

RESOLUTION OF THE
NAVAJO NATION COUNCIL
25th NAVAJO NATION COUNCIL - FIRST YEAR, 2023

AN ACTION

RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; REQUESTING THAT THE NEW MEXICO HOUSE BILLS NO. 140 AND NO. 147 RELATING TO A TRIBAL EDUCATION TRUST FUND AND AN INDIAN EDUCATION TRUST FUND BE AMENDED SUCH THAT THE NEW MEXICO LEGISLATURE DISTRIBUTE THE FUNDING FROM THE TRIBAL EDUCATION AND INDIAN EDUCATION TRUST FUNDS BASED UPON THE PROPORTION OF TRIBAL STUDENTS ENROLLED IN THE STATE PUBLIC EDUCATION SYSTEM; AND, IF THE NEW MEXICO LEGISLATURE DOES NOT ACCOMPLISH THIS, THEN THE GOVERNOR SHOULD VETO H.B. NOS. 140 AND 147

WHEREAS:

- A. Pursuant to 2 N.N.C. § 164(A)(16) "[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council."
- B. The Navajo Nation's ability to determine the education of Navajo students is an aspect of tribal sovereignty, and as such constitutes an emergency for the Navajo Nation.
- C. New Mexico House Bill 140 (H.B. 140) titled "Relating to Education; Creating the Tribal Education Trust; Providing Distributions to The Public Education Department; Providing Accountability Measures; Providing Reporting Requirements; Making Appropriations," is attached as **EXHIBIT A**. This bill proposes to create a tribal education trust fund and would include an initial investment of \$50 million from New Mexico's public education reform fund. The purpose is to allow New Mexico tribes, nations, and pueblos to use the funds for the purposes outlined in the Indian Education Act at NM Stat § 22-23A-2 or through an intergovernmental agreement.
- D. As drafted, H.B. 140 proposes that 90 percent of the distribution would be allocated equally among the tribes and the remaining 10 percent be proportionally allocated to the tribes based on the number of students from each tribe served by New Mexico public schools.

- E. The fiscal impact report, attached as **EXHIBIT B**, provides a synopsis of H.B. 140, discusses fiscal implications as well as other considerations. A chart showing the distribution amounts for each tribe is on page 3 of the fiscal impact report.
- F. A funding distribution chart, attached as **EXHIBIT C**, illustrates the distribution amounts expressed as a cost ratio per student and cost per student. This chart shows that Navajo Nation students in New Mexico would be getting a distribution of only \$10.53, as compared to New Mexico Pueblo students who would receive \$241.40 and New Mexico Apache students who would receive \$167.48.
- G. While the creation of a tribal education trust fund is to support New Mexico tribes in sharing responsibility for the public education of Native students in a manner consistent with tribal sovereignty, the funding allocated for the Navajo Nation is inadequate to improve academic outcomes for Navajo students.
- H. New Mexico House Bill No. 147, if enacted into law, will create a new "Indian Education Fund." Like H.B. No. 140, this H.B. No. 147 provides a distribution formula for all New Mexico tribes, which will unfairly impact Navajo students in the State of New Mexico. **EXHIBIT D**, see also **EXHIBIT C**.

NOW, THEREFORE, BE IT RESOLVED:

The New Mexico legislature should distribute the funding from the Tribal Education and Indian Education Trust Funds based upon the proportion of tribal students enrolled in the state public education system. If this change is not accomplished in the legislature, then the governor should veto H.B. Nos. 140 and 147.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the 25th 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 02 Opposed, on this 2nd day of February 2023.

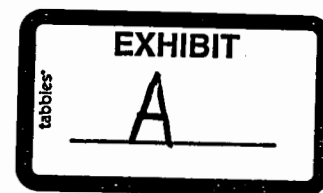


Honorable Crystalyne Curley, Speaker
25th Navajo Nation Council

2/2/23

DATE

Motion: Honorable Rickie Nez
Second: Honorable George Tolth
Speaker Crystalyne Curley not voting



HOUSE BILL 140

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Derrick J. Lente and G. Andrés Romero and Javier Martínez
and Patricia Roybal Caballero and Anthony Allison

