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FISCAL IMPACT REPORT

ORIGINAL DATE 1-17-2008

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE Native American Art Authenticity Program SB 16

ANALYST Dearing

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$300.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Cultural Affairs

SUMMARY

Synopsis of Bill

Senate Bill 16 appropriates \$300 thousand from the general fund to department of Cultural Affairs for the purpose of implementing a Native American art authenticity program to label Indian Arts and Crafts sold or originating in New Mexico as authentic in source.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand contained in this bill is a nonrecurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY08 shall not revert to the General Fund.

SIGNIFICANT ISSUES

The federal Indian Arts and Crafts Act of 1990 (created under Public Law 101-644) and codified as 25 U.S.C. Section 305 established a Native American handmade product classification.

The 1990 federal legislation created the Indian Arts and Crafts Board (IACB). The Board is tasked with establishing policies and direction to maintain the economic development of

American Indians and Alaska Natives through expansion of the Indian arts and crafts markets. The IACB consists of five (5) commissioners appointed by the Secretary of the Interior serving voluntarily, without compensation.

Under the existing federal Act, any item produced after 1935 that is marketed using terms such as “Indian,” “Native American” or “Alaska Native” must be made by a member of a State or federally-recognized tribe or by a certified Indian artisan.

For a first time violation of the existing Federal Indian Arts and Crafts Act of 1990, an individual can face civil or federal criminal penalties up to a \$250,000 fine or a 5-year prison term, or both. If a business violates the Act, it can face civil penalties or can be prosecuted and fined up to \$1,000,000.

Fraudulently labeled items marketed as authentic and Indian or Native American in craftsmanship can harm sales of authentic merchandise. According to the Attorney General’s office, the federal IACB is not sufficiently funded or provided other resources to accomplish its oversight role for the Indian arts and crafts markets.

PERFORMANCE IMPLICATIONS

If enacted, the LFC recommends that the Cultural Affairs department submit a plan for program evaluation with specific program goals and criteria for assessing the program effectiveness and suggested outputs, outcomes and performance measures to evaluate the performance of state government programs as prescribed in the Accountability in Government Act.

ALTERNATIVES

Under 25 U.S.C. Section 305, artists may currently create advertisements, logos, marks, or group or individual hallmarks or otherwise conspicuously mark items to indicate that the item is authentically produced by a Native American. Items produced with materials prescribed in 25 U.S.C. Section 305 through specific production methods may be marked and marketed as “Indian,” “Native American,” or “Alaska Native”, under the act, and may also be labeled as originating from a particular tribe, provided the item was created by a member of that particular tribe. Items labeled or referencing a specific tribal or Indian nation “heritage,” “descent,” or “ancestry” should be used only where the statement is truthful and does not indicate the artist is a member of the relevant tribe.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting Senate Bill 16 would prevent an appropriation to implement the Native American art authenticity program.

PD/bb