

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/09
 SPONSOR Pinto LAST UPDATED 02/10/09 HB _____
 SHORT TITLE State-Tribal Collaboration Act SB 196/aSIAC
 ANALYST Burns

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Information Technology (DoIT)
 State Personnel Office (SPO)
 Economic Development Department (EDD)
 State Fair Commission (SFC)
 Indian Affairs Department (IAD)
 Human Services Department (HSD)
 Department of Health (DOH)
 State Investment Council (SIC)
 Office of African American Affairs (OAAA)

No Response Received From

General Services Department (GSD)
 Public Defenders Department (PDD)
 Department of Military Affairs (DMA)

SUMMARY

Synopsis of SIAC Amendment

Senate Indian Affairs Committee amends SB196 on page 3, line 13, after “shall” strike the remainder of the line and strike line 14 through “as” and insert in lieu there of “designate”.

The amendment will read as “Every state agency shall designate a tribal liaison, who reports directly to the office of the head of the state agency,

The amendment is meant to remove the requirement of agencies having to hire or reclassify a full time equivalent to work as a tribal liaison. While the bill removes the language requiring an FTE it does not remove an agency from having to comply with the duties that are required of the tribal liaison.

Synopsis of Original Bill

Senate Bill 196 enacts the State-Tribal Collaboration Act; Requiring State-Tribal Collaboration and communication; declaring an emergency.

FISCAL IMPLICATIONS

There is no appropriation associated with SB 196. The bill was intended to carry no fiscal impacts to cabinet level agencies which will be required to follow the act. SB 196 will require the designation of a full-time-equivalent tribal liaison at all cabinet level agencies. The word designate was intended to minimize the fiscal impact on agencies. By using the word “dedicate” (used on page 3, line 13 of the Act), the Act would not require agencies to hire new staff. Rather, agencies would have to designate one or a portion of more than one existing staff’s time to the Tribal liaison function. This allows agencies to allocate current resources which equal up to a full time equivalent in order to meet the requirements of the bill. Agencies could experience increased operating costs due to increased training, travel, and administrative duties contained in the bill.

Agencies which do not currently have a dedicated tribal liaison would be required dedicate a full-time-equivalent (FTE) to the position. If an agency is unable to reallocate their resources to meet the requirements of this bill they would be forced to take on additional operating costs to employ a person in the position.

The State Fair Commission reports that they would be unable to allocate the resources to meet the requirements of this bill without taking away from resources critical to the Fair’s operations. The State Fair indicates they would have to hire an additional FTE at a cost of \$75 thousand per year. Being that the State Fair operates on enterprise funds they would be forced to generate additional revenues to support the requirements of this bill.

HSD reports that they would incur minimal fiscal impact from the enactment of this bill. The impact to HSD would be experienced in the cost of paying for employee training, lost productivity due to employees needing to take time away from their regular duties, and additional administrative costs due to certain requirements in the bill.

SIC recognizes that the agency would directly incur a cost of approximately \$70 thousand per year (salary & benefits) in order to employ a full-time tribal liaison employee position. Additionally, with the recent economic downturn, the SIC has been operating on a very strict budget limited to necessities and would be pressed to afford hiring an additional full-time employee without having a detrimental effect on other areas of the agency. Creating a new, full-time tribal liaison position would potentially require additional agency resources such as establishing new office space and incurring additional transportation costs to/from the agency and to/from the Indian tribes, nations and pueblos.

SPO reports there would be travel and/or administrative costs for state agency managers and employees who have to complete required training. SPO also reported that development of appropriate training curriculum in conjunction with the Indian Affairs Department could be done with existing staff and agency resources.

DOH reports they would experience no fiscal implications from this bill.

DoIT reported the additional costs associated with the bill are not known at the current time.

There could also be additional fiscal implications to agencies which did not respond to the request for bill analysis or failed to fully fill in the requested information.

The fiscal concerns for OAAA are that the agency is very small and can not afford to designate a full time person for this endeavor. However, the executive Director of the OAAA will be the Liaison to the State Department of Indian Affairs, and other American Indian Governments, to increase cooperation and collaboration between all involved parties.

