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FISCAL IMPACT REPORT

SPONSOR Padilla ORIGINAL DATE 01/23/14
LAST UPDATED _____ HB _____
SHORT TITLE Zia Sun Symbol Origin & Use SM 1
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$11.5	\$19.5		\$31.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Cultural Affairs (DCA)

No Response
Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Memorial 1 requests DCA to make a report to the Senate Indian and Cultural Affairs Committee and the Senate Public Affairs Committee regarding “who has a right to use the Zia sun symbol and if there are any restrictions on how it may be used.”

FISCAL IMPLICATIONS

Producing and presenting the requested report would have a fiscal impact on DCA. The effort would impact executive level staff as key administrators of the study. For a comprehensive report that would include recommendations and best practices for the State’s use of the symbol, DCA estimates an approximate cost of \$31.0 thousand in salary and benefits from executive level staff and/or a contract for that approximate amount.

SIGNIFICANT ISSUES

The State of New Mexico is the largest single user of one version of what is known as the Zia

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Sun Symbol. Because of the scale of the State’s use of this symbol, the State has a significant vested interest in limitations on its use. The report would be valuable only if it addressed a more specific question or questions than those currently stated in the Memorial. The history of the Symbol’s use is long and complex, so any change to position or policy on use and control by the State could also be complicated.

Production of the report, including its research and production is likely to require close consultation with the Pueblo of Zia. The issue of Zia Sun Symbol trademarked use has been litigated previously by the Pueblo, so the Pueblo of Zia holds a body of both cultural and legal research. Because the State of New Mexico is the largest user of the symbol, however, there is potential for conflicts of interest between the State and the Pueblo, particularly if the report is intended to include recommendations.

The memorial asks for a report about “who has the right to use” the Symbol and “if there are any restrictions.” It is not clear if the author simply wants a *legal* question answered with regard to trademark or any other government restrictions, or if the author seeks to know whether the use *could* be limited, how, and specific options for the State to restrict its own use of the Symbol, or if other information is sought.

The memorial is also not clear if the sponsor would like to distinguish between permitted uses and users of the State’s flag version of the Zia Sun Symbol and Zia Pueblo’s version of the Zia Sun Symbol.

Existing federal law addresses at least part of the *trademark* part of the question. The U.S. “Lanham Act” states that the United States Patent and Trademark Office (USPTO) must refuse registration of a mark if it “[c]onsists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation.” (see 15 U.S.C. § 1052(b), 2006).

In other words, federal law does not allow any entity or person to register and protect a trademark that includes a symbol that is used in a state’s flag--not even the state of New Mexico or Zia Pueblo. Thus, no party has the trademark for the Zia Sun Symbol and no party can obtain valid trademark for the symbol.

Anyone can use the symbol without violating federal trademark law, but no one can use it to the exclusion of others (which is the role of a trademark). The Lanham Act also requires the USPTO to reject a trademark registrations that “[c]onsists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute” (15 U.S.C. § 1052(a), 2006).

PERFORMANCE IMPLICATIONS

DCA analysis states that depending upon the intended scope of the report, it could require a significant amount of staff time, diverting them from their existing responsibilities. Also depending on the scope of the report, contracted external experts could be required. Collaboration with the Pueblo of Zia and other state agencies also may be required, involving staff time and travel, in addition to coordination of the meetings. Likewise, if a written report is anticipated, a significant portion of staff time would be invested in writing, formatting, and

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editing the final report.

OTHER SUBSTANTIVE ISSUES

A December 21, 2013 a report by Chris McKee on KRQE.com regarding SM 1 stated that “Ten years ago, Gov. Bill Richardson announced he was going to create a task force to tackle the Zia question.” [State Senator Michael]Padilla says there's no record that any task force was ever formed.”

ALTERNATIVES

Federal law is controlling on at least one facet of this matter, but the State could pass legislation to restrict its own use of the Zia Sun Symbol and/or pass a resolution or memorial requesting that New Mexico’s congressional delegation seek a change in federal law.

CAC/ds