

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

AMENDMENT

Date Prepared: 2/10/25

Bill Number: SB 308

Sponsor: Pinto

Short Title: Native American Ombud Act

Agency Name and Code Number: NM Indian Affairs Dept 60900

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Section II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0	\$2,000	Non-recurring	State GF

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
n/a	\$2,000	Unknown	Nonrecurring	Agency GF

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	\$975.5	Unknown	\$975.5	Nonrecurring	Agency GF

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(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 308 establishes an Office of Native American Ombud within the Indian Affairs Department (IAD). SB 308 contains 10 sections. Section 1 states that the short title of this SB 308 is the Native American Ombud Act (Act). Section 2 defines terms used throughout the Act.

Section 3, provides that the Ombud is appointed by the IAD Secretary. The Ombud has the authority to contract for services and can elect to use services provided by volunteers. The Ombud is responsible for 1) identifying, investigating and resolving concerns regarding Native Americans, 2) ensuring that Native Americans have consistent and timely access to services that are provided by the Ombud Office and receive timely responses from the Ombud Office, 3) identify patterns of concerns and recommend strategies to improve providing services to Native American involving issues like civil and criminal legal advice and representation, 4) ensuring that Office staff are trained in federal, state, and local laws and rules and policies regarding Native Americans, investigative techniques, dispute resolution and other matters that the Office deems appropriate; 5) developing procedures for certification of ombuds; 6) analyze, comment and monitor the development and implementation of federal and state laws, rules, and other governmental policies and actions involving Native Americans; 7) recommend changes to laws, rules or policies; 8) facilitate public comment on proposed laws, rules, policies and actions; and 9) provide information to public and private agencies, legislators and others involving problems or concerns of Native Americans.

Section 4 requires the Ombud Office to submit an annual report no later than December 1 of each year that includes any action taken, concerns identified, and recommendations for improving the quality of services provided to and protecting the rights of Native Americans.

Section 6 establishes that all files and records maintained by the Ombud Office are confidential and not subject to the Inspection of Public Records Act. Additionally, Section 6 provides that individual identities will be disclosed only if a person consents in writing, provides oral consent that is documented in writing by an Ombuds Office representative or by court order. Finally, Section 6 provides that the annual report submitted by the Ombud Office may be based on confidential information and may be shared with the public. However, the report should not identify individual Native Americans or violate the privilege of confidentiality that exists between the Ombuds Office and the individual.

Section 7 requires an informational posting of services provided by the Ombud Office in a conspicuous location.

Section 8 requires IAD to provide adequate legal counsel who provides advice and consultation to the Ombud Office and who can assist the Ombud Office and its contractors in the performance of its official duties.

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Section 9 establishes a process for non-compliance and Section 10 provides a \$2Million appropriation from the general fund to IAD to be used to establish and set up the Ombud Office by FY 2026. If the funds are not used within that time, they will revert to the general fund. Section 11 provides an effective date of July 1, 2025.

SIRC AMENDMENT

The SIRC Amendment removes all references to the Indian Affairs Department and the Secretary and replaces the references with the State Department of Justice and the Attorney General. The SIRC Amendment amends Section 11, which contains an emergency clause and states that the Native American Ombud Act will take effect immediately.

As a result of the SIRC Amendment, any duties and responsibilities under the Native American Ombud Act will be carried out by the State Department of Justice and the Attorney General.

FISCAL IMPLICATIONS

This bill appropriates \$2,000,000 from the General Fund to the Indian Affairs Department for fiscal year 2026, which is subject to reversion at the end of the fiscal year. The department would require recurring funds in the operating budget in order to sustain the implementation of this bill.

The appropriations are intended for expenses to be incurred in establishing the office of the Native American Ombud.

IAD will experience an increased administrative workload in managing funds appropriated to the agency, to include a new FTE equivalent to Ombudsman SPO's class and compensation, training, travel, technical office needs and other supplies and materials. This position requires a classified position pay band 80. The new FTE will result in an estimated annual cost of approximately \$101,512.00, which includes salary, benefits, and incidentals.

This bill will require the office to provide civil and criminal legal advice and representation to Native Americans. IAD will experience an increased legal workload that will result in the need for an office attorney/general counsel. An attorney position will result in an approximate annual cost of \$124,016.00, which includes salary, benefits, and incidentals.

It appears this bill may result in the Ombudsman and the attorney requiring support staff. This bill would likely result in multiple attorneys depending on the scope of the Office. This may result in \$200,000.00 to \$700,000.00 in annual expenses.

IAD is currently at capacity with office space. This will cause IAD to require more office space for the increased administrative workload. This space expense will be approximately \$50,000.00 annually.

SIRC AMENDMENT

As a result of the Amendment, fiscal implications identified in this section will be the responsibility of the State Department of Justice and the Attorney General. With the amendment, there is no fiscal impact to IAD.

