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FISCAL IMPACT REPORT

SPONSOR Taylor, JP DATE TYPED 2/13/04 HB 92/aHGUAC/
aHAFC/aSIAC

SHORT TITLE Cultural Affairs Department Act SB _____

ANALYST Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Office of Cultural Affairs (OCA)

SUMMARY

Synopsis of SIAC Amendment

The Senate Indian and Cultural Affairs Committee (SIAC) amendment to House Bill 92 strikes the House Government and Urban Affairs Committee amendment in its entirety (*see HGUAC amendment below*).

The SIAC amendment also adds minimum qualification and appointment requirement language for the following division directors: Fine Arts, Museum of International Folk Art, Museum of Indian Arts and Culture, State Monuments, and Archaeological Services, as outlined below:

The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

The director shall be appointed by the Secretary of Cultural Affairs from a list of no less than three names provided by the Museum of New Mexico Board of Regents.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee (HAFC) amendment to House Bill 92 strikes the \$500.0 appropriation from the bill and changes control for Museum of New Mexico property from the Cultural Affairs Department to the Museum Board of Regents of the Museum of New Mexico (see below):

"18-3-1. MUSEUM OF NEW MEXICO ESTABLISHED--LOCATION--
PROPERTY.--

A. The "museum of New Mexico" is established. ~~[It shall have headquarters in Santa Fe, New Mexico.]~~ All properties, real or personal, now held for museum purposes and all properties, real or personal, which may be acquired for museum purposes at any time in the future shall be under the control of the ~~[museum division of the office of]~~ museum board of regents of the museum of New Mexico ~~cultural affairs department.~~

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee (HGUAC) amendment to House Bill 92 makes several technical corrections to render the bill gender neutral and to correct the repeal provisions in section 54 so as not to repeal §18-4-6 NMSA 1978, which is amended in section 24 of HB 92. The amendment also changes the Mesilla state monument name to the Taylor Reynolds Barela state national monument.

Synopsis of the Original Bill

House Bill 92 creates a Cultural Affairs Department (CAD) which is composed of 15 divisions. This bill addresses the directives and recommendations made in Committee Substitute for House Bill 585, passed and signed by the Governor during the 2003 Legislative Session, and by the Legislative Subcommittee on Reorganization. An appropriation of \$500 thousand is allocated for organizational and operational expenses, including \$150 thousand to raise museum directors to division director status and \$350 thousand for museum services.

This new cabinet department includes the following divisions:

- A. administrative services division;
- B. arts division;
- C. historic preservation division;
- D. library division;
- E. Hispanic cultural division;
- F. farm and ranch heritage museum division;
- G. natural history and science museum division;
- H. museum of space history division;
- I. museum services division; and
- J. the following divisions that make up the museum of New Mexico:
 - (1) palace of the governors state history museum division;
 - (2) museum of fine art division;
 - (3) museum of Indian arts and culture division;
 - (4) museum of international folk art division;
 - (5) archaeological services division; and
 - (6) state monuments division.

Significant Issues

The Board of Regents of the Museum of New Mexico will continue to make policy for the fine arts, folk arts, Indian arts, and state history museums, the monuments, and the office of archaeological studies. CAD will replace the current museum of New Mexico division with an office of museum services that will provide centralized services to the museum of New Mexico divisions, with the goal of eventually providing such services to other state museums.

FISCAL IMPLICATIONS

The \$500.0 appropriation contained in this bill is a recurring expense to the general fund and any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

ADMINISTRATIVE IMPLICATIONS

HB 92 creates a division of museum services within the Cultural Affairs Department (CAD). According to Section 12 of HB 92, this division serves all the museum divisions of CAD by providing support in exhibitions, statewide education services, publishing and other services as requested by the divisions or the CAD secretary. This is a new division will serve up to eight separate museum divisions. This may result in administrative repercussions since the museum divisions of OCA have never employed a centralized system for museum services.

TECHNICAL ISSUES

The New Mexico Attorney General's Office recommends the following amendments to HB 92:

Except for the Lincoln County monument, it is unnecessary to list in the Act each state monument. State monuments are designated in accordance with Section 18-6-17 NMSA 1978. The bill should state that the monuments division is responsible for the operation of management of designated state monuments. New monuments will be designated in the future and circumstances could arise that result in a designated monument's closure. For that reason it is recommended that the Act not enumerate each state monument.

Section 5(B) should be amended to read: The appointed secretary shall have all the duties, responsibilities and authority of that office during the period of time prior to confirmation or rejection of his or her appointment by the senate in conformity with the requirements of the state constitution.

Section 6(B)(2) should be amended to read: (2) lawfully delegate authority to subordinates as he or she deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

Section 6(B)(4) should be amended to read: (4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the duties of the department;

Section 6(B)(5) should be amended to read: (5) take administrative action by issuing orders and instruction, in conformity with the law. To ensure implementation of and compliance with the provisions of the Department of Cultural Affairs Act, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

Section 6(B)(7) should be amended to read: (7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of the department;

Section 6(B)(8) should be amended to read: (8) prepare an annual budget for the department;

Section 6(B)(9) should be amended to read: (9) ensure cooperation, :

Section 6(C) should be amended to read: The secretary is authorized to apply for and receive, ...