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO EDUCATION; CREATING THE TRIBAL EDUCATION TRUST
FUND; PROVIDING DISTRIBUTIONS TO THE PUBLIC EDUCATION
DEPARTMENT; PROVIDING ACCOUNTABILITY MEASURES; PROVIDING
REPORTING REQUIREMENTS; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] TRIBAL EDUCATION TRUST FUND--
CREATED--PURPOSE--DISTRIBUTIONS--APPROPRIATION.--

A. The "tribal education trust fund" is created as
a nonreverting fund in the state treasury. The tribal
education trust fund shall be used for any purpose enumerated
in Section 22-23A-2 NMSA 1978 or in an intergovernmental
agreement between an Indian nation, tribe or pueblo and the
public education department. The fund consists of
distributions, appropriations, gifts, grants and donations.

.223438.5

underscored material = new
[bracketed material] = delete

1 Income from investment of the fund shall be credited to the
2 fund. Money in the fund shall be expended only as provided in
3 this section.

4 B. The state investment officer shall invest money
5 in the tribal education trust fund in accordance with the
6 prudent investor rule set forth in the Uniform Prudent Investor
7 Act.

8 C. The state investment officer shall report
9 quarterly to the legislative education study committee and the
10 state investment council on the investments made pursuant to
11 this section. Annually, a report shall be submitted no later
12 than October 1 each year to the legislative education study
13 committee and any other appropriate interim committees.

14 D. Beginning in fiscal year 2025, distributions
15 from the tribal education trust fund shall be made to the
16 public education department on July 1 of each year in which
17 adequate money is available in the tribal education trust fund
18 in an amount equal to the greater of two million five hundred
19 thousand dollars (\$2,500,000) or five percent of the average of
20 the year-end market values of the tribal education trust fund
21 for the preceding five calendar years; provided that the public
22 education department shall distribute funding received pursuant
23 to this subsection as provided by Subsection E of this section.

24 E. Beginning in fiscal year 2025, on August 1 of
25 each year the public education department shall disburse money

.223438.5

1 received pursuant to Subsection D of this section to each New
2 Mexico tribe as follows:

3 (1) ninety percent of the total amount of the
4 distribution made pursuant to Subsection D of this section
5 shall be provided in equal amounts to each New Mexico tribe;
6 and

7 (2) ten percent of the total amount of the
8 distribution made pursuant to Subsection D of this section
9 shall be provided to each New Mexico tribe in an amount
10 proportional to the total number of New Mexico students served
11 by that New Mexico tribe.

12 F. Money disbursed pursuant to Subsection E of this
13 section shall be disbursed on warrants signed by the secretary
14 of finance and administration pursuant to vouchers signed by
15 the secretary of public education or the secretary's designee.

16 G. Beginning in fiscal year 2025 and in each
17 subsequent fiscal year, the lesser of one percent of the tribal
18 education trust fund or one hundred thousand dollars (\$100,000)
19 is appropriated from the tribal education trust fund to the
20 public education department for expenditure in the fiscal year
21 in which it is appropriated to administer the tribal education
22 trust fund. Administrative costs include staff salaries and
23 expenses related to administration of the tribal education
24 trust fund. Any unexpended or unencumbered balance remaining
25 at the end of any fiscal year shall revert to the tribal

.223438.5

1 education trust fund.

2 H. In addition to the distribution pursuant to
3 Subsection D of this section, money in the tribal education
4 trust fund may be expended in the event that general fund
5 balances, including all authorized revenues and transfers to
6 the general fund and balances in the general fund operating
7 reserve, the appropriation contingency fund, the tobacco
8 settlement permanent fund, the state-support reserve fund and
9 the tax stabilization reserve, will not meet the level of
10 appropriations authorized from the general fund for a fiscal
11 year. In that event, to avoid an unconstitutional deficit, the
12 legislature may appropriate from the tribal education trust
13 fund to the general fund only in the amount necessary to meet
14 general fund appropriations for that fiscal year and only if
15 the legislature has authorized transfers from the appropriation
16 contingency fund, the general fund operating reserve, the tax
17 stabilization reserve and the tobacco settlement permanent fund
18 that exhaust those fund balances.

