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## FISCAL IMPACT REPORT



SPONSOR: Begaye DATE TYPED: 01/24/02 HB 86

SHORT TITLE: Native American Spiritual Advisors SB \_\_\_\_\_

ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	\$75.0			Recurring	General fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in The General Appropriation Act

Duplicates SB164

### SOURCES OF INFORMATION

LFC Files

#### Responses Received

Department of Health (DOH)

Corrections Department (CD)

### SUMMARY

#### Synopsis of Bill

House Bill 86 appropriates \$75,000 from the general fund to CD for the purpose of funding two Native American spiritual advisors to serve all of the state-funded adult correctional facilities, including those operated pursuant to a contract with the state.

### FISCAL IMPLICATIONS

The appropriation of \$75,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

It is possible that the bill might indirectly increase costs to the department in future years if other religious volunteers soon began demanding compensation for their services. There is also some possibility this appropriation might increase the cost of defending additional inmate civil suits requesting equal or similar funding for their religious activities.

### **ADMINISTRATIVE IMPLICATIONS**

According to CD, the bill will slightly increase the administrative burden upon Department procurement staff and staff members required to respond to inmate grievances and civil suits claiming religious discrimination.

### **OTHER SUBSTANTIVE ISSUES**

CD reports the bill raises several issues:

The bill will almost certainly have a positive impact upon CD's ability to provide Native American spiritual counseling to Native American inmates. For many years the Corrections Department has provided these services through volunteers. In the short term, if the department could pay these volunteers it would certainly be sure that these services would continue and probably even improve.

The bill should enable CD to more thoroughly implement the Native American Counseling Act. Also, the bill could result in an increase in claims by non-Native American inmates alleging a denial of equal protection or other religious discrimination.

CD suggests considering either funding all outside spiritual and religious counselors in some sort of equitable fashion, or funding no religious activities and operate on the assumption that all will be provided on a volunteer basis.

As it relates to religious services provided for inmates, it might be more appropriate for such services to be provided on a volunteer basis, rather than on a compensation basis. If CD begins payment for those services, it might reduce the number of persons willing to provide such services on a volunteer basis in the future.

It is possible that religious volunteers for religions other than those of Native Americans, as well as inmates who practice religions other than that of the Native Americans, will demand compensation in the same manner.

There is also some possibility that this sort of funding directed specifically for Native American religious practices could be challenged as discrimination on the basis of religion by other inmates. It is also possible that this sort of "discrimination" is not unlawful because of the Native American Counseling Act, which is unique to the State of New Mexico.

DOH reports rehabilitation of Native American prisoners in corrections facilities in New Mexico, along with their families, may be improved through the use of Native American spiritual advisors. An additional function the Native American spiritual advisors could provide would be education of corrections staff regarding the spiritual traditions and needs of Native American prisoners.

While keeping public safety in mind, security personnel and other law enforcement officials should

receive increased cross-cultural training so they will understand Native American traditions and the artifacts involved in the practice of these traditions.

It should be noted that various spiritual beliefs and sacred items and ceremonies may vary according to different tribal groups across New Mexico. It may be difficult for only two spiritual advisors to meet the needs of all Native American prisoners from the 22 Tribes and Pueblos in New Mexico as well as from Tribes, Pueblos and reservations in other parts of the United States.

LAT/prr:ar