Section 6 (E) should be amended to read: The secretary and each division of the department is authorized to promulgate and adopt such reasonable rules as may be necessary to carry out the duties of the department and its divisions. A rule proposed by the director of a division in carrying out the functions and duties of the division shall not be promulgated until approved by the secretary. Unless otherwise provided by statute, a rule affecting a person, agency or entity outside the department shall not be adopted, amended or repealed without a public hearing on the propose action before the secretary or a hearing officer designated by the secretary. At least one public hearing shall be held in Santa Fe. Notice of the subject matter of the rule,

Section 7(A) should be amended to read: A. The divisions and units of the department and the respective directors shall have all the powers and duties enumerated in the specific laws involved. However, the implementation of those powers and duties shall be subject to the direction and supervision of the secretary, who shall have final decision-making authority and responsibility for the administration of the powers and duties of the department, its divisions and units.

Section 7(B) should be amended to read: (B) The department shall have access to all records, data and information of other state departments that are not specifically confidential or otherwise protected from disclosure by law.

Section 8 should be amended to read: DIVISION DIRECTORS. – Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, “directors” of each division within the department. The directors so appointed are exempt from the Personnel Act.

The Cultural Affairs Department disagrees with the AGO suggested amendments to sections 13 through 18 of HB 92 as outlined below:

The proposed AGO amendments say "under the authority of the Museum of New Mexico"; key word, "authority". This is wrong. There is no Museum of New Mexico. The OCD was very specific about using the word "imprimatur" in the bill - for this very reason. The divisions will all be identified as a part of Museum of New Mexico (MNM), sort of an identifier, or "imprint" (hence the word, "imprimatur"), but not under an entity with any "authority".

The proposed AGO amendments also suggest the phrase "exercise trusteeship over the collections" – The OCD cabinet secretary believes it is important that the Boards exercise trusteeship over the facilities, too; in other words, leave the current language in the bill which reads: "exercise trusteeship over the [name of the specific] Museum". That would include collections and facilities.

Section 13 should be amended to read: MUSEUM OF FINE ART DIVISION CREATED – LOCATION – BOARD OF REGENTS. -- The “museum of fine art division” is created in the department of cultural affairs. The museum of fine art located in Santa Fe shall be operated as a division of the department of cultural affairs and under the authority of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the collections of the museum of fine art.

Section 14 should be amended to read: PALACE OF THE GOVERNORS STATE HISTORY MUSEUM DIVISION CREATED – LOCATION – BOARD OF REGENTS. -- The “palace of the governors state history museum division” is created in the department of cultural affairs. The palace of the governors state history museum located in Santa Fe shall be operated as a division of the department of cultural affairs and under the authority of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the collections of the governors state history museum.

Section 15 should be amended to read: MUSEUM OF INTERNATIONAL FOLK ART DIVISION CREATED – LOCATION – BOARD OF REGENTS. -- The “museum of international folk art division” is created in the department of cultural affairs. The museum of international folk art located in Santa Fe shall be operated as a division of the department of cultural affairs and under the authority of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the collections of the museum of international folk art.

Section 16 should be amended to read: MUSEUM OF INDIAN ARTS AND CULTURE DIVISION CREATED – LOCATION – BOARD OF REGENTS. -- The “museum of Indian arts and culture division” is created in the department of cultural affairs. The museum of Indian arts and culture located in Santa Fe shall be operated as a division of the department of cultural affairs and under the authority of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the collections of the museum of Indian arts and culture.

Section 17 should be amended to read: STATE MONUMENTS DIVISION CREATED – BOARD OF REGENTS. -- The “state monuments division” is created in the department of cultural affairs. The state monuments division shall be operated as a division of the department of cultural affairs and under the authority of the museum of New Mexico. The state monuments division shall develop, manage and oversee those locations within the state designated as state monuments. The museum of New Mexico board of regents shall exercise trusteeship over state monuments and any collections associated with designated state monuments.

Section 18 should be amended to read: ARCHAEOLOGICAL SERVICES DIVISION CREATED – BOARD OF REGENTS. -- The “archaeological services division” is created in the department of cultural affairs. The archaeological services division shall be operated as a division of the department of cultural affairs and under the authority of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the collections of the archaeological services division.

Section 19(B) should be amended to read:

- (B) The museum of New Mexico consists of the:
- (1) palace of the governors state history museum;
 - (2) museum of fine art;
 - (3) museum of Indian arts and culture;

- (4) museum of international folk art;
- (5) archaeological services division; and
- (6) state monuments division.

OTHER SUBSTANTIVE ISSUES

Implementation of this bill will make museum director positions exempt from the Personnel Act, thereby making them appointed positions serving at the pleasure of the CAD secretary.

RLG/yr:dm:lg