

LFC Requester:

Antonio Ortega

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/24/25

Check all that apply:

Bill Number: SB308

Original Correction
Amendment Substitute

Sponsor: Sen. Shannon D. Pinto

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Native American Ombud Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	2000	Nonrecurring	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill amendment creates new sections of law, the Native American Ombud Act, that establish the Native American ombud office within the New Mexico Department of Justice (“NMDOJ”). The amendment tasks the new office with several responsibilities (listed below) related to Native American affairs and appropriates \$2,000,000 to the NMDOJ in fiscal 2026 to establish the office. The amendment includes an emergency provision making the amendment effective immediately.

Section 1 provides the short title of the act, the Native American Ombud Act (“Act”).

Section 2 provides definitions to be used in the Act.

Section 3 creates the new office within the NMDOJ and provides the duties of the office. The Native American ombud, appointed by the attorney general, is charged with overseeing the office. The various duties of the office include identifying, investigating and resolving concerns pertaining to Native Americans that are filed with the office. In addition, the office is required to ensure that Native Americans have regular and timely access to the services provided by the office. The office is also required to identify patterns of concerns that emerge regarding governmental services provided to Native Americans and to recommend strategies for improvement in providing those services. The amendment lists the type of training the office must provide for staff, contractors and volunteers. The office is required to analyze, comment on and monitor federal and state laws, rules and other governmental policies and actions that pertain to Native Americans and recommend changes to laws, rules, policies and actions pertaining to the rights of Native Americans. The amendment requires the office to facilitate public comment on proposed laws, rules, policies and actions. Lastly, this section of the amendment requires the office to provide information to public and private agencies, legislators and other persons regarding the problems and concerns of services available to Native Americans and make recommendations related to those problems and concerns.

Section 4 requires the office to prepare an annual report that includes actions taken by the office; identified concerns, resolution of those concerns, and the effectiveness of the resolution; recommendations for improving the quality of services provided to Native Americans and for protecting their rights; and policy, regulatory and legislative recommendations to solve identified concerns.

Section 5 requires the office to identify and seek to resolve concerns communicated by or on

behalf of Native Americans and requires the office to communicate to the concerned person if the agency does not address the concern.

Section 6 makes confidential and exempts from the New Mexico Inspection of Public Records Act (NMSA 1978, Chapter 14, Article 2) (“IPRA”) all files and records maintained by the office that pertain to Native Americans. This section also prohibits the disclosure of the identity of a concerned person about whom the office maintains files and records, but provides some exceptions to the prohibition, including consent by the concerned person or if ordered by a court.

Section 7 requires every person providing services to Native Americans to post a notice that contains a brief description of the services provided by the office and contact information of the office.

Section 8 requires the office to ensure it has legal counsel to provide advice and consultation to the office needed to protect the rights of Native Americans, and in the performance of the official duties of the ombud and representatives.

Section 9 makes it unlawful to willfully interfere with the actions of the office. This section also makes unlawful instituting discriminatory, disciplinary or retaliatory action against any Native American for filing a concern with, providing information to or otherwise cooperating with the office. Lastly, this section provides a process for addressing noncompliance with the Act.

Section 10 appropriates \$2,000,000 from the general fund to the NMDOJ for expenditure in fiscal year 2026 for expenses to be incurred in establishing the office. Any unexpended or unencumbered balance reverts to the general fund. This section also includes an emergency provision making the amendment effective immediately.

FISCAL IMPLICATIONS

This bill amendment creates significant responsibilities for the NMDOJ, as the agency is tasked with creating the Native American ombud office and is solely responsible for the fulfillment of the duties of the office.

SIGNIFICANT ISSUES

The Indian Affairs Department Act, NMSA 1978, Section 9-21-2 through -15, created the New Mexico Department of Indian Affairs (“IAD”) and charged it with similar duties and responsibilities outlined in the bill. For example, the IAD shall “investigate, study, consider and act upon the entire subject of Indian conditions and relations within New Mexico, including problems of health, economy and education and the effect of local, state and federal legislative, executive and judicial actions.” NMSA 1978, Section 9-21-7(B)(1). In addition, the IAD “shall collaborate with other state departments or agencies that have an interest or stake in the subject being investigated, studied or considered.” *Id.* With regard to policy, the IAD charge is broad and shall “assist in setting the policy, and act as the clearinghouse, for all state programs affecting the Indian people of New Mexico”, NMSA 1978, Section 9-21-7(B)(2), and may “hold hearings, conduct meetings, make investigations and confer with officials of local, state and federal agencies to secure cooperation between the local, state, federal and Indian tribal governments in the promotion of the welfare of the Indian people of New Mexico”, NMSA 1978, Section 9-21-7(C)(1). While the nature of the bill appears to provide a mechanism for receiving and addressing concerns related to *services* provided to Native Americans, there may

be significant overlap between the policy directives of the bill to the NMDOJ and IAD's existing statutory role in policymaking.

