

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0028-24_

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating to an Emergency for the Navajo Nation Council; Requesting Amendments to New Mexico House Bill 134 “Creating the Tribal Education Trust Fund; Providing Reporting Requirements; Creating the Tribal Education Trust Fund Disbursement Formula Task Force; Making Appropriations”

Date posted: January 31, 2024 at 11:05AM

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**Executive Director
Office of Legislative Services
P.O. Box 3390
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(928) 871-7586**

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0028-24

DATE: January 24, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; REQUESTING AMENDMENTS TO NEW MEXICO HOUSE BILL 134 "CREATING THE TRIBAL EDUCATION TRUST FUND; PROVIDING REPORTING REQUIREMENTS; CREATING THE TRIBAL EDUCATION TRUST FUND DISBURSEMENT FORMULA TASK FORCE; MAKING APPROPRIATIONS"

FINAL AUTHORITY: Navajo Nation Council

VOTE REQUIRED: Simple Majority

PURPOSE: The purpose of this proposed resolution is to propose amendment to New Mexico House Bill 134, which creates a task force to prepare a disbursement formula for the tribal education trust fund.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 25th NAVAJO NATION COUNCIL – Second Year, 2024

3 INTRODUCED BY

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6 (Sponsor)
7
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9 TRACKING NO. 0028-24

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11 AN ACTION

12 RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL;
13 REQUESTING AMENDMENTS TO NEW MEXICO HOUSE BILL 134
14 “CREATING THE TRIBAL EDUCATION TRUST FUND; PROVIDING
15 REPORTING REQUIREMENTS; CREATING THE TRIBAL EDUCATION
16 TRUST FUND DISBURSEMENT FORMULA TASK FORCE; MAKING
17 APPROPRIATIONS”
18

19 WHEREAS:

- 20 A. The Navajo Nation Council is the governing body of the Navajo Nation, 2 N.N.C.
21 §102(A), and has a government-to-government relationship established and
22 memorialized through the Treaty of 1850 (9 Stat. 974) and Treaty of 1868 (15 Stat.
23 667).
- 24 B. Matters constituting an emergency shall be limited to cessations of direct services
25 required as an entitlement under Navajo Nation or Federal law, or which directly
26 threaten the sovereignty of the Navajo Nation. Such emergency matters must arise
27 due to the pressing public need for such resolution(s) and must be a matter requiring
28 final action by the Council. 2 N.N.C. §164 (A)(16)
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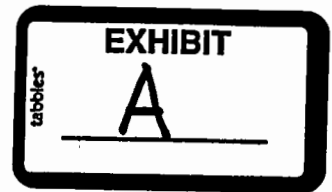
- 1 C. This resolution is offered as an emergency since the need to adequately fund education
2 throughout the Navajo Nation creates a direct threat to the sovereignty of the Navajo
3 Nation.
- 4 D. Representative Derrick J. Lente introduced New Mexico House Bill 134, titled,
5 “Creating the Tribal Education Trust Fund; Providing Reporting Requirements;
6 Creating the Tribal Education Trust Fund Disbursement Formula Task Force; Making
7 Appropriations,” on January 18, 2024. The text of New Mexico House Bill 134
8 (“House Bill 134”) is attached as **Exhibit A**.
- 9 E. The purpose of HB 134 is, in relevant part, for the public education department to
10 create a disbursement formula for the tribal education trust fund.
- 11 F. House Bill 134 as introduced provides, “[t]he public education department shall
12 create a disbursement formula, in consultation with the tribal education task force
13 created pursuant to Section 2 of this 2024 act.”
- 14 G. Each New Mexico tribe is required to submit “to the public education department a
15 summary of its operating budget and plan for the ensuing fiscal year based on tribally
16 determined goals and needs.” Moreover, the summary “shall include a brief narrative
17 describing how the budget and plan will contribute to the purposes of the Indian
18 Education Act.”
- 19 H. House Bill 134 creates a tribal education trust fund disbursement formula task force
20 (the “task force”) within the public education department. The assistant secretary of
21 Indian education shall serve on the task force in an advisory function and the task
22 force shall be supported by the public education department.
- 23 I. Nine representatives are contemplated for the task force. These representatives are as
24 follows:
- 25 a. Three representatives from the Navajo Nation;
 - 26 b. Two representatives, one from Jicarilla Apache Nation, and one from
27 Mescalero Apache Tribe;
 - 28 c. Three representatives, one from the southern pueblos, one from the northern
29 pueblos, and one from the western pueblos; and
 - 30 d. The chair of the Indian education advisory council.