There could also be costs associated with the annual summit requirement of SB 196. The summit would occur at least once a year, during the third quarter of the state's fiscal year. The summit would be a meeting which includes the governor, leaders of Indian nations, tribes and pueblos in a state-tribal summit to address issues of mutual concern. There is no appropriation contained in this bill, but the State would most likely incur a cost associated with the summit. A possible cost savings could occur with multiple issues dealt with in one summit there wouldn't be a need to do as many issue specific summits.

SIGNIFICANT ISSUES

SB 196 has several components to promote and develop the communication and collaboration process within state government. SB 196 would require every cabinet-level state agency to create a policy that promotes:

- Effective communication and collaboration;
- Positive government-to-government relations between the agency and the tribes; and,
- Cultural competency in providing effective services to American Indians and Alaska Natives.

According to OAAA There is a need to establish a legislative format and policy that will improve communication and collaboration between State Agencies and Tribal Entities.

Agencies would also be required to dedicate a full-time-equivalent position as a tribal liaison. The tribal liaison would ensure ongoing communication with the tribes and serve as a contact person for tribes and other state agencies regarding the agencies programs and policy initiatives. The tribal liaison would report directly to the office of the head of the state agency and work with the department to develop and ensure implementation of the state agency policy. This position within the agency would provide the tribal liaison with the ability to convey Native American issues and needs directly to the office of the Secretary or agency director.

SB 196 would require, at least once a year, a summit between the Governor of New Mexico and the 22 Tribal leaders. This government-to-government meeting would provide the Governor and Tribal leaders a formal opportunity to discuss issues of mutual concern and develop stronger relationships.

State agency managers and employees who have ongoing communication with the tribes would be required to complete a training provided by the State Personnel Office (“SPO”), with assistance from the IAD. The training curriculum would be developed in collaboration with the tribes, SPO, IAD, the American Indian Law Center at the University of New Mexico and other organizations; it would include modules on cultural competency, the promotion of effective communication and collaboration between state agencies and the tribes, and the development of positive state-tribal government-to-government relations. This training component reflects feedback the IAD received during consultation with tribal leaders and state tribal liaisons during the development of the Act; both groups expressed the need for state employees to receive training in cultural competency and how to and effectively communicate and collaborate with the tribes.

SB 196 would require each cabinet-level agency to submit an annual report to the IAD for compilation and presentation to the Governor and the Legislature. As a measure of accountability and progress on the development of state-tribal relations, the report would include a description of the agency’s current and planned efforts to implement their policy as well as outcomes of any communication and collaboration with tribes. It would also require a certification by SPO of the number of the agency’s managers and employees who received training and a description of the current and planned programs and services, including funding levels, which are provided to or directly affect American Indian or Alaska Natives.

A significant issue for the State Fair is that the fair is an entertainment venue and does not operate as a policy-making agency as contemplated in the bill. Interrelationships with Indian Tribes have been on the basis of promoting the State Fair and entertainment and the arts of Indian tribal people. The additional compliance issues contemplated in this bill would take away from resources that are already being used to collaborate and communicate with Indian Nations. The State Fair appreciates its relationship with Indian Nations and embraces its role as an avenue to aid in the promotion and preservation of Indian culture. However, the State Fair wishes to be exempted from the measures contained in the bill.

HSD already complies with many of the requirements contained in the bill. The Department has a tribal liaison in the Office of the Secretary and also a part-time liaison in its Medical Assistance Division. The Department makes efforts at collaboration prior to implementation of policies and programs that will affect Indian nations, tribes, and pueblos. The Department incorporates cultural competency into its programs and policies and typically requires its contractors to do the same. The Department has also participated in several summit meetings between Executive agencies and Indian nations, tribes, and pueblos. HSD also indicated that there would be some lost productivity as Department employees would need to take time away from their regular duties to receive training.

SB196 declares an emergency which means it is necessary for the public peace, health and safety that this act takes effect immediately.

PERFORMANCE IMPLICATIONS

SB196 relates to DOH's FY10 Strategic Plan, Community Objective 1: Reduce Health Disparities in New Mexico.

ADMINISTRATIVE

NMSIC states the “new position would require supplementary training by the state personnel office in order to ensure that the employee meets the objectives and criteria as required in this specific niche role since it is unrelated to the typical SIO agency matters of investments.”