19 I. As used in this section, "New Mexico tribe"
20 means an Indian nation, tribe or pueblo located wholly or
21 partially in New Mexico in which Native American students are
22 being educated in New Mexico.

23 SECTION 2. [NEW MATERIAL] TRIBAL EDUCATION TRUST FUND
24 ACCOUNTABILITY MEASURES--REPORTING REQUIREMENTS--PUBLIC
25 EDUCATION DEPARTMENT DUTIES.--

.223438.5

1 A. Prior to April 15 of each year, each tribal
2 education department shall submit to the public education
3 department a summary of its operating budget and plan for the
4 ensuing fiscal year based on tribally determined goals and
5 needs. This summary shall include a brief narrative describing
6 how the budget and plan will contribute to meeting the purposes
7 of the tribal education trust fund enumerated in Section 1 of
8 this 2023 act.

9 B. Prior to October 15 of each year, each tribal
10 education department shall submit to the public education
11 department a spending report and an assessment of program
12 impact, student engagement and student outcomes based on
13 tribally determined criteria.

14 C. The public education department shall report to
15 the legislative education study committee, any other
16 appropriate interim committee and the New Mexico tribes no
17 later than November 15 of each year the total disbursements
18 made pursuant to Subsection E of Section 1 of this 2023 act for
19 the previous fiscal year, a summary of tribal reports received
20 and a projection of available disbursements pursuant to
21 Subsection E of Section 1 of this 2023 act in the following
22 fiscal year.

23 D. Nothing in this section shall interfere with the
24 sovereignty of federally recognized New Mexico tribes.

25 E. The public education department may:

.223438.5

1 (1) establish procedures and adopt rules,
2 after formal consultation with the New Mexico tribes, as
3 required to administer and disburse money pursuant to
4 Subsection E of Section 1 of this 2023 act;

5 (2) enter into intergovernmental agreements
6 with the New Mexico tribes to disburse funding pursuant to
7 Subsection E of Section 1 of this 2023 act; and

8 (3) solicit, receive and report on tribal
9 education budgets, plans and reports pursuant to this section.

10 F. As used in this section, "New Mexico tribe"
11 means an Indian nation, tribe or pueblo located wholly or
12 partially in New Mexico in which Native American students are
13 being educated in New Mexico.

14 SECTION 3. APPROPRIATION.--Fifty million dollars
15 (\$50,000,000) is appropriated from the public education reform
16 fund to the tribal education trust fund for expenditure in
17 fiscal year 2024 and subsequent fiscal years to carry out the
18 purpose of that fund. Any unexpended or unencumbered balance
19 remaining at the end of a fiscal year shall not revert to the
20 public education reform fund.

21 SECTION 4. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2023.

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports which are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR Lente/Romero, GA/Martinez, J/Roybal LAST UPDATED 1/26/23
Caballero/Allison ORIGINAL DATE
 SHORT TITLE Tribal Education Trust Fund BILL NUMBER House Bill 140
 ANALYST Liu/Torres, I

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$50,000.0	Nonrecurring	Public Education Reform Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	\$1,000.0	\$2,040.0	Recurring	Tribal Education Trust Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 147

Is a companion to House Bill 149

Relates to an appropriation in the General Appropriation Act

Sources of Information

LFC Files

Legislative Education Study Committee (LESC) Files

Responses Received From

New Mexico Attorney General (NMAG)

Indian Affairs Department (IAD)

Public Education Department (PED)

State Investment Council (SIC)

SUMMARY

Synopsis of House Bill 140

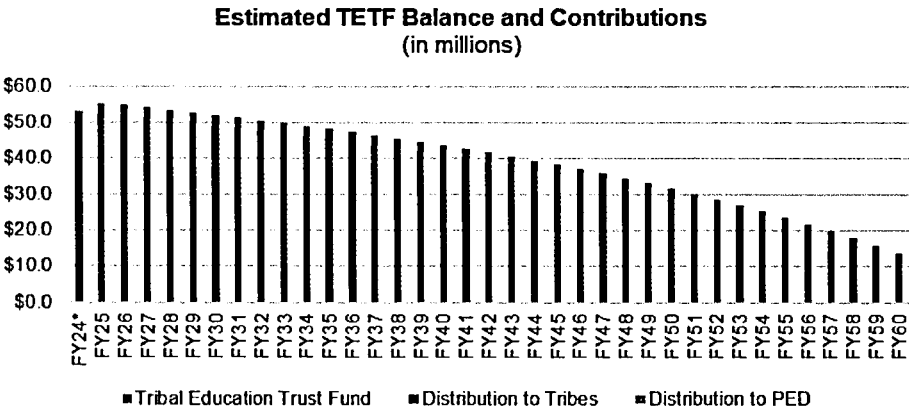
House Bill 140 appropriates \$50 million from the public education reform fund to create a tribal education trust fund (TETF), managed by SIC, that will make annual distributions for PED to

