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## FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3/9/05 HB 545/HJCS

SHORT TITLE Native American Out-of-State Inmate Placement SB \_\_\_\_\_

ANALYST Peery

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Response Received From

Department of Indian Affairs (DIA)  
New Mexico Corrections Department (NMCD)

No Response

Attorney General's Office (AGO)

### SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 545 requires in determining the appropriate out-of-state transfer of Native American inmates consideration for the cultural and spiritual needs of the Native American inmate and the location of the Native American inmate's family or other social, spiritual or cultural support system by the Corrections Department. The proposed legislation states a Native American inmate in a correctional facility in New Mexico will not be transferred to a correctional facility outside New Mexico unless: 1) the Secretary of Corrections or the Secretary's designee makes a specific finding that there is no suitable correctional facility available in New Mexico for the Native American inmate; or 2) the Native American inmate voluntarily consents to placement in a correctional facility outside of New Mexico. The proposed legislation clarifies "correctional facility" to include privately owned or operated correctional facilities, and "Native American" to mean a person who is an enrolled member of an Indian nation, pueblo or tribe with a geographical presence in New Mexico.

## PERFORMANCE IMPLICATIONS

NMCD reports the proposed legislation significantly and unduly interferes with the Department's administrative authority and flexibility to house inmates in locations it deems to be the best for the safe and efficient operation of the prison system.

## TECHNICAL ISSUES

DIA state that it is unclear as to what constitutes a "specific finding" regarding a Native American inmate in a New Mexico correctional facility will not be transferred to a correctional facility outside the state unless "the Secretary of Corrections or Secretary's designee makes a "specific finding" that there is no suitable correctional facility available in New Mexico for the placement of the Native American inmate."

## OTHER SUBSTANTIVE ISSUES

NMCD reports the proposed legislation violates or contradicts New Mexico statutory and case law granting Corrections Department officials the complete discretion and authority to decide where to house or place its inmates. Section 31-20-2, NMSA 1978 states "persons sentenced to imprisonment for a term of one year or more shall be imprisoned in a corrections facility designated by the corrections department." The New Mexico Supreme Court has cited this statute in ruling that once a person has been sentenced to the Corrections Department, it is the Department that determines in what facility the person is to be housed (State v. Neely, 117 N.M. 707, 876 P.2d 222 (1994)). NMCD states the Interstate Corrections Compact, Section 31-5-17, NMSA 1978, gives the Corrections Department the authority and discretion to transfer an inmate to a prison facility in another state. NMCD reports that United State Supreme Court has ruled that inmates have no constitutional right to incarceration in a particular prison, even if conditions at one prison are worse than conditions of another (Meachum v. Fano, 427 U.S. 215, 223 (1976)). Further, the United States Supreme Court has also held that "just as an inmate has no justifiable expectation that he will be incarcerated in any particular prison within a State, he has no justifiable expectation that he will be incarcerated in any particular state" (Olim v. Wakinekona, 461 U.S. 238 at 245 (1983)).

DIA states most Native American inmates encounter severe problems while incarcerated because the correctional facilities lack the basic information about who these inmates are and the unique perspective and worldview that the inmate has learned from his or her tribal community. DIA reports to remain culturally and socially connected, the Native American inmate should be able to have visits from family members and tribal community members which can only be accomplished if they are nearby. DIA states removing the Native American inmate from New Mexico and away from this support system is detrimental to his or her spiritual, emotional, mental and physical well-being and is also detrimental to his family and tribal community who share the inmates' Indian culture and values. DIA reports family visits are essential to the Native American inmate's ability to reintegrate back into the tribal community when the sentence is completed.

**RLP/sb**