

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3-9-05 HB 987/HJCS

SHORT TITLE Deceased Native American Remains Disposition SB \_\_\_\_\_

ANALYST Collard

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Indian Affairs (DIA)

Commission on Higher Education – University of New Mexico’s Health Sciences Center - Office of the Medical Investigator (OMI)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 987 amends Section 24-11-6.1 NMSA 1978 to include several provisions:

- Requiring the state medical investigator to exercise due diligence to avoid performing an autopsy of a deceased person determined to be a member of a federally recognized Indian nation, tribe or pueblo unless legally required due to possible criminal acts or omissions, an obscure cause of death, or other reasons, or pursuant to consent given according to the provisions of 24-12-4 NMSA 1978;
- In the event an autopsy must be conducted, requiring the medical investigator to use the least invasive procedure possible to satisfy the investigator’s legal duties;
- Requiring the medical investigator to attempt to provide advance notice of an autopsy to the surviving spouse or next of kin, or if none can be found, to the Indian nation, tribe or pueblo before an autopsy is conducted and provide documentation on the autopsy to the contacted person or entity;
- Allowing, upon the request of the surviving spouse or next of kin, or if none can be found, the deceased person’s nation, tribe, or pueblo, a law enforcement representative to be present

during an autopsy, as long as the law enforcement officer does not interfere with the autopsy procedure and follows the health regulations governing autopsy procedures;

- Requiring the medical examiner to consult with the surviving spouse or next of kin regarding the disposition of all of the deceased remains;
- Requiring the state medical examiner replace all body parts and provide written certification to the surviving spouse or next of kin of the deceased that the investigator has replaced all parts; and
- Requesting each Indian nation, tribe, and pueblo in New Mexico designate an official representative that the medical investigator will contact when it is necessary to contact a tribal representative.

### Significant Issues

DIA indicates the bill, as substituted, relates to the following case: the OMI autopsy of Alicia Waseta, a deaf 21 year old member of the Pueblo of Laguna, who was struck and killed while crossing a street near the New Mexico School for the Deaf. Her body was returned to the Waseta family for burial. However the OMI did not inform the Waseta family her heart had been removed. Two month's after, Alicia Waseta was laid to rest, OMI called the Waseta family requesting to keep Alicia Waseta's heart for medical research. The Waseta family sued OMI. The status of the lawsuit is not known at this time.

Besides avoiding, unless legally required, or performing the least invasive autopsy, the bill would require the state medical investigator to notify surviving spouse or next of kin, or if none is identified, the Indian Nation, Tribe or Pueblo in advance of an autopsy. The bill will also allow a law enforcement officer to be present during an autopsy, and require the state medical investigator to consult with surviving spouse of the deceased regarding the disposition of all of the deceased's remains.

DIA notes, for many Native Americans these requirements are critical as there may be religious or cultural considerations that prohibit the autopsy, or return of all remains to the deceased's body. Additionally, consultation with the family or the tribe or pueblo of the deceased is critical in conducting religious or cultural activities in the burial of the deceased.

Additionally, due to tribal religious and cultural beliefs, the deceased's spouse or next of kin, Indian Nation, Tribe or Pueblo may not wish to be informed of the details of the autopsy, have a representative present at the autopsy, or otherwise be associated with the medical procedures involved in the performance of an autopsy.

OMI indicates it is already complying with most of the requirements of the bill. Paragraph E of the bill was introduced during bill substitution discussions and is advocated by OMI. OMI indicates it would take this action even if passage of the bill did not ultimately take place.

### **PERFORMANCE IMPLICATIONS**

DIA indicates the substituted bill requires the state medical investigator to make reasonable efforts to determine if a deceased person is a member of a federally recognized tribe. As well, the state medical investigator is to notify, provide documentation, or consult with a surviving spouse or next of kin, or the Indian nation, tribe or pueblo of the deceased. The substituted bill does not establish policies on how to carry out these duties.

## **FISCAL IMPLICATIONS**

There is no appropriation for this bill and OMI indicates there is no significant fiscal impact on OMI as a result of this bill.