distribute to each New Mexico tribe. The bill establishes minimum distribution requirements, administrative and reporting responsibilities for PED and SIC, reporting requirements for tribal education departments (TED), and legislative authorization to tap the fund in the event of a general fund deficit and exhausting available reserves. The effective date of this bill is July 1, 2023. This bill is endorsed by LESC.

FISCAL IMPLICATIONS

The appropriation of \$50 million contained in this bill is a nonrecurring expense to the public education reform fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the public education reform fund. Provisions of the bill distribute TETF revenues annually (beginning in FY25) based on the greater of \$2.5 million or 5 percent of the average of year-end market values of TETF for the preceding five calendar years. Additionally, the bill makes another TETF distribution to PED for administrative costs based on the lesser of \$100 thousand or 1 percent of the fund.

The bill charges SIC with management of the fund. This allows higher investment earning potential than if managed as part of the state’s treasury balances. However, the relatively lower balance of the fund, the annual distributions, and the reserve risk of the fund suggest investment returns will likely be minimal. Assuming an aggressive return of 4 percent for the size and distributional characteristics of the fund, LFC staff estimate the fund will provide relatively flat distributions of \$2.5 million to Indian nations, tribes, or pueblos and \$100 thousand to PED for almost 40 years. Because the balance of the TETF is not expected to grow, the total distributions are likely to remain close to the minimum of \$2.6 million a year.



*Includes \$3 million in estimated gains for FY24 on top of the \$50 million endowment

SIC notes TETF will provide at least \$2.5 million annually to PED for distribution to Indian nations, tribes, or pueblos for the foreseeable future. Depending on the returns earned on TETF investments, the distribution may be expected to increase. Any increase, however, will be wholly dependent on returns and cannot be predicted with certainty.

SIC notes TETF differs substantially in resources and beneficiaries from other funds, such as the land grant permanent fund (LGPF) and, therefore, may need to be invested with a different risk

and return profile. For example, LGPF receives cash inflows from the State Land Office that currently exceed annual cash distributions, whereas TETF will be funded with a one-time appropriation. SIC notes this difference may lead to different tolerance for risk and long-term investment goals. Given the inflows, LGPF can absorb short-term losses without impacting distributions to beneficiaries, whereas large swings in the investment returns of TETF may cause fluctuations in distributions. This factor may suggest a lower risk profile for TETF. On the flipside, SIC notes this same factor may suggest a higher risk profile for TETF because, in the absence of significant long-term growth that exceeds both the distribution rate and inflation (which last year was close to 7 percent), the real value of distributions from TETF will decrease every year.

Provisions of this bill permit the Legislature to appropriate from TETF to the general fund to avoid an “unconstitutional deficit.” However, this emergency appropriation is only authorized after the Legislature has exhausted available funds from the appropriation contingency fund, general fund operating reserve, tax stabilization reserve, state-support reserve, and tobacco settlement permanent fund.

SIGNIFICANT ISSUES

PED notes provisions of the bill require the department to allocate the TETF distribution annually on July 1 as follows:

- 90 percent distributed equally to each tribe and
- 10 percent distributed to each tribe in proportion to the number of New Mexico students each tribe serves.

