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FISCAL IMPACT REPORT

SPONSOR <u>Pinto</u>	LAST UPDATED <u>3/5/2025</u>	ORIGINAL DATE <u>2/8/2025</u>
SHORT TITLE <u>Native American Ombud Act</u>	BILL NUMBER <u>Senate Bill 308/ec/aSIRC</u>	ANALYST <u>Ortega</u>

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$2,000.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMAG	No fiscal impact	At least \$351.5	At least \$351.5	At least \$703.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 307
Relates to Senate Bill 468

Sources of Information

LFC Files

Agency Analysis Received From
Indian Affairs Department (IAD)
Department of Health (DOH)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SIRC Amendment to Senate Bill 308

The Senate Indian, Rural and Cultural Affairs Committee amendment to Senate Bill 308 (SB308) adds an emergency clause and replaces all references to the Indian Affairs Department (IAD) and its secretary with the New Mexico Attorney General (NMAG). The amendment states the Native American ombudsman will be appointed by the Attorney General.

Synopsis of Original Bill

Senate Bill 308 appropriates \$2 million from the general fund to the Indian Affairs Department (IAD) in FY26 for the purpose of enacting the Native American Ombud Act and establishing the Office of the Native American Ombud to identify, investigate, and resolve concerns related to

services provided to Native Americans. The Native American ombudsman will be appointed by the secretary of the Indian Affairs Department (IAD) and will oversee office operations, including investigating complaints, monitoring policy implementation, and recommending legislative or regulatory changes.

The bill states that the office will ensure confidentiality of records related to Native Americans and provide an annual report detailing concerns, resolutions, and policy recommendations. The bill mandates that all service providers post contact information for the office in a visible location and online, if applicable. IAD must provide legal counsel to the office to assist in its duties. The bill prohibits retaliation against individuals who file concerns and establishes a process for addressing noncompliance.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The appropriation of \$2 million contained in SB308 is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund. The Indian Affairs Department (IAD) states there is no fiscal impact to the department as a result of the SIRC amendment. However, there will be a fiscal impact to the New Mexico Attorney General (NMAG), which would be responsible for establishing and operating the Office of the Native American Ombud under the amendment. To sustain the implementation of the bill beyond FY26, NMAG will require recurring funds in its operating budget. This analysis assumes the operating costs initially calculated for IAD would be similar for the NMAG. The total cost of implementing the bill was estimated by calculating personnel expenses and office space needs.

The Indian Affairs Bureau of the NMAG currently provides legal, support, outreach, and advocacy for the state's Native American nations, tribes, and pueblos, with specialized attorneys serving as liaisons on issues such as water rights, consumer protection, and civil rights. Therefore, NMAG may have existing staff and resources who can fulfill the needs of the Office of the Native American Ombud. This analysis assumes NMAG would need to hire one ombudsman as well as additional support staff. IAD estimates that hiring an ombudsman at a classified position pay band 80 will result in an annual cost of approximately \$101.5 thousand, including salary, benefits, and incidentals. Additional support staff could cost up to \$200 thousand annually, depending on the number of staff required to fulfill the office's responsibilities. This number was derived from IAD's estimate ranging between \$200 thousand and \$700 thousand in annual expenses to fund additional attorneys and support staff

IAD estimates additional leased space to cost approximately \$50 thousand annually, depending on location and office requirements. Based on these calculations, the annual cost of implementing SB308 with the NMAG is estimated to be at least \$351.5 thousand, depending on staffing levels and office space requirements.

SIGNIFICANT ISSUES

The statutory duties outlined in SB308 overlap significantly with the existing statutory authority of the IAD. Under NMSA 1978, Section 9-21-7, IAD is responsible for investigating and

addressing issues affecting Native American communities, coordinating with local, state, and federal agencies, and advocating for policy changes. Both IAD and NMAG state the establishment of the Office of the Native American Ombud may duplicate these responsibilities without clearly defining how the office will interact with IAD's existing functions. IAD maintains that, despite the SIRC amendment, the bill remains overly broad and duplicative.

IAD and NMAG also note that SB308 relates to the State-Tribal Collaboration Act, which requires state agencies to develop policies regarding their relationships with tribal entities and designate tribal liaisons. IAD states the bill's creation of an ombudsman office raises structural and operational concerns, given that each cabinet-level agency is responsible for engaging with tribal governments, producing annual reports on agency interactions with Native communities, and facilitating communication between state and tribal entities. Without clear delineation, the bill may introduce redundancy and create confusion about the respective roles of the ombudsman, IAD, and existing tribal liaisons.

NMAG raises additional concerns about certain provisions in the bill. For example, language in Section 3(C) does not specify where the ombudsman's recommendations should be directed, creating uncertainty about whether they are intended for internal use or broad distribution. Additionally, Section 3(C)(8), which requires the ombudsman to "facilitate public comment on proposed laws, rules, policies, and actions," may be overly broad and could be narrowed to focus on Native American rights.

IAD and NMAG both express concerns regarding the confidentiality provisions in Section 6. IAD states that the broad language in Section 6 regarding the confidentiality of records raises concerns about compliance with the Inspection of Public Records Act (IPRA) because the department retains numerous Intergovernmental Agreements (IGAs) with tribes, pueblos, and nations, many of which are currently considered public records. NMAG states the provisions could conflict with existing transparency laws and should be more clearly defined. A blanket confidentiality provision could create legal conflicts and limit public access to important governmental agreements. IAD also notes ambiguity in Section 6(B), which states that certain information in the ombudsman's annual report may be published but does not clarify the extent of transparency or accessibility.

IAD further states that SB308 mandates that the department, through the ombudsman, prepare an annual report on Native American concerns but does not specify where the report must be submitted or whether it should be made public. The department notes that the amendment fails to clarify where the required report should be published.

Both IAD and NMAG raise concerns about the requirement in Section 7 that "every person that provides services to Native Americans" must post contact information for the ombud in a visible location. IAD states it is unclear whether this applies to state agency staff, tribal service providers, or all individuals offering services to Native Americans. NMAG states this is also broad and could be difficult to enforce. The Department of Health (DOH) adds the bill assigns the ombud broad investigative and training responsibilities, including monitoring state and federal policies affecting Native Americans and developing certification procedures for ombuds. However, it does not specify funding sources, staffing requirements, or how these functions will be coordinated with existing state and tribal entities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB308 relates to Senate Bill 307 (SB307), the Child Ombud Act, which proposes the creation of an Office of the Child Ombud within the Children’s Code, and includes oversight related to federal and state child welfare laws affecting Native American families. The selection committee for the ombudsman position includes a member with expertise in the Indian Child Welfare Act (ICWA) of 1978 and the Indian Family Protection Act. The office staff must be trained in tribal laws, culture, and sovereignty.

SB308 also relates to Senate Bill 468 (SB468), which proposes funding a tribal liaison program in each county to ensure Native American populations have equal access to the electoral process through voter education, translation services, and registration drives. Although SB468 focuses specifically on voting rights, its provisions could align with SB308, which tasks the ombud with recommending changes to laws, rules, and policies affecting Native American rights more broadly.

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