- 1 J. The task force is charged with developing a disbursement formula for the public
2 education department to use in distributing funds from the tribal education trust fund.
- 3 K. As part of its process in developing a disbursement formula, the task force “shall
4 ensure that the distribution formula is equitable for each Indian nation, tribe, and
5 pueblo located wholly or in part in the state.”
- 6 L. The task force is required to consider “tribal needs and tribal size, including both a
7 base and student count elements for the disbursement formula.”
- 8 M. The Navajo Nation supports key elements of House Bill 134, as those elements are
9 consistent with the Navajo Nation’s 2024 legislative priorities for New Mexico, as
10 approved in Resolution NABID-60-23.
- 11 N. The Navajo Nation, however, urges the New Mexico legislature to consider the
12 following amendments to House Bill 134:
- 13 a. In lieu of the chair of the Indian education advisory council’s inclusion on the
14 task force, increase the Navajo Nation’s membership to 60 percent of the task
15 force. This request is made based on both the land and population bases of the
16 Navajo Nation;
 - 17 b. Clarify in the legislation that the task force’s disbursement formula, and any
18 disbursement schedules created by the task force, are not subject to further
19 review by the department of public education, or another administrative body;
20 and
 - 21 c. Allow nominations to the task force to be effective 15 calendar days after
22 notice from the nominating tribe. Based on prior experience, waiting for the
23 public education department’s assistant secretary of Indian education to make
24 appointments has created undue delay.

25
26 **THEREFORE, BE IT RESOLVED:**

- 27 A. The Navajo Nation requests amendments to House Bill 134 consistent with paragraph
28 N, a-c, above.
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1 B. The Navajo Nation Council hereby authorizes the Navajo Nation President, and the
2 Navajo Nation Speaker to take all steps necessary to advocate for the Navajo Nation's
3 position with respect to House Bill 134.
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HOUSE BILL 134

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Derrick J. Lente

FOR THE INDIAN AFFAIRS COMMITTEE AND
THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING THE TRIBAL EDUCATION
TRUST FUND; PROVIDING REPORTING REQUIREMENTS; CREATING THE
TRIBAL EDUCATION TRUST FUND DISBURSEMENT FORMULA TASK FORCE;
MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] TRIBAL EDUCATION TRUST
FUND--CREATED--PURPOSE--DISTRIBUTION--REPORTING REQUIREMENTS--
PUBLIC EDUCATION DEPARTMENT DUTIES--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

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1 distributions, appropriations, gifts, grants and donations.
2 Income from investment of the fund shall be credited to the
3 fund. Money in the fund shall be expended only as provided in
4 this section.

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

9 C. The state investment officer shall report
10 quarterly to the legislative education study committee and the
11 state investment council on the investments made pursuant to
12 this section. Beginning in fiscal year 2025, a report shall be
13 submitted no later than October 1 each year to the legislative
14 education study committee and any other appropriate interim
15 committees.

16 D. Beginning in fiscal year 2026, a distribution
17 shall be made from the tribal education trust fund to the
18 public education department on July 1 of each year in which
19 adequate money is available in the tribal education trust fund
20 in an amount equal to the greater of twelve million five
21 hundred thousand dollars (\$12,500,000) or five percent of the
22 average of the year-end market values of the tribal education
23 trust fund for the preceding five calendar years; provided that
24 the public education department shall distribute funding
25 received pursuant to this subsection according to the formula
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1 developed pursuant to Section 2 of this 2024 act.