SIGNIFICANT ISSUES

Most of the statutory duties of the Native American Ombud Act under SB 308 are already the responsibility of the IAD. Specifically, under NMSA 1978, Section 9-21-7, the IAD is already tasked with investigating, studying, considering and acting upon “the subject of Indian conditions within New Mexico...and the effect of local, state, and federal legislative and executive and judicial actions”, setting policy and holding hearings, conducting meetings, investigating and conferring and collaborating with local, state and federal agencies to promote the welfare of Indian people in New Mexico.

Under Section 4, IAD already addresses constituent concerns, thinks critically regarding how to address such concerns, assesses and analyzes a resolution to such concerns as well as how to improve quality of services, therefore, much of Section 4 is already in action by IAD. However, the bill states that, by December 1 of each year, IAD, through the Ombud Office, shall prepare a report on those areas, but it does not state where such report shall be submitted nor whether such report shall be published. Later, under section 6(B), it states that certain information in the report *may* be published or furnished to the public.

Under Section 5, the bill requires IAD to inform constituents of the decision not to address a concern and the reasons for such decisions. Overall, IAD already does this. However, while IAD often tries to provide constituents with a response, or at a minimum, another contact, IAD may not always be able to disclose specific reasons for being unable to address a particular matter.

Under Section 6, the bill takes a broad approach stating that all files and records maintained by the office that pertain to Native Americans are confidential and not subject to IPRA. Many, if not most, of IAD’s records pertain to Native American and often subject to IPRA. For example, IAD has hundreds of Intergovernmental Agreements (IGAs) with Nations, Pueblos, and Tribes and such IGAs are a matter of public record. The language is overly broad and requires further clarification.

Under Section 7, the bill states that *every person* that provides services to Native American shall post in a conspicuous location, information related to the office. This requirement seems overly broad and burdensome. Further, it is unclear whether this section applies to every person in the Ombud Office, every person in IAD, every person who works for the state, or some other reference to every person. Such language requires clarification.

Under Section 8, the bill requires that there be availability of legal counsel to the office, who shall not have a conflict of interest. It is difficult to state that there would never be a conflict of interest, however, should such a conflict arise for IAD, IAD could work with another state agency to assist for that particular matter. However, generally, a conflict of interest conflicts out the attorney from working on that matter. At this time, IAD only has one General Counsel of the entire agency.

SIRC AMENDMENT

While, as a result of the Amendment, any substantive issues identified in this section will be the responsibility of the State Department of Justice and the Attorney General, it does not change IAD’s original analysis. Moving the duties from one entity to another does not negate IAD’s concerns that IAD is already tasked with studying, investigating, and acting upon matters that

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impact Native American citizens and Nations, Pueblos, and Tribes. Further, the Amendment does not address the concern about where a report should be published.

Section 6 and Section 7 of the bill are still overly broad. Section 8 still will face conflicts of interest.

Overall, the bill is overly broad and duplicative.

PERFORMANCE IMPLICATIONS

The Ombud Office is housed within IAD and the IAD Secretary is required to appoint the Ombud under this Act. The IAD will also receive a \$2 Million appropriation to establish the Ombud Office. The appropriation implies that IAD will have direct oversight of, at the very least, ensuring that the funds are properly expended to hire Ombud Office staff, contractors, provide office space, etc.

SIRC AMENDMENT

As a result of the Amendment, any performance implications identified in this section will be the responsibility of the State Department of Justice and the Attorney General. However, the appropriation will be directed toward work that IAD is already addressing. Alternatively, IAD could be appropriately funded to ensure that it has the resources to continue to do work it is tasked with through state statutes.

ADMINISTRATIVE IMPLICATIONS

\$2 Million is appropriated to the IAD to establish the Ombud Office. The appropriation implies that IAD will have direct oversight of, at the very least, ensuring that the funds are properly expended to hire Ombud Office staff, contractors, provide office space, etc.

SIRC AMENDMENT

As a result of the Amendment, any performance implications identified in this section will be the responsibility of the State Department of Justice and the Attorney General. However, the appropriation will be directed toward work that IAD is already addressing. Alternatively, IAD could be appropriately funded to ensure that it has the resources to continue to do work it is tasked with through state statutes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There is another bill, SB 307 CHILD OMBUD ACT, with a new section of the children's code to create the "office of the child ombud." The ombud selection committee consists of 9 members, including "one of whom shall have specialized expertise in the federal Indian child welfare act of 1978 and the Indian family protection act." The ombud is required to report findings and recommendations related to the implementation of the federal Indian child welfare act of 1978 and the Indian family protection act. Additionally, the office staff will be trained in "federal, state, local and tribal laws, regulations and policies with respect to child protection and juvenile justice services in the state;...(3) the federal Indian child welfare act of 1978, the Indian protection act, tribal culture, tribal relations and sovereign nation status...:

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SIRC AMENDMENT

The Amendment does not directly impact the conflicts, duplications, companionship, or relationship issues identified in this section.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

SIRC AMENDMENT

Processes will occur at IAD as is currently established.

AMENDMENTS

None.