value of products
10 severed and sold in the school district as determined under the
11 Oil and Gas Ad Valorem Production Tax Act and upon the assessed
12 value of equipment in the school district as determined under
13 the Oil and Gas Production Equipment Ad Valorem Tax Act.

14 C. "Federal revenue", as used in this section,
15 means receipts to the school district or state-chartered
16 charter school, excluding amounts that, if taken into account
17 in the computation of the state equalization guarantee
18 distribution, result, under federal law or regulations, in a
19 reduction in or elimination of federal school funding otherwise
20 receivable by the school district, derived from ~~[the following:~~

21 ~~(1)]~~ seventy-five percent of the school
22 district's share of forest reserve funds distributed in
23 accordance with Section 22-8-33 NMSA 1978 ~~[and~~

24 ~~(2) seventy-five percent of grants from the~~
25 ~~federal government as assistance to those areas affected by~~

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underscored material = new
[bracketed material] = delete

1 ~~federal activity authorized in accordance with Title 20 of the~~
2 ~~United States Code, commonly known as "PL 874 funds" or "impact~~
3 ~~aid"].~~

4 D. To determine the amount of the state
5 equalization guarantee distribution, the department shall:

6 (1) calculate the number of program units to
7 which each school district or charter school is entitled using
8 an average of the MEM on the second and third reporting dates
9 of the prior year; or

10 (2) calculate the number of program units to
11 which a school district or charter school operating under an
12 approved year-round school calendar is entitled using an
13 average of the MEM on appropriate dates established by the
14 department; or

15 (3) calculate the number of program units to
16 which a school district or charter school with a MEM of two
17 hundred or less is entitled by using an average of the MEM on
18 the second and third reporting dates of the prior year or the
19 fortieth day of the current year, whichever is greater; and

20 (4) using the results of the calculations in
21 Paragraph (1), (2) or (3) of this subsection and the staffing
22 cost multiplier from the October report of the prior school
23 year, establish a total program cost of the school district or
24 charter school;

25 (5) for school districts and state-chartered

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1 charter schools, calculate the local and federal revenues as
2 defined in this section;

3 (6) deduct the sum of the calculations made in
4 Paragraph (5) of this subsection from the program cost
5 established in Paragraph (4) of this subsection;

6 (7) deduct the total amount of guaranteed
7 energy savings contract payments that the department determines
8 will be made to the school district from the public school
9 utility conservation fund during the fiscal year for which the
10 state equalization guarantee distribution is being computed;
11 and

12 (8) deduct ninety percent of the amount
13 certified for the school district by the department pursuant to
14 the Energy Efficiency and Renewable Energy Bonding Act.

15 E. Reduction of a school district's state
16 equalization guarantee distribution shall cease when the school
17 district's cumulative reductions equal its proportional share
18 of the cumulative debt service payments necessary to service
19 the bonds issued pursuant to the Energy Efficiency and
20 Renewable Energy Bonding Act.

21 F. The amount of the state equalization guarantee
22 distribution to which a school district is entitled is the
23 balance remaining after the deductions made in Paragraphs (6)
24 through (8) of Subsection D of this section.

25 G. The state equalization guarantee distribution

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1 shall be distributed prior to June 30 of each fiscal year. The
2 calculation shall be based on the local and federal revenues
3 specified in this section received from June 1 of the previous
4 fiscal year through May 31 of the fiscal year for which the
5 state equalization guarantee distribution is being computed.
6 In the event that a school district or charter school has
7 received more state equalization guarantee funds than its
8 entitlement, a refund shall be made by the school district or
9 charter school to the state general fund."

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January 29, 2019



Honorable Senators
Honorable Representatives
State of New Mexico Legislators
Santa Fe, NM 87501

Dear Sir or Madam,

The Navajo Nation Office of the President and Vice President and the 24th Navajo Nation Council recognizes that the most recent decision regarding public education, *Yazzie/Martinez vs. State of New Mexico (2018)* is a landmark ruling for the future of education in the State of New Mexico. At-risk students, including Native American students, deserve an adequate education that prepares them to succeed in life, and the New Mexico Public Education Department must implement the necessary changes to ensure that all students receive such an education.

