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FISCAL IMPACT REPORT

SPONSOR Begaye DATE TYPED 1/25/05 HB 125

SHORT TITLE Native American Staff Termination Requirement SB _____

ANALYST Chabot

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | NFI | | See Narrative | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AG)
 Department of Indian Affairs (DIA)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 125 amends Section 22-5-4 NMSA 1978 (Local School Boards—Powers—Duties) and requires school boards work with the Indian Education Advisory Council to improve an identified inadequate staffing pattern of Native Americans. It amends Section 22-5-14 (Local Superintendent—Powers and Duties) and Section 22-10A-27 (Discharge Hearing—Procedures) to require school district superintendents of districts with a pattern of inadequate Native American staffing to notify the assistant superintendent of Indian Education five days in advance of terminating or discharging a Native American administrator, teacher or licensed support staff member. It amends Section 22-23A-5 (Indian Education Division—Created—Assistant Superintendent—Duties) to require review of inadequate Native American staffing and oversee Native American bilingual language programs. Finally, it amends Section 22-23A-6 (Advisory Council) to request from PED on an annual bases a summary report of Native American staffing patterns and in December of each year to make a report to the assistant superintendent for Indian Education and the Legislative Indian Affairs Committee with recommendations to improve inadequate staffing patterns.

Significant Issues

PED has significant concerns about this bill. First, it would require the department to become involved in what are school districts personnel actions. It would have to monitor school district hiring and discharge actions, and require PED to become involved in corrective actions. In 1986, the Legislature removed the former State Board of Education out of district employment decisions. This bill would require PED to become involved if the case was about an individual identified as a Native American.

Second, the bill does not specify what the department is to do upon notification of a pending personnel action, and the Assistant Secretary's involvement could be deemed to violate due process requirements of the individual. It may also violate an individual's right to privacy because personnel actions between an agency and the individual are confidential until finalized and the action taken. The requirement to notify PED by a school district contemplating an action may violate that confidentiality.

Third, requiring PED to provide the Indian Education Advisory Council information summarizing school district staffing patterns implies PED has a right to collect this information. However, the bill does not give the agency this authority. The agency states "To generate this data, PED would be required to ask *all* applicants ethnicity questions, which would invariably implicate the Fourteenth Amendment of the U.S. Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § and the New Mexico Human Rights Act.

Fourth, "identified patterns of inadequate Native American staffing" is not defined. It would be determined by the Indian Education Advisory Council without Legislative input or consultation with school districts.

Fifth, the bill requires PED to implement corrective actions and it urges affirmative action as a measure. This could lead to civil rights litigation because it is not clear a state agency can adopt its own Indian preference procedures.

Lastly, the bill assigns oversight of the Native American bilingual language programs to PED's Indian Education Division. Under provision of the Public Education Department Act (Section 9-24-4 NMSA 1978), the Secretary has assigned the responsibility to the Bilingual and Multicultural Education Bureau which is not part of the Indian Education Division.

AG states the proposed language in Section 2 may conflict with the School Personnel Act (Section 22-10A-24(C) which prohibits the local superintendent and school board from publicly disclosing its reasons for termination. In addition, Section 3 of the bill exceeds the scope of Section 22-10A-27(B) which applies to discharge hearings not terminations.

FISCAL IMPLICATIONS

PED estimates \$233.5 thousand, plus undetermined costs to each affected school district, will be required to implement the requirements of this bill.

ADMINISTRATIVE IMPLICATIONS

The Assistant Secretary of Indian Education will have to establish procedures to comply with this statute.

TECHNICAL ISSUES

To align the statute with the PED organizational structure, the following changes are recommended:

- Page 2, Line 5, change “superintendent” to “secretary”.
- Page 4, Line 17, change “superintendent” to “secretary”.
- Page 5, Line 21, change “superintendent” to “secretary”.
- Page 7, Line 20, change “SUPERINTENDENT” to “SECRETARY”.
- Page 7, Line 24, change “superintendent” to “secretary”.
- Page 11, Line 24, change “superintendent” to “secretary”.

AG recommends terminology in the act be aligned with the resulting organizational structure under the Public Education Act to avoid confusion in titles.

OTHER SUBSTANTIVE ISSUES

DIA recommends the definition of the term “inadequate Native American staffing” be included in the bill. It suggests staffing patterns should adequately reflect and population and diversity of the district. LFC recommends the definition include percentage of students required before considerations of “inadequate Native American staffing” are required to be reported.

LFC recommends the PED general counsel be available to discuss objections to this bill before appropriate committees.

ALTERNATIVES

PED will continue to recruit Native American into teaching programs through the appropriation for Indian Education in the General Appropriations Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

DIA suggests concerned parents, lawmakers, public school personnel and other community members will continue to question the equity disparities for Native American students in New Mexico public schools, especially in areas where there are high numbers of Native American Students.

POSSIBLE QUESTIONS

1. What is the role of PED in collecting, reporting and taking action on the information required by this bill?
2. Is there other means of obtaining this information?