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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/09
 SPONSOR Lundstrom LAST UPDATED 03/05/09 HB 83
 SHORT TITLE Native American Arts & Crafts Sales SB _____
 ANALYST Varela

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
\$100.0		Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB92 and HB93

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Cultural Affairs (DCA)
 Indian Affairs Department (IAD)
 Tourism Department (TD)
 Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 83 appropriates \$100 thousand from the general fund to the Department of Cultural Affairs (DCA) for two studies, each totaling \$50 thousand. The first study is to determine the contribution of Native American arts and crafts to the economy, culture and social fabric of New Mexico. The second study is to determine the extent to which articles represented for sale in New Mexico as authentic Native American arts and crafts are misrepresented in regard to materials, artist of origin, place of origin, or manner of production. Both appropriations are contingent upon the receipt of funding from a non-state government source in an amount at least twice the amount of this appropriation.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

The appropriation of \$50 thousand contained in this bill to study the contribution of Native American arts and crafts to the economy, culture and social fabric of New Mexico is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of 2010 shall revert to the general fund. The appropriation is contingent upon the receipt of funding from a non-state government source in an amount at least twice the amount of this appropriation.

The appropriation of \$50 thousand contained in this bill to determine the extent to which articles represented for sale in New Mexico as authentic Native American arts and crafts are misrepresented in regard to materials, artist of origin, place of origin, or manner of production is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of 2010 shall revert to the general fund. The appropriation is contingent upon the receipt of funding from a non-state government source in an amount at least twice the amount of this appropriation.

According to the December 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

The Department of Cultural Affairs serves as New Mexico's cultural steward, charged with preserving the state's arts traditions and cultural integrity. This appropriation will enable the department to effectively study the economic, cultural and social contributions of Native American arts & crafts in New Mexico.

The Indian Affairs Department (IAD) reported that House Bill 83 received an endorsement from the Interim Indian Affairs Committee on Dec. 17, 2008.

According to IAD, House Bill 83 provides funding to conduct two studies that would provide a better understanding of the value of Native American arts and crafts to New Mexico's economy and culture; the effect of importation, production, and sales of non-authentic Native American arts and crafts; and the extent of sales of misrepresented non-Native American arts and crafts. This information may help New Mexico improve its enforcement of the Indian Arts and Crafts Sales Act and protect the livelihoods of Native artists in New Mexico.

The State of New Mexico has passed the Indian Arts and Crafts Sales Act to prohibit the sale of non-Indian made products represented to be Indian handmade or authentic Indian arts and crafts (Section 30-33-7A NMSA 1978 and P.L. 101-644). The statute prohibits any person from representing any Indian arts and crafts products as made from a material, including natural material, e.g. turquoise, unless is made of that material (Section 30-33-7C NMSA 1978). Failure to disclose in writing if a product is made of treated, reconstructed, or synthetic material may also result in criminal or civil penalties (Section 30-33-7F NMSA 1978). A person cannot solicit or buy for resale as authentic Indian arts and crafts any products that are known in fact not to be authentic (NMSA § 30-33-7E). Lastly, it is unlawful for any person to prepare, disseminate or otherwise engage in any unfair or deceptive trade practice, including any false misleading or

deceptive advertising, or any unconscionable trade practice, regarding Indian arts and crafts (NMSA § 30-33-7F). Any person found to be in violation of the Act would face fines or imprisonment, or both (NMSA § 30-33-9).

IAD states that despite these deterrents the forging of Indian art is a thriving business. The New Mexico Office of the Attorney General stated to the 2008 Interim Indian Affairs Committee that the sale of Native American arts and crafts is a multimillion dollar industry in New Mexico, but that fraudulently represented arts and crafts in this market make up at least 50%.¹ According to the federal Indian Arts and Crafts Board, “fraud in the [Indian] arts and crafts industry is becoming rampant and the area where it is the most rampant is in Arizona and New Mexico.”²

The fraudulent sale of non-Indian arts and crafts as authentic negatively impacts both Native artists and the economy. The Council for Indigenous Arts and culture states that this fraudulent activity is detrimental to the Native community through the loss of culture and personal income for many Native American artists.³ Fraudulent sales raise consumer doubt in the products being sold and erode the market for authentic Indian work.⁴

It is important to note that the emergency clause included in HB 83 would allow the two studies to begin immediately upon the receipt of funds from a non-state source. This source may include private and federal funds, and it would provide both studies with additional resources to conduct what are fairly complicated economic impact and market research studies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 83 relates to HB 93, Attorney General Indian Arts Act Enforcement, and HB 92, Indian Arts and Craft Sales Act Changes.

HB 93 would appropriate \$100,000 to the New Mexico Attorney General’s Office for expenditure in FY10 to investigate and prosecute violations of the New Mexico Indian Arts and Crafts Sales Act (Section 30-33-1 et seq. NMSA 1978); expenditures can be made for staff and the costs and expenses of enforcement and consumer education.

HB 92 would amend the New Mexico Indian Arts and Crafts Sales Act (Section 33-30-9 NMSA 1978) to increase penalties for persons willfully violating provisions of the Act by both increasing the cost of the civil penalty and lowering the minimum value of property which would constitute a violation of the Act. Moreover, the Act would increase penalties for violations involving property valued in excess of \$2,500 or in excess of \$20,000.

¹ New Mexico State Legislature, Interim Indian Affairs Committee. Hearing on the Sale of Indian Arts and Crafts (8/11/2008). Text from: Attorney General of New Mexico, www.nmag.org.

² Donovan, Bill. “Man who bogus bracelet avoids jail,” Gallup Independent, Dec. 10, 2007. Retrieved Jan. 22, 2008, http://www.gallupindependent.com/2007/december/121007bd_bogusman.html.

³ Council for Indigenous Arts and Culture. *Which is Authentic Indian Handmade?*, Brochure, 2000. Retrieved Jan. 22, 2008, www.ciaccouncil.org.

⁴ US Department of the Interior. “Federal and State Collaboration Results in Crackdown on Marketing of Fake Indian Arts and Crafts,” *US Department of the Interior News*, September 21, 2007. Retrieved Jan. 22, 2008, www.doi.gov/news/07_News_Releases/070924.html.

TECHNICAL ISSUES

According to IAD, House Bill 83 does not include a deadline for completion of the studies. It may be helpful to define an end date so that the results would be shared in a reasonable time frame. Additionally, this bill does not clarify a legislative committee or executive agency to which the studies should be reported.

AMENDMENTS

IAD suggests the following amendments:

It is recommended that on page 2, line 5, following the period after “appropriation”, insert the following sentence, “The Cultural Affairs Department shall report their findings to one or more appropriate interim committees by September 30, 2010.”

It is recommended that on page 2, line 19, inserting the following sentence, “The Cultural Affairs Department shall report their findings to one or more appropriate interim committees by September 30, 2010.”

PV/mc:svb