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FISCAL IMPACT REPORT

SPONSOR Tsosie **DATE TYPED** 2/21/05 **HB** _____

SHORT TITLE State Property for Reburial of Human Remains **SB** 948

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$100.0		See discussion below.	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB949.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department Cultural Affairs (DCA)

Department of Indian Affairs (DIA)

SUMMARY

Synopsis of Bill

Senate Bill 948 would enact the Reburial Cemetery Act. In particular, SB948 would require that, unless otherwise designated by the DCA, human remains including funerary objects associated with the remains, shall be reburied in a federal or state reburial cemetery unless a descendant group requests otherwise.

DCA would be required to facilitate designation of state and federal land for reburial of un-marked remains not claimed by a descendant group including organizing a working group by September 1, 2005 including representatives from DCA, DIA, and the tribal-state working group to recommend rules for acquisition of remains and maintenance of the reburial ceremony, distinguish remains that can be reburied and those that cannot, and establish procedures and priorities for reburying remains in state and private collections. DCA would also promulgate rules by December 30, 2006 for platting remains placed in a reburial cemetery and ensuring information is

confidential, accepting and acquiring remains and coordinating activities with the state historic preservation officer, maintaining and securing the reburial cemetery, and working with descendant groups to provide access to the reburial cemetery for ceremonies. By July 1, 2007, DCA would be required to accept the first remains for reburial with priority given to remains currently at MIAC, begin platting the reburial cemetery, and provide security.

Senate Bill 948 appropriates \$100,000 from the general fund to DCA in FY06 and FY07 for establishing, staffing, securing and maintaining the reburial cemetery and reburying remains.

Significant Issues

DIA indicated that SB 948 addresses a very important and sensitive issue related to the reburial of Native American ancestral remains. Currently, many of the unclaimed or unidentified human remains are stored in cardboard and metal boxes at several New Mexico museums, including DCA facilities. The need for a secure and appropriate resting place for the ancestral remains is paramount and is the reason why the Tribal State Workgroup on Repatriation and Sacred Places Protection (TSWG) was established. Since January 2004, representatives on the TSWG have worked on various aspects of the proposed bill to provide for the respectful treatment of Native American ancestral remains and to ensure tribal participation in establishing rules for acquisition of remains and maintenance and preservation of a reburial proposed cemetery. DIA noted that a majority of New Mexico's twenty-two tribes are represented on the TSWG and support SB948 and that the Museum of Indian Arts and Culture Advisory Panel also supports the bill.

DCA noted that SB948 does not have jurisdiction over federal property or collections pertaining to the federal Native American Grave Protection and Repatriation Act (NAGPRA). NAGPRA regulations deal specifically with federal lands, and collections contained in museums at least partially funded through federal support. Human remains not currently in such a museum or found in chance discoveries on private or state lands are not covered by NAGPRA. Furthermore, NAGPRA does not currently have a simple mechanism to rebury remains of unknown geographic provenance. This bill would allow those remains and objects to be reburied in a proper, secure cemetery.

FISCAL IMPLICATIONS

The appropriation of \$100,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY07 would revert to the general fund. DCA notes that the ongoing maintenance and recordation of new reinterments will require future appropriations to ensure the reburials are protected from vandalism or discovery. It is not clear if the appropriation in this bill will be sufficient for a single fiscal year, particularly if funds are required to purchase land and/or develop infrastructure at the cemetery site.

ADMINISTRATIVE IMPLICATIONS

DCA indicated that SB948 will help department staff administer the law under the Cultural Properties Act. Two DCA divisions—Historic Preservation Division and the Museum of Indian Arts & Culture—would request a small percentage of overall funding for administrative costs such as travel, tribal education, and consultation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB949 which appropriates funds to inventory human physical remains in the state archaeological repository collections for the purpose of repatriation and reburial and for conservation and collection preservation of the Native American collections belonging to DCA.

TECHNICAL ISSUES

DIA recommended the following amendments:

On Page 2, Section 2, Subsection E, Lines 13-14, strike ‘for remains not claimed by a descendent group’.

On Page 3, Section 4, Line 3, strike ‘and’ and replace with ‘or’.

On Page 3, Section 4, Line 4-5, strike ‘not claimed by a descendent group’.

DCA identified one technical issue in that language in Section 4-A(3) mentions reburying remains held in private collections. It is the department’s understanding that existing statutes do not provide for the attachment of collections in private ownership.

OTHER SUBSTANTIVE ISSUES

DIA provided the following background information on the TSWG: In January 2004, the TSWG was established for the following purposes:

- To review current state and federal statutes regarding repatriation;
- To recommend amendments to current regulations;
- To gather tribal recommendations to the repatriation process based on tribal needs, emphasizing tribal consultation and cultural sensitivity;
- To improve enforcement;
- To educate the general public on repatriation and sacred places protection;
- and
- To draft legislation for a state cemetery for unclaimed or culturally unidentified human remains.

DIA indicates that SB948 is the legislation that members of the TSWG had anticipated would arise from their meetings. The TSWG has met since January 2004 and has sponsored two conferences, the “Protecting the Spirits of Our Ancestors: Repatriation and Sacred Places Protection Issues in the State of New Mexico” and the “Protecting the Spirits of the Ancestors Conference II.” Conference attendees included tribal leaders, tribal historic preservation officers, NAGPRA coordinators, tribal archaeologists, cultural preservationists, tribal museum staff, IAIA Museum Studies students, state agency staff, culturally affiliated tribes, and others committed to improving the repatriation process and protecting the multitude of sacred places in the State of New Mexico. The outcome of these meetings was the recognition of the need for a state reburial cemetery that is secure and available to the tribes for ceremonies as an alternative to the painful legacy of human remains stored in cardboard and metal boxes that has been occurring for over 100 years. Further, the TSWG felt it was necessary to let the ancestors rest in peace in a secure place where they will not be harmed or ever disturbed again.

Another related issue requiring attention, according to DIA, is the reburial of human remains dis-

covered during undercover NAGPRA and Bureau of Indian Affairs (BIA) operations. In some of these cases, the tribes are unable to accept the remains or funerary objects, but would like them to be reburied. Consideration should be made to allow the proposed reburial cemetery to accept the remains in these cases.

DH/yr