2 E. 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 F. The public education department shall enter into
20 intergovernmental agreements with New Mexico tribes prior to
21 the disbursement of funds pursuant to Subsection G of this
22 section.

23 G. Beginning in fiscal year 2026, on July 15 of
24 each year, the public education department shall disburse money
25 received pursuant to Subsection D of this section to each New
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1 Mexico tribe that has entered into an intergovernmental
2 agreement with the department. Money disbursed to a New Mexico
3 tribe shall not revert and shall carry over to the next fiscal
4 year for continued use by the New Mexico tribe. Money
5 disbursed pursuant to this subsection shall be disbursed on
6 warrants signed by the secretary of finance and administration
7 pursuant to vouchers signed by the secretary of public
8 education or the secretary's designee.

9 H. The public education department shall create a
10 disbursement formula, in consultation with the tribal education
11 trust fund disbursement formula task force created pursuant to
12 Section 2 of this 2024 act, that ensures that a New Mexico
13 tribe receives nonreverting disbursements each year on July 15
14 that the New Mexico tribe may use to carry out the purposes of
15 the Indian Education Act.

16 I. Prior to April 15 of each year, each New Mexico
17 tribe shall submit to the public education department a summary
18 of its operating budget and plan for the ensuing fiscal year
19 based on tribally determined goals and needs. This summary
20 shall include a brief narrative describing how the budget and
21 plan will contribute to meeting the purposes of the Indian
22 Education Act.

23 J. Prior to October 15 of each year, each New
24 Mexico tribe shall submit to the public education department a
25 spending report and an assessment of program impact, student

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1 engagement and student outcomes based on tribally determined
2 criteria.

3 K. The public education department shall report to
4 the legislative education study committee, any other
5 appropriate interim committee and the New Mexico tribes no
6 later than November 15 of each year the total disbursements
7 made pursuant to Subsection G of this section for the previous
8 fiscal year, a summary of tribal reports received and a
9 projection of available disbursements pursuant to Subsection G
10 of this section in the following fiscal year.

11 L. The public education department may:

12 (1) establish procedures and adopt rules,
13 after formal consultation with the New Mexico tribes, as
14 required to administer and disburse money pursuant to
15 Subsection G of this section; and

16 (2) solicit, receive and report on tribal
17 education budgets, plans and reports pursuant to this section.

18 M. Nothing in this section shall interfere with the
19 sovereignty of federally recognized New Mexico tribes.

20 N. Beginning in fiscal year 2025 and in each
21 subsequent fiscal year, the lesser of one percent of the tribal
22 education trust fund or one hundred thousand dollars (\$100,000)
23 is appropriated from the tribal education trust fund to the
24 public education department for expenditure in the fiscal year
25 in which it is appropriated to administer the tribal education

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1 trust fund. Administrative costs include staff salaries and
2 expenses related to administration of the tribal education
3 trust fund. Any unexpended or unencumbered balance remaining
4 at the end of a fiscal year shall revert to the tribal
5 education trust fund.

6 O. As used in this section, "New Mexico tribe"
7 means an Indian nation, tribe or pueblo located wholly or
8 partially in New Mexico in which Native American students are
9 being educated in New Mexico.

10 SECTION 2. TEMPORARY PROVISION--TRIBAL EDUCATION TRUST
11 FUND DISBURSEMENT FORMULA TASK FORCE--CREATION--MEMBERSHIP--
12 DUTIES--REPORTING REQUIREMENTS.--

13 A. The "tribal education trust fund disbursement
14 formula task force" is created within the public education
15 department. The task force shall function from the date of its
16 appointment, which shall be no later than December 1, 2024,
17 until July 1, 2031. The assistant secretary of Indian
18 education of the public education department shall serve on the
19 task force in an advisory function. The task force shall be
20 supported by the public education department. The task force
21 shall consist of the following nine members:

