

FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022

HB 135/a

February 10, 2022

Mr. President:

Your **INDIAN, RURAL AND CULTURAL AFFAIRS COMMITTEE**,  
to whom has been referred

**HOUSE HEALTH & HUMAN SERVICES  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 135**

has had it under consideration and reports same with recommendation  
that it **DO PASS**, amended as follows:

1. On page 2, line 14, before "guardianship", insert "permanent".
2. On page 2, line 20, after "proceedings", insert "or kinship guardianships".
3. On page 5, line 6, after "membership", strike the remainder of the line up to the period.
4. On page 6, line 22, before "permanency", insert "team decision meetings,".
5. On page 8, line 25, strike the second occurrence of "the" and insert in lieu thereof "every".
6. On page 10, line 17, strike "discretion" and insert in lieu thereof "direction".
7. On page 10, line 18, after the period, insert "The department shall not determine tribal membership.".
8. On page 19, between lines 23 and 24, insert the following new paragraph:

**FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022**

SIRC/HB 135

Page 2

"(1) for purposes of establishing legal custody at the custody hearing, the standard of proof shall be probable cause;"

9. Renumber the succeeding paragraphs accordingly.

10. On page 19, line 25, after "child", insert "at adjudication".

11. On page 20, line 13, after "placement", insert "at adjudication".

12. On page 20, line 20, strike "(3)" and insert in lieu thereof "(4)".

13. On page 23, line 2, strike the closing quotation mark.

14. On page 23, between lines 2 and 3, insert the following new subsection:

"D. When the court determines that the Indian child's best interest will be served as a result of intervention by a person described in Subsection B of this section, the court may permit intervention unless the party opposing intervention can demonstrate that a viable plan for reunification with the respondents is in progress and that intervention could impede the progress of the reunification plan.""

15. On page 24, line 22, strike "in court".

16. On page 24, line 23, after "court", insert "on the record".

17. On page 24, line 23, strike "which" and insert in lieu thereof "the".

**FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022**

SIRC/HB 135

Page 3

18. On page 24, line 24, after "tribes", insert "of which".
19. On page 27, line 3, strike "and".
20. On page 27, between lines 3 and 4, insert the following new paragraph:

"(2) able to testify regarding whether the Indian child's continued custody by the parent, guardian or Indian custodian is likely to result in serious emotional or physical damage to the child; and".
21. Renumber the succeeding paragraphs accordingly.
22. On page 27, line 12, after "that", insert "may".
23. On page 27, line 16, strike "forty-five" and insert in lieu thereof "fifteen".
24. On page 27, line 16, after "after", strike the remainder of the line and strike line 17 through "tribe" and insert in lieu thereof "filing the petition".
25. On page 28, line 1, strike "sixty" and insert in lieu thereof "thirty".
26. On page 28, line 1, after "days", strike the remainder of the line and strike line 2 through "investigation" and insert in lieu thereof "after filing the petition".
27. On page 28, lines 20 through 22, strike Subsection H in its entirety.
28. Reletter the succeeding subsection accordingly.
29. On page 29, line 15, strike "department's" and insert in lieu thereof "Indian child's tribe's".

**FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022**

SIRC/HB 135

Page 4

30. On page 30, line 7, before "entering", insert "voluntarily".

31. On page 30, line 7, after "placement", strike "voluntarily".

32. On page 30, line 8, strike the first occurrence of "or" and insert in lieu thereof "of".

33. On page 30, line 8, strike "child's parent's or guardian's".

34. On page 32, line 14, after "prior", insert "to".

35. On page 32, line 15, strike "Within" and insert in lieu thereof "No later than".

36. On page 32, line 15, strike the first occurrence of "of" and insert in lieu thereof "before".

37. On page 36, line 10, strike the closing quotation mark and between lines 10 and 11, insert the following new subsection:

"H. In an adoption proceeding involving a child who is an Indian child, the court-ordered mediation pursuant to Section 32A-4-29 NMSA 1978 shall not be waived and the Indian child's tribe shall be allowed to participate, whether or not the Indian child's tribe intervenes.""

38. On page 36, line 14, after "subject", insert "of".

39. On page 36, line 18, before "12", insert "9," and before "17", insert "16,".

40. On page 36, line 19, strike "or" and insert in lieu thereof a comma and after "28", insert ", 34 or 35".

**FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022**

SIRC/HB 135

Page 5

41. On page 42, line 10, after the period, insert a closing quotation mark.

42. On page 42, lines 11 through 15, strike Subsection N in its entirety.

43. On page 49, line 14, strike "transition" and insert in lieu thereof "case".

44. On page 54, line 7, strike "attempted".

45. On page 56, line 7, before "parent", insert "adoptive".

46. On page 56, line 22, strike "in discussion with" and insert in lieu thereof "after allowing testimony from all parties and".

47. On page 59, line 22, strike "petitioner" and insert in lieu thereof "prospective adoptive parent".

48. On page 66, line 4, after "Code", strike the remainder of the line and strike line 5 through "Act".

49. On page 67, between lines 7 and 8, insert the following new subsections:

"A. If a child is taken into custody by the department, the department shall make active efforts to determine whether there is reason to know the child is an Indian child.

B. At the beginning of every proceeding under the Children's Code, the court shall make a written determination as to whether the Indian Family Protection Act applies to the case."

50. Reletter the succeeding subsections accordingly.

**FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022**

SIRC/HB 135

Page 6

51. On page 67, between lines 19 and 20, insert the following new paragraph:

"(1) an Indian tribe asserts that the child may be eligible for membership;"

52. Renumber the succeeding paragraphs accordingly.

53. On page 67, line 20, strike "each" and insert in lieu thereof "any".

54. On page 67, line 21, strike ", Indian tribe or" and insert in lieu thereof "or an".

55. On page 67, line 22, strike "or agency".

56. On page 67, line 24, strike "each" and insert in lieu thereof "any".

57. On page 68, line 1, strike "or agency".

58. On page 68, line 10, strike "a ward" and insert in lieu thereof "under the jurisdiction".

59. On page 69, lines 6 through 16, strike Subsection D in its entirety and insert in lieu thereof the following new subsection:

"F. As used in this section, "Indian organization" means a group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians."".

60. On page 71, line 25, strike both occurrences of "child" and insert in lieu thereof "person".

61. On page 72, line 1, strike "child" and insert in lieu thereof "person".

**FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022**

SIRC/HB 135

Page 7

62. On page 163, line 6, before "The", insert the following:

"A. The provisions of this act apply to all cases filed on or after July 1, 2022.

B."

63. On page 163, strike lines 9 and 10 and insert in lieu thereof:

**"SECTION 74. EFFECTIVE DATE.--**

A. The effective date of the provisions of Sections 1 through 21 and 23 through 73 of this act is July 1, 2022.

B. The effective date of the provisions of Section 22 of this act is July 1, 2023.".,

and thence referred to the **JUDICIARY COMMITTEE.**

FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022

SIRC/HB 135

Page 8

Respectfully submitted,

\_\_\_\_\_  
Shannon Pinto, Chair

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 4 For 0 Against

Yes: 4

No: 0

Excused: Sanchez

Absent: None

HB0135IC1.wpd

.222619.1