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FISCAL IMPACT REPORT

SPONSOR Jennings ORIGINAL DATE 1/25/08
LAST UPDATED _____ HB _____
SHORT TITLE Insufficient Indian Health Care Lawsuit SB 270
ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB270 and HB120

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Attorney General's Office (AGO)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

Senate Bill 270 appropriates \$500.0 thousand from the GENERAL FUND to the Office of the Attorney General) for the purpose of preparing and filing a lawsuit against the United States for failure to provide sufficient funding for Indian health care.

FISCAL IMPLICATIONS

The Attorney General explains that it is uncertain whether, if the bill passes, and the Attorney General does bring suit, the funds appropriated will be sufficient to cover the costs of the litigation.

SIGNIFICANT ISSUES

The Attorney General points out that if construed as a mandate by the State Legislature to maintain this lawsuit, as opposed to merely providing funding should the Attorney General

determine that the suit is required, the bill may implicate Article III, Section 1 of the New Mexico Constitution (commonly referred to as the “separation of powers clause”) as a possible unlawful intrusion by the Legislative Branch of government into the managerial and discretionary duties of a member of the Executive Branch of government.

Even if the bill is construed to mandate this litigation, several legal issues must be overcome. It remains to be determined whether the state has standing to bring such a suit, on whose behalf the suit will be brought (i.e. the state itself, individuals deprived of health care due to the stated lack of “sufficient funding” or on behalf of the various Tribes, Nations, or Pueblos); whether the United States has waived its sovereign immunity allowing such a suit; whether an adequate case or controversy exists in order to maintain the suit; whether the facts would support such a suit; who the proper parties would be, etc.

Indian Affairs Department reports that the federal Indian Health Care Improvement Act of 1976 (“IHCIA”) reaffirmed the US federal trust responsibility, established by treaties, legislation, executive orders, and court rulings, to provide health care services to Native Americans. The enactment of the IHCIA was in response to evidence of inadequate funding for Indian health care services and the huge health disparities experienced by American Indians at the time. IHCIA was last reauthorized in 1993 and it has been functioning under continuing resolution since 2000. However, IHCIA reauthorization is currently pending before the US Congress. The reauthorization of IHCIA would expand resources and funding available to Native American communities for health-related services. It would 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.

The Indian Health Service (“IHS”) is the main provider of health services to American Indians. However, according to a 2003 report by the US Commission on Civil Rights, IHS operates at 59 percent of what is needed to provide adequate health care. They also found that annual per capital health expenditures for Native Americans total 60 percent of the amount spent on other Americans under mainstream health plans. The Commission states that these and other measurements “express in clear terms that funding levels are inadequate...the conclusion is unmistakable that current funding levels are far below that necessary to maintain basic health services and that the federal government has failed to satisfy its explicit trust obligation.”

PERFORMANCE IMPLICATIONS

The AGO stresses that the bill could be construed as providing funding necessary to bring the lawsuit referred to if, in the discretion of the Attorney General, such a suit is authorized and the state has a sufficient interest in maintaining the suit. However, the bill could also be construed as a *mandate* to bring such a suit which, if complied with, will require staff resources and time in prosecuting the litigation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB270 relates to HB120 American Indian Health Care Improvement Act which would seek to address American Indian health disparities by establishing an American Indian Health Division within the NM Department of Health. In addition, HB120 would appropriate \$15 million dollars to DOH for distribution for a variety of health care activities.

OTHER SUBSTANTIVE ISSUES

According to IAD, persistent lack of funding may account for the continuing health disparities experienced by American Indians and Alaska Natives. According to a 2006 IHS report, American Indians and Alaska Natives 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.

Department of Health offers a local perspective saying that American Indians in New Mexico have the some of the highest health disparity rates when compared to other racial/ethnic groups on the following health indicators: mental illness, suicide, alcoholism/drug addiction, cancer, diabetes, obesity, heart disease. Based on the New Mexico American Indian Health Status Data Report, 2005 created by the New Mexico Department of Health, the five leading causes of death in New Mexico affecting the American Indian population (2000-2002) were cancers, unintentional injuries, diseases of the heart, diabetes, chronic liver diseases, and cirrhosis. American Indian Infant mortality decreased over the past 10 years but remains higher then all other ethnic groups (7.2 and 6.1 per 1,000 live births, respectively in 2002). For American Indian males, the leading types of cancer are prostate, colorectal, lung, kidney and stomach; for American Indian females the leading types of cancers are breast, colorectal, ovarian, corpus, uterus and stomach. Within all American Indian groups, shigellosis and campylobacter rates were higher than those of all the other race/ethnic groups combined. Indian health Service is under funded by the federal government and does not meet the current health care service needs of Indian people in the New Mexico.

It also notes 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 health care for American Indians are the U.S. Department of Health and Human Services and the Indian Health Service (IHS). There are nearly 200,000 American Indians in New Mexico, making up 10.5% of the state's population, of which many 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, the IHCIA expired 14 years ago and has been operating under continuing resolution since 1993. The federal IHCIA, if reauthorized, would expand health resources available to American Indian communities to reduce health disparities.

ALTERNATIVES

Appropriate state agencies could be asked to investigate the issues contemplated by this bill, as opposed to providing funding to bring suit.

EO/bb