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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/09
 LAST UPDATED 03/10/09 **HB** _____

SPONSOR Lovejoy

SHORT TITLE Native American Veterans Tax Settlement Fund **SB** 541/aSIAC/aSFC

ANALYST Burns

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 465 Native American Veterans Tax Settlement
 Relates to 7-2H-1 NMSA 1978
 Relates to SB 599 Native American Veterans' Income Tax Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment adds that investments made on behalf of the Native American Veterans' Income Tax Settlement Fund must take into consideration the liquidity requirements of the fund.

Synopsis of SIAC Amendment

The Senate Indian Affairs Committee amendment to Senate Bill 541 strikes section 5 in its entirety.

The amendment strikes the \$2 million appropriation from the bill. Without an appropriation there may not be sufficient funds to pay debts determined to be owed by the previous study into improper tax withholdings. The bill may still carry a significant fiscal impact due to the expansion of eligibility of those Native American veterans whom would be able to claim improper tax withholdings.

Synopsis of Original Bill

Senate Bill 541 amends sections of 7-2H-1 NMSA 1978 concerning the Native American Veterans' income tax settlement fund.

Senate Bill 541 appropriates \$2 million from the general fund to the Native American Veterans' income tax settlement fund for the purpose of carrying out the purposes of the fund.

FISCAL IMPLICATIONS

The appropriation of \$2 million 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 not revert to the general fund.

Fiscal impact could also be experienced by TRD and SIC both whom will have to administer portions of the distribution and investment.

SIGNIFICANT ISSUES

SB 541 amends Section 7-2H-1 NMSA 1978 to clarify that a Native American veteran who had State income tax withheld from active duty military income while the veteran was domiciled on his or her own tribal lands or the tribal lands of their spouse, would be eligible for a settlement payment from the Native American Veteran's Income Tax Settlement Fund. The bill stipulates that settlement payments are to include the amount of state personal income taxes withheld from eligible Native American veterans that have not been previously refunded to the veterans plus interest. The bill also stipulates that the Native American Veteran's Income Tax Settlement Fund will be administered by TRD and that TRD will establish procedures and rules to administer the fund. The amount that may be appropriated to TRD to administer the Native American veterans' income tax settlement fund in fiscal year 2010 and subsequent fiscal years is limited to 5% of the fund balance. The amount that may be appropriated to the Veterans' Services Departments to assist in administering the fund is similarly limited to 5% of the fund in fiscal year 2010 and subsequent years.

A previously study conducted by VSD in conjunction with TRD determined that taxes which were improperly withheld is likely to have been less than \$2 million. SB 541 appropriates \$2 million which will not revert to the general fund at the end of a fiscal year. The appropriation exceeds the amount determined owed by the previous study.

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 has previously indicated that the above language, both in the original bill, as well as it is presented in SB 541 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 capitol. 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.*”

ADMINISTRATIVE

According to TRD the change of “department” from veterans’ services to taxation and revenue will require additional FTEs in ACD and RPD to administer this bill. Low impact on IT; 120 developer hours will be required to create a new worksheet in GenTax for the PIT program. A credit will be created through the worksheet that will then follow the normal refund process already in GenTax.

RELATIONSHIP

SB 465 Native American Veterans Tax Settlement, 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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

No appropriation would be made to the Native American veterans’ income tax settlement fund and no amendments would be made to 7-2H-1 NMSA 1978 to clarify language contained in statute.

KJB/mt:svb