F I S C A L I M P A C T R E P O R T

SPONSOR Lujan, B **ORIGINAL DATE** 1/21/08 **LAST UPDATED** 2/11/08 **HB** 120/aHHGAC/aHAFC

SHORT TITLE American Indian Health Care Improvement Act **SB**

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	**FY09**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to the General Appropriation Act for DOH, but is not included therein

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$0.1	$0.1		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Aging & Long Term Services Department (ALTSD)
Department of Health (DOH)
Indian Affairs Department (IAD)
Health Policy Commission (HPC)
Human Services Department (HSD)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations & Finance Committee amendment to House Bill 120, as amended removes all of the appropriations contained in the HHGAC amendment and the original bill.

The amendment changes the effective date from July 1, 2008 to July 1, 2009.

Synopsis of HHGAC Amendment

The House Health & Government Affairs amendment does the following:

- changes the name of the Division of Indian Affairs to the Office of Indian Affairs;
- clarifies that the "American Indian health council" is created to replace the American Indian health advisory committee;
- changes the duties of the director from managing and implementing to coordinating the activities of the council;
- allows council members or designees who are state employees to collect per diem and mileage paid from the fund as funding is available provided by the Per Diem and Mileage Act.
- allows either co-chair to call a meeting;

The amendment also clarifies two of the duties of the American Indian Health Council will be to identify Indian health priorities and to prepare and revise annually an action plan that will lead to:

(1) achieving the priorities identified by the council; and
(2) coordinating the use of available funding for improvement of health care delivery to and the health of American Indians;

The amendment will allow the council to issue requests for proposals; review proposals submitted for grants and encourage the cooperative use of existing technology infrastructure from the fund only as funding is available. The language permitting the council to draw on sources of capital outlay funding is removed.

The amendment clarifies that the projects, services, training and capital improvement projects must achieve the goals of the American Indian Health Care Improvement Act.

The amendment also changes the language stating that the council will authorize grants from the fund to say the council will recommend grants from the fund for planning, development and coordination of improvements for health care infrastructure and health care services for American Indians residing in New Mexico.

The amendment states that the DOH secretary shall appoint a director for the office from a list of recommendations provided by tribes, tribal entities, tribal organizations and off-reservation nonprofit corporate bodies governed by an Indian-controlled board of directors. The DOH secretary shall employ in a full-time classified position a tribal liaison, who reports directly to the secretary or a designee.

The appropriations were changed as follows:

The $15,000,000 appropriated from the general fund to the American Indian health care improvement fund was lowered to $14,600,000.

The $2,200,000 to support the development of local plans for improvement of the delivery of health care to American Indian people and to conduct studies and analyses of health care and health coverage functions and trends was raised to $2,250,000.

The amendment removes the language allowing money from the fund to be used to administer the fund and lowers the $400,000 appropriation to $350,000 to DOH for administration.

The balance of the changes were clean up.

Synopsis of Original Bill

House Bill 120 appropriates $15,000,000 from the general fund and enacts the American Indian Health Care Improvement Act, which creates the following:

- The American Indian Health Council replaces existing boards that advise the DOH on American Indian health issues. The council shall oversee the implementation of the American Indian Health Care Improvement Act. The council shall consist of 18 voting members appointed by the governor. These members are identified in the bill.

- The American Indian Health Care Improvement Fund is created in the state treasury. The fund consists of money appropriated by the legislature and grants, bequests, gifts or money otherwise distributed to or designated for the fund from government or private sources. The DOH shall administer the fund.

- The American Indian Health Division is created within the DOH. The Secretary of DOH shall appoint a director for the division, who shall direct the activities of the division and advise the secretary on the development of policies and programs that address the health care needs of American Indians.

FISCAL IMPLICATIONS

The appropriation of $15,000,000 contained in this bill is a recurring expense from the General Fund. to the American Indian Health Care Improvement Fund (AIHCF) for expenditure in fiscal year 2009 and subsequent fiscal years for the following purposes:

> (1) $2,200,000 to support the development of local plans for improvement of the delivery of health care to American Indian people and to conduct studies and analyses of health care and health coverage functions and trends, including type of coverage and cost of coverage, with a long-term trend analysis of all health care practices available for Americans Indians in New Mexico;
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> (2) 10,000,000 to support, supplement or expand the existing components of the health care system providing services to American Indian people to improve delivery of health care to the American Indian population, including enrolling as many eligible American Indians who meet the federal poverty level requirements;
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> (3) $500,000 to expand the scope of investigation and research of the center for American Indian health of the health sciences center of the University of New Mexico;

(4) $600,000 for recruitment and retention of students training for careers in medicine or ancillary fields to become medical practitioners or medical researchers;

(5) $500,000 for research and epidemiological studies;

(6) $400,000 for technical assistance and outreach provided by the center for Native American studies of the health sciences center of the University of New Mexico to implement the components of the American Indian Health Care Improvement Act;

(7) $400,000 for information systems and technology support for tribal community health care delivery systems; and

(8) $400,000 for the staffing and operations of the American Indian Health Division of the DOH.

Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund but shall remain in the American Indian health care improvement fund for future expenditure pursuant to the American Indian Health Care Improvement Act.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Appropriations pursuant to this bill shall be made to supplement rather than to supplant existing American Indian health initiatives.

SIGNIFICANT ISSUES

According to the Indian Health Service (IHS), American Indians and Alaska Natives nationally face large health disparities when compared to other racial groups in the US. For example, the IHS reports that American Indians and Alaska Natives have lower life expectancy and a disproportionate disease burden when compared to all other Americans. The infant mortality rate among American Indians and Alaska Native is 8.5 per every 1,000 live births compared to 6.8 per 1,000 for all US races, and American Indians and Alaska Natives die at higher rates than the national average from tuberculosis, alcoholism, vehicular crashes, diabetes, unintentional injuries, homicide, and suicide.

New Mexico statistics mirror these national statistics. According to the DOH's Native American Health Status Report, the report finds that although American Indian infant mortality rate has decreased since the mid 1990s, and it still remains higher than all other races in New Mexico. The report also finds that American Indians in New Mexico die at higher rates than other races from unintentional injuries, diabetes, chronic liver disease and cirrhosis. It reported that 33% of American Indians in New Mexico are obese, which is significantly higher than all other races in New Mexico. HB 120 will seek to address these disparities in American Indian health.

HB 120 does the following:

1) Creation of an American Indian Health Division within DOH

HB 120 will create the American Indian Health Division ("Division") within the DOH. HB 120 will task the Division to serve as a single point of contact in state government to address American Indian health issues. The Division will be managed by a Director. The Director will advise the Secretary of the DOH on the development of policies and programs serving American Indians in New Mexico. In addition, the Director will also support the activities of the American Indian Health Council. The Director will designate staff to the Council (see p.14, lines 9-10), make recommendations on grant proposals submitted to the Council, oversee grants awarded by the Council through monitoring and technical support to grantees, and issue monthly reports on the status of grant projects. At the start of each fiscal year, the Director will provide a progress report to the Council of all grant projects authorized in the previous fiscal year. In this report, the Director will recommend best practices from successful programs that could be used to improve health outcomes in other American Indian communities throughout the state.

Currently, the DOH houses the Office of American Indian Health within the Division of Policy and Planning. The office also provides support to American Indian Health Advisory Committee, whose members are appointed by the Secretary of Health. The Office works with key health staff and officials to address American Indian health issues, and supports the DOH's government-to-government relations with the Tribes.

It is not clear if the Division, to be created by this bill, will replace the Office and create a separate directorate for American Indian health within the DOH structure, or if the Division will duplicate the functions of the Office.

2) Creation of an American Indian Health Council

Under this bill 120, the American Indian Health Council (Council) will be created. Once created, the Council will replace all existing advisory boards that address American Indian health issues, including the American Indian Health Advisory Committee, the current main advisory committee to the Secretary of DOH on matters concerning American Indian health. There are, however, other advisory boards and committees that periodically advise DOH on American Indian health issues, but do not claim this as their sole function. It is not clear if HB 120 intends to replace all boards that address American Indian health issues, even in part, or just the American Indian Health Advisory Committee.

The Council will be tasked to oversee the implementation of the Act. The Council's most significant task will be to advise the DOH on all American Indian health-related issues. However, HB 120 provides the Council with many other responsibilities other than serving as an advisory entity.

For example, the Council will be responsible for developing strategies and conducting analysis on how to eliminate health disparities between American Indians and other populations. The Council will be responsible for creating a five-year state strategic plan that will identify gaps in existing American Indian health care delivery systems. This plan will inform the Council's year-to-year priorities and yearly action plan. Based on these yearly priorities, the Council will request proposals for funding and identify capital improvement projects that will achieve their priorities and award grants that promote improvement in American Indian health. The Council will also be tasked to provide training sessions to applicants and grant recipients regarding the

Act and the Council's annual priorities. The Council will require semi-annual progress reports from grantees and promote successful programs to encourage replication within other American Indian communities. Finally, the Council will support the cooperative use of existing technology infrastructure, including telehealth services, and promote health-related information sharing agreements between the state and Tribes.