PERFORMANCE IMPLICATIONS

This bill amendment creates significant responsibilities for the NMDOJ, as the agency is tasked with creating the Native American ombud office and is solely responsible for the fulfillment of the duties of the office.

ADMINISTRATIVE IMPLICATIONS

This bill amendment creates significant responsibilities for the NMDOJ, as the agency is tasked with creating the Native American ombud office and is solely responsible for the fulfillment of the duties of the office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See above discussion in Significant Issues regarding potential overlap with existing responsibilities of the IAD.

This bill is related to SB468 (making an appropriation to fund a tribal liaison program in each county to ensure that the Native American population has equal access to all phases of the electoral process by providing voter education and awareness, translation services and voter registration drives, all on a nonpartisan basis). SB468 appears to address certain rights, namely, voting rights, of Native Americans and this bill tasks the ombud with recommending changes to laws, rules, policies and actions pertaining to the rights of Native Americans.

This bill is related to two existing statutes, the Indian Affairs Department Act (NMSA 1978, Section 9-21-2 through -15), discussed above, and the State-Tribal Collaboration Act (NMSA 1978, Section 11-18-1 through -5). The latter requires every state agency to develop and implement a policy related to its relationship with Indian nations, tribes and pueblos, and to designate a tribal liaison. See NMSA 1978, Section 11-18-3.

In addition, the requirement of Section 3(C)(8) to "facilitate public comment on proposed laws, rules, policies and actions" may relate to the requirements found in the State Rules Act (NMSA 1978, Chapter 14, Article 4) which govern the rulemaking process of state agencies. See additional discussion below in Other Substantive Issues.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

Section 3(C)(8) requires the ombud to "facilitate public comment on proposed laws, rules, policies and actions". This directive may be overly broad and could be narrowed by including language that conforms with some of the bill's stated responsibilities of the office. For example, this paragraph could include language from the paragraph immediately preceding it and direct the ombud to facilitate public comment on proposed laws, rules, policies and actions "pertaining to the rights of Native Americans as the office determines to be appropriate." See Section 3(C)(7).

Section 6 of the bill creates an exemption from IPRA for “all files and records maintained by the office that pertain to Native Americans”. This exemption may be overly broad but could be narrowed by tying the confidentiality of records to those records related to concerns filed with the office. In addition, the bill in Section 6 makes confidential the identity of “a concerned person about whom the office maintains files or records” without further defining the term “concerned person”.

Section 7 requires that “every person that provides services to Native Americans” must post contact information for the office in a conspicuous location. This requirement on its face extends to *every person* that provides services to Native Americans and appears to be overly broad. The bill does not limit the requirement to persons within the office of the ombud, the NMDOJ or state agencies. Given the bill’s provisions concerning violations of the Act in Section 9 and the broadness of this notice requirement, there may be difficulties surrounding its enforcement.

Where the bill requires the ombud to make recommendations, no receiving entity is provided. See Section 3(C)(3), requiring recommendation on strategies for improvement in providing governmental services provided to Native Americans; Section 3(C)(7), requiring recommendations on changes to laws, rules, policies and actions pertaining to the rights of Native Americans; and Section 3(C)(9), requiring recommendations regarding the problems and concerns of services available to Native Americans; and Section 4, mandating an annual report. Therefore, it is unclear whether such recommendations are solely for internal purposes, or whether they should be reported outside the office or the NMDOJ.

Lastly, the primary distinction between this amended bill and the original bill is the substitution of IAD for the NMDOJ. Given that context, it is unclear whether the bill contemplates certain services already provided, or to be provided in the future, by the NMDOJ in requiring the ombud to “ensure that Native Americans have regular and timely access to the services provided through the office”, or whether the reference to “services” are those provided by the IAD. See NMSA, Section 9-21-12 (providing for the program services division within the IAD to provide program implementation and support for field programs and services).

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.