SPO would be able to develop appropriate training curriculum in conjunction with the Indian Affairs Department with existing staff and agency resources in an effort to increase collaboration and communication between Indian nations, tribes or pueblos and state government.

HSD reported that there would be some additional administrative burden in completing the training and reporting requirements contained in the bill.

The State Fair believes additional management and employee time would have to be dedicated to ensuring the Act provisions are followed and the annual training requirements are adhered to.

SB 196 also contains the creation of a report which must be produced by each agency and then submitted to IAD to be compiled in to a single report which will submit to the governor and the legislature.

TECHNICAL ISSUES

The newly created tribal liaisons contained in the State-Tribal Collaboration act are included as part of the annual summit contained in subsection B, Section 4, on page four of SB 196. To obtain full State-Tribal collaboration it should be included in SB 196 that the annual summit will include the tribal liaisons from the cabinet level agencies.

Some concern has come up over the language in the bill which states “Every state agency shall dedicate a full-time equivalent position as a tribal liaison, who reports directly to the office of the head of the state agency.” If the language were changed to read, “Every state agency shall designate a tribal liaison,” the fiscal impact concerns which certain state agencies have expressed could be reduced.

OTHER SUBSTANTIVE ISSUES

SB 196 is a Governor Richardson bill (“GR bill”) and was endorsed by the Interim Indian Affairs Committee on December 17, 2008.

SB 196 has been so-far endorsed by eleven of the twenty-two tribes in New Mexico: the Pueblo of Isleta, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Zia, Pueblo of San Ildefonso, Pueblo of Taos, the Pueblo of Zuni, Pueblo of Cochiti, the Navajo Nation, the Jicarilla Apache Nation and the Mescalero Apache Tribe. Several other Pueblos have indicated they are considering support letters or resolutions.

Current Native American organization endorsements include the All Indian Pueblo Council (“AIPC”), the New Mexico Commission on Indian Affairs, the Albuquerque Indian Center, and the Bernalillo County Off-Reservation Native American Health Commission.

Between March and May 2008, the Indian Affairs Department met individually with tribal leaders to discuss the tribe’s primary issues and policy priorities. Tribal leaders emphasized as a priority the need to improve and strengthen government-to-government relations between the tribes and the State. Tribal leadership named formal consultation and more frequent communication with the Governor and his office and the IAD as ways to improve the relationships between the state and New Mexico’s twenty-two tribes. Taking direction from tribal leadership, the IAD began to develop this legislative proposal to establish a formal process in statute for communication and collaboration between the state and tribes.

ALTERNATIVES

Executive order 2005-004, Statewide Adoption of Pilot Tribal Consultation Plans, directed the following executive agencies to adopt a pilot tribal consultation plan no later than July 1, 2005, to address a specific and single area of the agency's operations that involve interaction with tribal governments, communities, and/or tribal members within New Mexico:

- 1) Children, Youth & Families Department;
- 2) Department of Public Education;
- 3) Department of Health;
- 4) Department of Labor;
- 5) Department of Tourism;
- 6) Economic Development Department;
- 7) Energy, Minerals and Natural Resources Department;
- 8) Human Services Department;
- 9) Department of Agriculture;
- 10) Environment Department;
- 11) Department of Transportation;
- 12) Department of Cultural Affairs;
- 13) Office of Homeland Security;
- 14) Office of State Engineer/Interstate Stream Commission;
- 15) Aging and Long-term Care Department;
- 16) Taxation and Revenue Department; and
- 17) Department of Veterans' Services.

The executive order directed all agencies listed to implement such plans immediately (July 1, 2005) unless otherwise directed. The executive order states “it is vital to the well-being and prosperity of the State of New Mexico that the State maintain and continue to foster long-lasting and committed relationships with the Tribes and Pueblos in New Mexico.” The executive order if enforced could serve as an alternative to SB 169 if the act is not approved.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting SB 196 would mean that the structure for state-tribal government-to-government relations between the State of New Mexico and the 22 tribes in New Mexico may not continue into future administrations. Moreover, the state would lack consistency in tribal communication

and collaboration across all cabinet-level agencies. Finally, state staff may not have training to understand how to work within tribal sovereignty and protocols in order to provide culturally appropriate services to Native American residents of the state.

KJB/mt:svb