The Council will consist of eighteen (18) voting members appointed by the Governor. The 18 members will include:

- ✓ Five ex-officio members, consisting of the Secretaries from DOH, IAD, ALTSD, HSD and Children, Youth & Families (CYFD) or their designees. The Secretary of DOH will serve as co-chair of the Council.

- ✓ Eight members representing one or more tribes or their designees, one serving as a co-chair of the Council:

    - Three members from the 19 Pueblos selected from lists submitted to the Governor from the Eight Northern Pueblos Council, the Ten Southern Pueblos Council and the western Pueblos.

    - Three members from the Navajo Nation selected from a list submitted to the Governor by the President of the Navajo Nation.

    - One member from the Jicarilla Apache Nation selected from a list submitted to the Governor by the President of the Jicarilla Apache Nation.

    - One member from the Mescalero Apache Tribe selected from a list submitted to the Governor by the President of the Mescalero Apache Tribe.

- ✓ One member who is American Indian and representing the Behavioral Health Planning Council.

- ✓ One (1) member who is a health care provider to Off-Reservation American Indians.

- ✓ Two (2) members who are American Indians living Off-Reservation.

- ✓ One (1) member who is a health care provider to American Indians living on a reservation.

Each member could serve two, two-year terms for a total of four years. It should be noted that HB 120 contains no provisions to remove Council members prior to the end of their term. This may allow Council members to remain on the Board even if they are unable to attend meetings or have multiple unexcused absences. The Council will not be required to report to any governing body including the Legislature, interim committees, or other individuals.

3) Creation of the American Indian Health Care Improvement Fund (AIHCIF)

This bill will create the AIHCIF in the state treasury to implement the Act. The Fund will provide for grants to be awarded by the Council. DOH will administer the Fund, including

investing the Fund to accrue interest. DOH will be able to create necessary accounts within the Fund to implement the Act, including an account to support the Division's costs. The bill will require that no more than ten percent of the fund, or a maximum of $400,000, be used to pay for administrative costs during any fiscal year.

The administrative structure of the AIHCIF resembles that of the currently existing Tribal Infrastructure Fund Act (TIF), which provides financial support to New Mexico's Tribes, Pueblos, and Nations for infrastructure improvement projects. DOH will administer the fund much like the IAD administers the TIF funds. For example, the Council will award grants through a RFP process, like the TIF Board. HB 120 will create only one fund from which monies are spent, unlike TIF which created two funds, a Trust Fund which acts as an endowment and the Project Fund from which grants are awarded. The two-fund structure provides TIF with a permanent reserve of funding to continue its activities even if the other fund is fully expended through grants. DOH notes that this bill does not provide for a permanent reserve, which may be of concern.

4) Creation of Tribal Liaisons in Certain Executive Departments

HB 120 will amend the general powers and duties of each of the Secretaries of the CYFD, DOH, HSD, and ALTSD. HB 120 will require the Secretaries of each of these departments to employ a full-time classified tribal liaison. The tribal liaisons will promote communication between the departments and tribal communities in New Mexico; provide cultural competence and protocol training to department staff; work with tribes and off-reservation American Indian populations to resolve issues; and collaborate with other departments' tribal liaisons. These tribal liaisons will report directly to their respective department Secretaries and will have no formal relationship with the Council or the Division.

Tribal liaisons are already employed at CYFD, DOH, HSD, and ALTSD. These tribal liaisons perform many, if not all, of the functions as listed in HB 120. However, the current tribal liaison positions are not statutorily required and they are maintained at the Cabinet Secretary's discretion.

ADMINISTRATIVE IMPLICATIONS

HB 120 will create a new Division within DOH. This will change the current structure within DOH. As currently proposed by HB 120, the functions of the Office of American Indian Health will either be duplicated or will be transferred to the newly created American Indian Health Division. HB 120 will also require DOH to take on additional responsibilities to implement the Act. If HB 120 were to be passed without an appropriation, this will create a large, unfunded mandate for DOH. If funding for HB 120 was less than the level necessary to carry out the needed administrative functions, this could have serious implications for the implementation of the Act.

It should be noted that the American Indian Health Advisory Committee is currently appointed by the Secretary of Health. Under HB120, the new American Indian Health Council will be appointed by the Governor.

