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FISCAL IMPACT REPORT

ORIGINAL DATE 1-18-2007

SPONSOR Lundstrum LAST UPDATED _____ HB 153

SHORT TITLE Voluntary Indian Arts Certification Marks SB _____

ANALYST Dearing

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$300.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 152

SOURCES OF INFORMATION

LFC Files;
Library of Congress,
Federal Trade Commission,
The U.S. Department of Interior's Indian Arts and Crafts Board.

Responses Received From

Indian Affairs Department (IAD)
Attorney General's Office (AGO)
Cultural Affairs Department (CAD)

SUMMARY

Synopsis of Bill

House Bill 153 appropriates \$300 thousand from the general fund to department of Cultural Affairs for the purpose of creating a voluntary certification mark to label Indian Arts and Crafts sold or originating in New Mexico as authentic in source. HB 153 establishes a non-reverting fund for acceptance of legislative appropriations, gifts, fees, grants, and bequests. If enacted, House Bill 153 establishes a *State* Indian Arts and Crafts Advisory Board of seven (7) members appointed by the governor and entitled to per diem and mileage under the Per Diem and Mileage Act.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand contained in this bill is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY08 shall not revert to the General Fund.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

The federal Indian Arts and Crafts Act of 1990 (created under Public Law 101-644) and codified as 25 U.S.C. Section 305 established a Native American handmade product classification.

The 1990 federal legislation created the Indian Arts and Crafts Board (IACB). The Board is tasked with establishing policies and direction to maintain the economic development of American Indians and Alaska Natives through expansion of the Indian arts and crafts markets. The IACB consists of five (5) commissioners appointed by the Secretary of the Interior serving voluntarily, without compensation.

Under the existing federal Act, any item produced after 1935 that is marketed using terms such as “Indian,” “Native American” or “Alaska Native” must be made by a member of a State or federally-recognized tribe or by a certified Indian artisan.

For a first time violation of the existing Federal Indian Arts and Crafts Act of 1990, an individual can face civil or federal criminal penalties up to a \$250,000 fine or a 5-year prison term, or both. If a business violates the Act, it can face civil penalties or can be prosecuted and fined up to \$1,000,000.

Fraudulently labeled items marketed as authentic and Indian or Native American in craftsmanship can harm sales of authentic merchandise. According to the Attorney General’s office, the federal IACB is not sufficiently funded or provided other resources to accomplish its oversight role for the Indian arts and crafts markets.

The Cultural Affairs department discusses the necessity of a program office and regular staff to implement this program. Additionally, ongoing outreach and education activities would need to be conducted to inform the public, retailers, and artisans of program features and benefits.

PERFORMANCE IMPLICATIONS

If enacted, the LFC recommends that the Cultural Affairs department submit a plan for program evaluation with specific program goals and criteria for assessing the program effectiveness and suggested outputs, outcomes and performance measures to evaluate the performance of state government programs as prescribed in the Accountability in Government Act.

ADMINISTRATIVE IMPLICATIONS

Enactment of House Bill 153 would require the Attorney General's office, the Indian Affairs department and the department of Cultural affairs to collaborate on the promulgation of administrative policies for addition to the New Mexico Administrative Code.

RELATIONSHIP

House Bill 153 relates to House Bill 152. HB152 appropriates \$300 thousand for expenditure in FY08 to implement the Indian arts and crafts certification mark program. HB152 proposes a non-reverting appropriation, however it does not include amendments or additions to the existing Indian Arts and Crafts Sales Act, Sections 30-33-6, 30-33-7, and 30-33-11 NMSA proposed in HB153.

TECHNICAL ISSUES

If enacted, House Bill 153 would significantly amend the existing Indian Arts and Crafts Sales Act, Sections 30-33-6, 30-33-7, and 30-33-11 NMSA, including the addition of three subsections of new material within Section 30-33-6 NMSA. These three proposed additional subsections would establish the certification mark program and stipulate maximum annual and one-time fees for participants of \$100 and \$250 respectively, create the Indian Arts and Crafts Advisory Board and appointment criteria, and create the Indian Arts and Crafts Fund and relevant fiscal framework and operation of the non-reverting fund.

No penalties for fraudulent marketing are stipulated within this proposed legislation.

ALTERNATIVES

Under 25 U.S.C. Section 305, artists may currently create advertisements, logos, marks, for groups or individual hallmarks or otherwise conspicuously mark items to indicate that the item is authentically produced by a Native American. Items produced with materials prescribed in 25 U.S.C. Section 305 through specific production methods may be marked and marketed as "Indian," "Native American," or "Alaska Native", under the act, and may also be labeled as originating from a particular tribe, provided the item was created by a member of that particular tribe. Items labeled or referencing a specific tribal or Indian nation "heritage," "descent," or "ancestry" should be used only where the statement is truthful and does not indicate the artist is a member of the relevant tribe.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting House Bill 153 would prevent the creation of the certification mark program, the fund, and a State-level advisory Board.

POSSIBLE QUESTIONS

Would non-participation by eligible artisans create a barrier to sales or pricing of their products?

Would enactment of this legislation supplant funds and duplicate federal efforts in this area?

PD/mt/csd