22 (1) three representatives from the Navajo
23 Nation nominated by the leadership of New Mexico's Indian
24 nations, tribes and pueblos and appointed by the public
25 education department's assistant secretary of Indian education;

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1 (2) two representatives, one from the
2 Mescalero Apache Tribe and one from the Jicarilla Apache
3 Nation, nominated by the leadership of New Mexico's Indian
4 nations, tribes and pueblos and appointed by the public
5 education department's assistant secretary of Indian education;

6 (3) three representatives, one from the
7 southern pueblos, one from the northern pueblos and one from
8 the western pueblos, nominated by the leadership of New
9 Mexico's Indian nations, tribes and pueblos and appointed by
10 the public education department's assistant secretary of Indian
11 education; and

12 (4) the chair of the Indian education advisory
13 council.

14 B. The task force shall develop a disbursement
15 formula that the public education department shall use for the
16 disbursement of funds from the tribal education trust fund.
17 The task force shall ensure that the disbursement formula is
18 equitable for each Indian nation, tribe and pueblo located
19 wholly or in part in the state. The task force shall consider
20 tribal needs and tribal size, including both a base and student
21 count elements for the disbursement formula.

22 C. The task force shall report its recommendations
23 for a disbursement formula to the governor, the legislature and
24 the secretary of public education prior to July 1, 2025.

25 D. The task force shall reconvene on July 1, 2030

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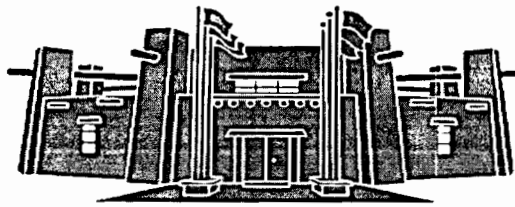
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1 to review and assess the equity and functionality of the
2 disbursement formula and provide additional recommendations, if
3 necessary, to the governor, the legislature and the secretary
4 of public education prior to July 1, 2031.

5 E. Members of the task force may receive per diem
6 and mileage as provided for nonsalaried public officers in the
7 Per Diem and Mileage Act and shall receive no other
8 compensation, perquisite or allowance.

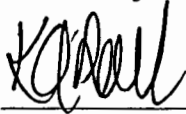
9 SECTION 3. APPROPRIATION.--One hundred million dollars
10 (\$100,000,000) is appropriated from the general fund to the
11 tribal education trust fund for expenditure in fiscal year 2025
12 and subsequent fiscal years to carry out the purpose of the
13 tribal education trust fund. Any unexpended or unencumbered
14 balance remaining at the end of a fiscal year shall not revert
15 to the general fund.

16 SECTION 4. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2024.



MEMORANDUM

TO: Honorable Amber Kanazbah Crotty
25th Navajo Nation Council Delegate

FROM: 
Kristen Lowell, Principal Attorney
Office of Legislative Counsel

DATE: January 24, 2024

RE: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; REQUESTING AMENDMENTS TO NEW MEXICO HOUSE BILL 134 “CREATING THE TRIBAL EDUCATION TRUST FUND; PROVIDING REPORTING REQUIREMENTS; CREATING THE TRIBAL EDUCATION TRUST FUND DISBURSEMENT FORMULA TASK FORCE; MAKING APPROPRIATIONS”

Per your request, the Office of Legislative Counsel has prepared the above referenced proposed legislation and associated legislative summary sheet. Based on existing law, the legislation as drafted is legally sufficient. However, as with all legislation, the proposed resolution is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel recommends the appropriate standing committee(s) reviews based on the authority of the standing committees outlined in 2 N.N.C. §§ 301, 401, 501, 601, and 701. Nevertheless, “the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration. 2 N.N.C. § 164(A)(5).

Please review the proposed legislation to ensure it is drafted to your satisfaction. If you approve, please sign as “Primary Sponsor” and submit it to the Office of Legislative Services where the proposed legislation will be given a tracking number and referred to the Office of the Speaker. If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of any revisions requested.