Pueblo, Tribe, or Nation	Est.Number of Children (Ages 5-17)	90% Equal Distribution (in thousands)	10% Population Distribution (in thousands)	Total TETF Distribution (in thousands)
Acoma	729	\$ 102.3	\$ 4.9	\$ 107.2
Cochiti	210	\$ 102.3	\$ 1.4	\$ 103.7
Isleta	663	\$ 102.3	\$ 4.5	\$ 106.8
Jemez	557	\$ 102.3	\$ 3.8	\$ 106.1
Jicarilla	619	\$ 102.3	\$ 4.2	\$ 106.5
Laguna	1,072	\$ 102.3	\$ 7.3	\$ 109.5
Mescalero	654	\$ 102.3	\$ 4.4	\$ 106.7
Nambe	182	\$ 102.3	\$ 1.2	\$ 103.5
Navajo Nation	27,306	\$ 102.3	\$ 185.2	\$ 287.5
Ohkay Owingeh	282	\$ 102.3	\$ 1.9	\$ 104.2
Picuris	37	\$ 102.3	\$ 0.3	\$ 102.5
Pojoaque	64	\$ 102.3	\$ 0.4	\$ 102.7
San Felipe	599	\$ 102.3	\$ 4.1	\$ 106.3
San Ildefonso	105	\$ 102.3	\$ 0.7	\$ 103.0
Sandia	59	\$ 102.3	\$ 0.4	\$ 102.7
Santa Ana	169	\$ 102.3	\$ 1.1	\$ 103.4
Santa Clara	134	\$ 102.3	\$ 0.9	\$ 103.2
Santo Domingo	889	\$ 102.3	\$ 6.0	\$ 108.3
Taos	307	\$ 102.3	\$ 2.1	\$ 104.4
Tesuque	58	\$ 102.3	\$ 0.4	\$ 102.7
Zia	160	\$ 102.3	\$ 1.1	\$ 103.4
Zuni	2,007	\$ 102.3	\$ 13.6	\$ 115.9
Total	36,862	\$ 2,250.0	\$ 250.0	\$ 2,500.0

Currently, tribes, pueblos, and nations receive distributions from the Indian education fund (IEF) on an annual basis, and the Legislature has increased appropriations in recent years for IEF distributions. In FY18, IEF appropriations totaled \$2.5 million; in FY23 the appropriation was

\$15 million.

PED makes IEF distributions based on priorities established by the PED secretary and assistant secretary of Indian education to implement the Indian Education Act. For FY23, the Legislature appropriated \$15 million to IEF, and PED allocated nearly \$2 million to tribal education departments (Pojoaque, Mescalero Apache, and Tesuque did not apply for funds):

Pueblo, Tribe, or Nation	Est.Number of Children (Ages 5-17)	FY23 IEF Distribution (in thousands)
Acoma	729	\$ -
Cochiti	210	\$ 120.9
Isleta	663	\$ 100.0
Jemez	557	\$ 108.4
Jicarilla	619	\$ -
Laguna	1,072	\$ 113.7
Mescalero	654	\$ -
Nambe	182	\$ 97.7
Navajo Nation	27,306	\$ 300.0
Ohkay Owingeh	282	\$ 97.2
Picuris	37	\$ 100.5
Pojoaque	64	\$ -
San Felipe	599	\$ 100.9
San Ildefonso	105	\$ 100.0
Sandia	59	\$ 99.3
Santa Ana	169	\$ 102.5
Santa Clara	134	\$ 102.0
Santo Domingo	889	\$ 113.0
Taos	307	\$ 104.6
Tesuque	58	\$ -
Zia	160	\$ 100.0
Zuni	2,007	\$ 110.3
Total	36,862	\$ 1,970.9

Other distributions through the FY23 IEF appropriation included

- \$2.8 million for school districts and charter schools,
- \$2.4 million for indigenous language fellows,
- \$1.2 million for indigenous education initiatives,
- \$974 thousand for educator recruitment in Native American communities,
- \$955 thousand for immersion schools,
- \$693 thousand for Native language teacher pipeline grants,
- \$200 thousand for Native language programs, and
- \$150 thousand for curriculum, instruction, and assessment.

The Tribal Education Alliance, an advocacy organization, notes the 90 percent equal distribution to tribes ensures each entity receives at least \$100 thousand, ensuring smaller tribes have capacity to hire a staff person.