Finally, HB 120 will statutorily create tribal liaison positions within the DOH, HSD, CYFD, and ALTSD. As previously stated, it is unclear whether this will replace existing liaisons or add additional positions within each department.

CONFLICT, DUPLICATION, RELATIONSHIP

HB 120 relates to the General Appropriations Act because executive agencies such as the DOH and others must use administrative resources to fulfill some of the requirements in this bill.

DOH notes that HB 120 both relates to and conflicts with HB 62 Health Solutions Act, sponsored by Rep. Heaton. Both bills seek to improve health disparities among certain population groups in New Mexico, including Native Americans, and seeks to increase access to health care resources and technologies.

Both bills will create advisory bodies to oversee the implementation of the acts, however, HB 120 and HB 62 conflict in their Councils' organizational structures, funding structures, and locations within the state government

TECHNICAL ISSUES

DOH provided the following:

- In the definitions section of HB 120, the definition of "applicant" includes "tribal entity" and "tribal organization." It may be prudent to clearly distinguish between a tribal entity and a tribal organization as confusion may arise between the terms.

- Additionally, HB 120 will replace all existing advisory boards that address American Indian health issues, including the American Indian Health Advisory Committee with the Council. There are, however, other advisory boards and committees that periodically advise DOH on American Indian health issues, but do not claim this as their sole function. It is not clear if HB 120 intends to replace all boards that address American Indian health issues, even in part, or just the American Indian Health Advisory Committee.

- There are also several provisions in this bill that are imprecise and obscure. For example, at P.8 lines 14-16 of HB 120, the Council is directed to identify training and technical assistance needs and strategize on ways to address them. However, this bill does not clarify whose needs are to be identified. It may be prudent to clarify this language.

- At P.11, lines 4-6, the Council will be directed to "develop collaboration and information sharing" according to state, federal, and state-tribal agreement, but again in this bill does not identify the entity(s) the Council will collaborate with. It may be prudent to clarify this language.

- This bill will also appropriate $400,000 for the staffing and operational costs of the Division. However, this appropriation does not explicitly appropriate funds to cover the Council's operational costs nor will it provide funding for the Council's staff.

- At P.41, lines 3-6, a $500,000 appropriation will be made to the Center for American Indian Health of the Health Sciences Center at the UNM. However, the name of this research center is actually the Center for Native American Health of the Health Sciences Center at UNM.

- Also on P.41, lines 13-17, a $400,000 appropriation is made to the Center for Native American Studies of the Health Sciences Center of UNM. However, a Center for Native American Studies does not currently exist within the Health Sciences Center of UNM.

OTHER SUBSTANTIVE ISSUES

American Indians die at higher rates than other Americans from tuberculosis, alcoholism, motor vehicle crashes, diabetes, and suicide. Health care experts, policy makers and Tribal leaders are looking at many factors that impact upon the health of Indian people, including the adequacy of funding for the Indian health care system.

In 2007, the All Indian Pueblo Council (AIPC) formally adopted health care improvement for Native Americans as a legislative priority for the 2008 Legislative Session. This priority is consistent with the AIPC Pueblo Health Committee's (PHC) mission to "improve the health status and access to health services for Pueblo people through the leadership and advocacy of the All Indian Pueblo Council and the 19 Pueblo Governors." The PHC believes that the enactment of the American Indian Health Care Improvement Act will help positively affect health-related issues faced by Native Americans in this state.

It should also be noted that the federal Indian Health Care Improvement Act Amendments of 2007 is currently being considered by the United States Congress. The United States has a federal trust responsibility established by treaties, legislation, executive orders, and court rulings to provide health care services to members of federally recognized tribes. The primary federal agencies responsible to provide healthcare for Native Americans are the U.S. Department of Health and Human Services and the Indian Health Service (IHS). There are nearly 200,000 Native Americans in New Mexico, making up 10.5% of the state's population, of which many of New Mexico's Native American citizens rely upon IHS for medical service. Pursuant to its trust responsibility, the federal government enacted the Indian Health Care Improvement Act of 1976 (IHCIA), however, IHCIA expired 14 years ago and has been operating under continuing resolution since 1993.

The federal IHCIA, if reauthorized, will expand health resources available to Native American communities. It will also seek to modernize the Indian health care system, provide new funding for mental and behavioral health services, as well as create flexibility within the health care structure, and allow health services to be provided in-home to elderly Native Americans.

DW/mt:bb