There are a significant number of Native American students in the state of New Mexico.

<i>School</i>	<i>Enrollment</i>	<i>Diné Population</i>
Bloomfield School District	3,037	38%
Central Consolidated School	6,089	91%
Cibola School District	3,733	17%
Cuba School District	541	62%
Jemez School District	232	25%
McKinley County School District	11,597	82%
Magdalena Country School District	351	48%
TOTAL	25,580	52%

**2017 Impact Aid Report from OERS*

These schools are populated with Navajo students, and the Navajo Nation's priority is to ensure the children in our state public schools receive adequate and sufficient education.

Title VII, of the Elementary and Secondary Education Act of 1965 (ESEA) and 20 U.S.C. §§ 7701 *et seq.* outline the policies and procedures a local educational agency must establish in order to receive federal money under the statute. Federal Impact Aid is designed to assist local school districts that have lost property tax revenue due to the presence of tax-exempt Federal property, including Indian lands, or that have experienced increased expenditures due to the enrollment of federally connected students, including children living on Indian lands.

Generally, a state receiving Impact Aid is not allowed to reduce state funding based upon the districts receipt of Impact Aid. However, New Mexico's school funding formula, the State Equalization Guarantee

(SEG) distribution payments, allows the state to reduce the amount it gives to local districts receiving this federal assistance subject to approval from the U.S. Secretary of Education.

While the credit for Impact Aid taken out of the SEG seems equitable in theory, it results in a drastic reduction in the funding needed for Indian children. Excluding Impact Aid from the federal credit of the SEG, and allowing school districts such as GMCSD, CSD, and CCSD to make full use of their ESEA Title VII funds could offer a strong funding source for Native students, in accordance with the Yazzie/Martinez decision. New Mexico SB 170 & 172, House Bill 325 & 326 offer a proposed solution to implement this change, by removing Impact Aid from the definition of federal revenue under the SEG formula, thus allowing school districts to keep their full ESEA Title VII allocation.

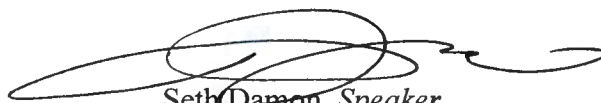
The Navajo Nation largely supports the initiative to implement needed change in the allocation of Impact Aid funding for Gallup McKinley County Schools, Cibola Schools and Central Consolidated school districts, as these school districts provide significant educational services to Navajo children. Impact Aid dollars should be provided to these schools to adequately fund school operation, maintenance, culturally appropriate programs, Native language programs, and educational resources.

Looking to the Yazzie/Martinez case, the current funding formula ultimately results in inadequate funding for federally-connected students, including students living on Indian lands, violating their fundamental right to education. Removing New Mexico's partial credit for operational Impact Aid offers a partial solution to this inadequacy by providing a funding source specifically geared to support Native children.

It is through these changes, that we may finally begin to see equity for our children.



Jonathan Nez, *President*
THE NAVAJO NATION



Seth Damon, *Speaker*
24th Navajo Nation Council

NAVAJO NATION

RCS# 19

1/30/2019

Naa'bik'iyati Committee

11:21:00 AM

Amd# to Amd#

Legislation 0008-19: Suopporing

PASSED

MOT Brown

New Mexico Senate Bill 172

SEC James, V

Titled "An Act Relating to
Public School Finance:....

Yea : 17

Nay : 0

Excused : 1

Not Voting : 5

Yea : 17

Begay, E
Begay, K
Begay, P
BeGaye, N
Charles-Newton

Crotty
Halona, P
Henio, J
James, V

Nez, R
Smith
Tso, D
Tso, E

Tso, O
Walker, T
Wauneka, E
Yellowhair

Nay : 0

Excused : 1

Daniels

Not Voting : 5

Brown
Freeland, M

Stewart, W

Tso, C

Yazzie