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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/09
 LAST UPDATED 02/12/09 **HB** _____

SPONSOR Pinto

SHORT TITLE Native American Veterans Tax Settlement **SB** 465/aSIAC

ANALYST Burns

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$300.0	Nonrecurring	General Fund
	Undetermined but Substantial	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to 7-2H-1 NMSA 1978

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)
 Veterans Services Department (VSD)
 State Investment Council (SIC)

No Response Received From

Department of Military Affairs (DMA)
 State Treasurers Office (STO)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SIAC Amendment

The Senate Indian and Cultural Affairs Committee amendment to Senate Bill 465 amends the bill on page 5, line 25, after “taxes”, insert “for all relevant years”.

Synopsis of Original Bill

Senate Bill 465 amends sections of 7-2H-1 NMSA 1978 concerning the Native American Veterans’ income tax settlement fund.

Senate Bill 465 appropriates \$300 thousand from the general fund to the Indian Affairs

Department for an independent study, including legal research, regarding New Mexico state personal income taxes that may have been withheld during the period 1942 through 1978 from the military income of Native American veterans when they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty.

Senate Bill 465 also appropriates an undetermined amount based on the conclusions of the above study.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund.

The undetermined appropriation contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance at the end of a fiscal year shall not revert to the general fund

The bill appropriates \$300 thousand and an undetermined amount. The undetermined amount could significantly obligate the state in future years. According to the December 2008 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

SB 465 builds on SB 574, passed during the Second Legislative Session, 2008, that required DVS and TRD to conduct a study to determine whether any improper taxes were withheld from the active duty military pay of Native American service members when their domiciliary was on an Indian reservation.

DVS and TRD completed a Report on Income Tax Withholding on Native American Veterans and presented their findings to the Interim Indian Affairs Committee on October 3, 2008. IAD assisted in the drafting of the Report. The Report found that there was a legal basis for state personal tax exemption for Native American veterans residing on reservation lands dating from 1977. According to the report up to 7,651 Native American veterans in New Mexico may be eligible for settlements payments. However, some Native Veterans groups have indicated that they have records from veterans that verify improper tax withholdings dating to 1942

SB465 clarifies the domiciliary requirement of Native American veterans eligible for tax refund settlement consideration to include residency on a spouse's reservation in addition to one's own reservation.

In existing statute, and in SB 465, Section 7-2H-3A states: *"...money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested, pursuant to Chapter 6, Article 8 NMSA 1978."*

SIC indicated previously that this particular language, both in the original bill, as well as it is presented in SB 465 is problematic. The Land Grant Fund has various investments in Private Equity, Real Estate, Hedge Funds and Structured Debt vehicles which are longer term

investments of varying liquidity. Private Equity investments for example, often take 15-years from time of initial investment to full exit and complete return of capital. Many of the alternative investments in the Land Grant Fund have similar “lock-up” periods, and are likely not conducive to the needs of the Native American Veterans Tax Settlement Fund, which should be precluded from these types of investments, due to the Fund’s undefined payout rates and fiscal needs.

The SIC once again suggests that alternative language would allow more flexible and appropriate investment strategies to be applied to this fund by the investment officer, even a change as simple as stating the investments should be managed “*in a prudent manner similar to the LGPF.*”

RELATIONSHIP

SB 465 relates to 7-2H-1 NMSA 1978. SB 465 amends the current statute and calls for a similar study to the study which has already been completed. The study would most likely duplicate the previous efforts of the study contained in statute.

OTHER SUBSTANTIVE ISSUES

TRD’s previous analysis indicates more than 7,500 Native American soldiers could be affected, with refunds estimated at less than \$2M overall.

ALTERNATIVES

Since study has already been presented DVS and TRD are ready to proceed with the application process for the tax settlement, both departments are only awaiting an appropriation to the settlement fund that was created by SB 574. An appropriation made to the fund would allow for payments to the potential recipients identified in the previous study.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico Native American veterans not included in the previous study who had state personal income taxes improperly withheld would not have an opportunity to present their claims and receive settlement payments.

POSSIBLE QUESTIONS

Without an emergency declaration included in the bill will there be sufficient time to perform the study and fulfill the requirements of the appropriation by October 1, 2009?

KJB/svb:mt