PERFORMANCE IMPLICATIONS

A 2021 LFC evaluation on implementation of the Indian Education Act found Native American students continue to perform well below peers on state and national measures of achievement, despite the availability of nearly \$147 million in state and federal funds at public schools and institutions of higher education for purposes aligned to the act. The report noted a history of

understaffing at PED's Indian Education Division, difficulties with funding utilization, challenges with local collaboration, and a lack of specific, targeted outcomes have resulted in a system that has not served Native American students in a comprehensive and coordinated manner.

The LFC evaluation found Native American student enrollment in public schools fell to 32.4 thousand students in FY19, an 8.5 percent decrease over the prior five years. Four-year high school graduation rates for Native American students increased to 69 percent in FY19, an 11 percentage point improvement over the prior five years, but still 6 percentage points lower than the statewide average of 75 percent. Similarly, Native American student reading and math proficiency rates improved marginally over the same period but remained below statewide averages. The evaluation noted, however, changes in high school graduation requirements (allowing alternative demonstrations of competency) likely contributed to increased graduation rates and changes to statewide standardize assessments complicated measures of progress in these areas.

ADMINISTRATIVE IMPLICATIONS

The bill requires each tribal education department to summarize operating budget, plan, goals, and needs for the ensuing fiscal year by April 15 of each year. Spending reports, impact assessments, and student outcomes are due to PED by October 15 annually. PED will, in turn, report to appropriate legislative committees and New Mexico tribes by November 15 each year, summarizing all disbursements and tribal reports.

PED may need to hire additional staff and promulgate rules 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.

SIC notes the bill does not identify the proper risk or return profile for TETF. The prudent investor rule referenced in the bill directs an investment manager to implement "an investment strategy having risk and return objectives reasonably suited to the trust." The prudent investor rule itself, however, does not dictate the appropriate level of risk for any particular trust. In the case of TETF, the clients are PED and New Mexico nations, pueblos, and tribes. SIC notes choosing the proper risk or return profile is a complex process that requires consideration of long-term goals, short-term needs, other available resources to meet needs, political or social tolerance for losses, and an appreciation of the inherent uncertainty of investment markets. SIC will need to work with PED and New Mexico nations, pueblos, and tribes to maintain a proper risk profile for TETF.

The bill requires the state investment officer to report quarterly on investment results of TETF. While this does not place a significant burden on the office, it may create an unwarranted expectation among oversight bodies that quarterly variations in investments results are meaningful. As a permanent fund, TETF will have a long-term investment horizon for which quarterly variation will not be of primary importance. SIC further notes TETF is likely to have assets that are valued on a quarterly lag which will confuse any trends apparent quarter to quarter. For instance, a second-quarter report will show results for the second quarter of public equity and the first quarter of private equity (due to the lag in reporting valuations for private market investments).

COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 147, which requires 50 percent of IEF distributions to be allocated to New Mexico tribes. The bill is a companion to House Bill 149, which requires PED to request about \$4 million each year for the Legislature to consider appropriating to TETF. The bill also relates to the IEF appropriation in the General Appropriation Act.

TECHNICAL ISSUES

Provisions of the bill make two separate distributions from TETF each year, beginning in FY25:

- Greater of \$2.5 million or 5 percent of the average year-end market values of TETF for the preceding five calendar years for tribes and
- Lesser of \$100 thousand or 1 percent of TETF for PED administrative expenses.

It is unclear if both distributions occur simultaneously or at different points of the year, which would affect the TETF balance amount used to calculate the amount of each distribution.

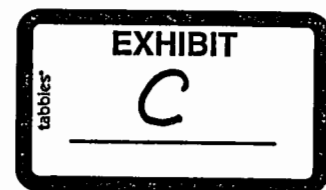
OTHER SUBSTANTIVE ISSUES

The public education reform fund is a nonreverting fund in the state treasury, subject to legislative appropriations, and appropriated to PED for the purposes of implementing evidence-based public education initiatives related to high-quality teaching and school leadership, extended learning opportunities for students, educational interventions for at-risk students, effective and efficient school administration, or promoting public education accountability. Revenues are primarily from reversions of K-5 Plus and Extended Learning Time program funds left unused by school districts and charter schools. Current balances from the reform fund are projected to reach \$186.5 million by the end of FY23.