DIA indicates there may be additional costs associated with locating, providing documentation, and consulting with surviving spouse, next of kin, Indian nation, tribe or pueblo where such activities may not have been undertaken before.

## **ADMINISTRATIVE IMPLICATIONS**

DIA notes determining the identity and tribal ethnicity of an unidentified Native American deceased may prove challenging for the medical investigator to adhere to the bill's requirements.

## **TECHNICAL ISSUES**

DIA notes the substituted bill requires the state medical investigator to request and keep current a list of tribal representatives from each New Mexico Indian tribe that the state medical investigator must contact regarding an autopsy or the disposition of the remains of a deceased member of the Indian Nation, Tribe or Pueblo. Because some tribes change their leadership on a yearly basis the state medical investigator should update the list of designated tribal representatives at a minimum, every year.

DIA also mentions tribal intermarriages and adoptions of non-tribal member Native Americans frequently occur within Indian Nation, Tribe or Pueblo. In cases of intermarriage or adoption of a non-tribal member Native American, should the law enforcement officer of the deceased non-tribal member Native American's Indian Nation, Tribe or Pueblo be present? Or, should the law enforcement officer of the deceased's spouse or next of kin's Indian Nation, Tribe or Pueblo be present? As written, DIA indicates this issue is not clarified. For example, should the Jicarilla Apache Nation's law enforcement officer be present at the autopsy of a deceased tribal member who was married to a tribal member of the Pueblo of San Juan? Or should the law enforcement officer of the Pueblo of San Juan be present at the autopsy of the deceased member of the Jicarilla Apache Nation? The same questions would apply to individuals adopted and would probably become more complex, especially if they are descendants from out-of-state tribes. Furthermore, the language as stated does not clarify the interstate jurisdictional issues.

DIA also indicates requiring tribal law enforcement officers at autopsies limits the law enforcement capabilities of tribal nations that are already experiencing limited law enforcement resources.

## **OTHER SUBSTANTIVE ISSUES**

DIA notes the bill recognizes the need to inform and consult with the Native American spouse or next of kin, Indian nation, tribe or pueblo on matters of great importance such as the performance of an autopsy on a deceased Native American. The medical performance of an autopsy, while important for determining the cause of death in western culture, is not considered religiously or culturally appropriate in Native American cultures.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

DIA states the bill establishes procedures for medical investigators that ensure the body of a deceased Native American is treated according to the spouse or next of kin, Indian nation, tribe or pueblo's religious or cultural beliefs. Additionally, the bill's procedures ensure that OMI takes the required measures to: 1) respect the religious and cultural beliefs of Native Americans, Indian nations, tribes or pueblos; and 2) avoid costly lawsuits associated with conduct not meeting legal or medical- professional standards.

Under current New Mexico law, the state medical investigator is under no obligation to contact the Native American deceased's spouse or next of kin, Indian nation, tribe or pueblo prior to an autopsy being conducted on the Native American deceased. Only after the autopsy has been conducted is the medical investigator charged with exercising due diligence to consult with the next of kin. Additionally, under current New Mexico law, the Native American deceased's Indian nation, tribe or pueblo is not contacted. Therefore, if not enacted, OMI may in all probability offend the religious and cultural beliefs of Native Americans, Indian nations, tribes or pueblos. Furthermore, without the required notification and consultation procedures embodied within this bill, OMI may further be exposed to time consuming and costly litigation, as is the case in the Waseta family lawsuit against OMI.

## AMENDMENTS

DIA suggests:

- Add a "Definitions" section to include a definition for "law enforcement officer," and "reasonable efforts" OR
- On page 2, Line 25, strike "of the" and replace with "within the" on page 3, Line 1, insert "jurisdiction of the" before "Indian".

DIA notes as written, the substitute does not clarify who is considered a tribal law enforcement officer. For example, some tribal nations are either policed by tribal law enforcement officers or Bureau of Indian Affairs (BIA) law enforcement officers or a combination of both. This does not include the role of FBI law enforcement officers, or state law enforcement officers where tribal-state agreements permit state police officers on Indian reservations.

**KBC/njw**