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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/09  
 LAST UPDATED 2/23/09      HB \_\_\_\_\_

SPONSOR Lovejoy

SHORT TITLE Native American Veterans Income Tax Fund      SB 599

ANALYST Burns

### APPROPRIATION (dollars in thousands)

| Appropriation |             | Recurring<br>or Non-Rec | Fund<br>Affected                           |
|---------------|-------------|-------------------------|--|
| FY09          | FY10        |                         |  |
|               | (\$2,000.0) | Nonrecurring            | General Fund                               |
|               | \$2,000.0   | Nonrecurring            | NA Veterans' Income<br>Tax Settlement Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 465 Native American Veterans Tax Settlement Fund  
 Companion to SB 541 Native American Veterans' Tax Settlement Fund  
 Duplicates Appropriation in the General Appropriation Act, \$500 thousand appropriated to TRD

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Investment Council (SIC)  
 Indian Affairs Department (IAD)  
 Taxation and Revenue Department (TRD)  
 Veterans' Services Department (VSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 599 appropriates \$2 million from the general fund to the Native American veterans' income tax settlement fund to carry out the purpose of the fund. The purpose of the fund is to make settlement payments to Native American veterans who had state personal income taxes improperly withheld from their military pay.

### 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.

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

A study conducted by TRD and VSD in conjunction with IAD determined that taxes which were improperly withheld from Native American veterans are likely to be less than \$2 million. The appropriation contained in SB 599 would most likely fulfill the purpose of the fund. \$500 thousand is already recommended in the General Appropriations Act for the fund.

## **SIGNIFICANT ISSUES**

SB 541 makes an appropriation to carry out the purpose of SB 574, which was passed during the 2008 legislative session. Section 3, Chapter 89 of Laws of 2008 creates the Native American veteran's income tax settlement fund. At the time there was no appropriation made to carry out the purpose of the fund. The appropriation contained in SB 541 would fulfill the purpose of the fund.

However, according to SIC:

- Under current statute NMSA 1978 Section 7-2H-3A, and proposed statute in SB 465, the SIC would manage the fund “...*in the manner that Land Grant Permanent Funds are invested...*”
- Existing and proposed language remains potentially problematic regarding the management of this fund, due to the investment structure of the Land Grant Fund, which is highly diversified in various investments and asset classes. Many of those investments, including but not limited to private equity, real estate, hedge funds and structured debt require longer term investment horizons and restricted liquidity.
- SIC sought and received opinion from the NM Attorney General's Office that this language may require identical investment allocation to the Land Grant Fund, and may restrict the appropriate investment of smaller funds written with this statutory language. Currently this issue has resulted in non-investment of one such state fund.
- While the Native American Veterans' Income Tax Settlement Fund is currently unfunded, should SB 599 pass, this would immediately be a concern.

## **DUPLICATION**

\$500 thousand is recommended to be appropriated to TRD in General Appropriation Act.

## **CONFLICT**

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

Senate Bill 465 also 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.

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

**RELATIONSHIP**

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

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

No appropriation would be made to carry out the purpose of the Native American veterans' income tax settlement fund.

KJB/mt