On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* education sufficiency lawsuits and found New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English learners, Native American students, and special education students. The court's findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

SL/IT/al/hg/rl



**HB 140 TRIBAL EDUCATION TRUST FUND FINANCIAL DISTRIBUTION CHART AT
90% EQUAL DISTRIBUTION and AT 10% DISTRIBUTION BASED UPON STUDENT POPULATION
FOR PUEBLOS, APACHES & NAVAJO NATION**

DISTRIBUTION CHART BY TRIBE	FUNDING AT 90%	FUNDING AT 10% ROW 5	TOTAL STUDENT COUNT	COST RATIO PER STUDENT BY %	COST PER STUDENT (ACTUAL)
Pueblos \$102,300 x 19	\$1,943,700	\$1,999,500	8,283	.24%	\$241.40
Apaches \$102,300 x 2	\$204,600	\$213,500	1,273	.17%	\$167.48
Navajo Nation	\$102,300	\$287,500	27,306	.01%	\$10.53
TOTALS:	\$2,250,600	\$2,500,500			

HOUSE BILL 147

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Derrick J. Lente

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO EDUCATION; CHANGING THE DISTRIBUTIONS FROM THE
INDIAN EDUCATION FUND.

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

SECTION 1. Section 22-23A-8 NMSA 1978 (being Laws 2003,
Chapter 151, Section 8, as amended by Laws 2007, Chapter 295,
Section 7 and by Laws 2007, Chapter 296, Section 7) is amended
to read:

"22-23A-8. FUND CREATED.--

A. The "Indian education fund" is created in the
state treasury. The fund consists of appropriations, gifts,
grants and donations and income from investment of the fund.
Money in the fund shall not revert. The fund shall be
administered by the department, and money in the fund is
appropriated to the department to distribute awards to support

.223439.3

underscored material = new
[bracketed material] = delete

1 the Indian Education Act.

2 B. The department shall ensure that funds
3 appropriated from the Indian education fund shall be used for
4 the purposes stated in the Indian Education Act and shall not
5 be used to correct for previous reductions of program services.

6 C. Beginning in fiscal year 2024, no less than
7 fifty percent of all distributions made from the Indian
8 education fund shall be made to New Mexico tribes and shall be
9 distributed to New Mexico tribes as follows:

10 (1) ninety percent of the total amount of
11 distributions made pursuant to this subsection shall be
12 provided in equal amounts to each New Mexico tribe; and

13 (2) ten percent of the total amount of
14 distributions made pursuant to this subsection shall be
15 provided to each New Mexico tribe in an amount proportional to
16 the total number of New Mexico students served by the tribal
17 education department within that New Mexico tribe.

18 ~~[G.]~~ D. The department shall develop procedures and
19 rules for the award of money from the fund for school
20 districts, charter schools and other entities. The department
21 shall issue monthly fund distributions to New Mexico tribes
22 pursuant to Subsection C of this section. The department may
23 request quarterly spending reports from the New Mexico tribes.
24 The department may enter into agreements with the New Mexico
25 tribes for the purposes of disbursing funds. New Mexico tribes

.223439.3

underscored material = new
[bracketed material] = delete

1 may carry over unused portions of funds received; provided that
2 those funds are used for the purposes of the Indian Education
3 Act. Disbursement of the fund shall be made by warrant of the
4 department of finance and administration pursuant to vouchers
5 signed by the secretary of public education."

6 SECTION 2. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2023.

8 - 3 -
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NAVAJO NATION

2/2/2023

Navajo Nation Council Special Session

05:12:53 PM

Amd# to Amd#

New Business: Item C.

PASSED

MOT Nez, R

(Emergency) Legislation 0012-23:

SEC Tolth, G

Opposing New Mexico House Bills

No.140 & No.147 . . .

Yeas : 18**Nays : 2****Excused : 2****Not Voting : 1****Yea : 18**

Arviso, S

Damon, S

Nez, R

Simpson, D

Aseret, L

Daniels, H

Notah, N

Slater, C

Begay, H

James, V

Parrish, S

Tolth, G

Begay, N

Jesus, B

Simonson, G

Tso, O

Claw, S

Johnson, C

Nay : 2

Yazzie, C

Nez, A

Excused : 2

Charles-Newton, E

Crotty, A

Not Voting : 1

Yanito, C

Presiding Speaker: Curley, C