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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/10

SPONSOR HAFC LAST UPDATED \_\_\_\_\_ HB CS/49/HAFC

SHORT TITLE Native American Fire Protection Funds SB \_\_\_\_\_

ANALYST Burns

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI	Recurring	Fire Protection Grant Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 48 Native American Emergency Medical Services  
HB 114 Postpone Fire Protection Fund Distribution

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$113.0	\$113.0	\$226.0	Recurring	Fire Protection Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission – State Fire Marshal (PRC)

Indian Affairs Department (IAD)

### SUMMARY

#### Synopsis of Bill

House Appropriations and Finance Committee Substitute for House Health and Government Affairs Committee Substitute for House Bill 49 amends the Fire Protection Fund Law to include tribal fire stations as eligible beneficiaries, require that the fire marshal and any tribe receiving a distribution from the fire protection fund have a joint powers agreement (JPA) in place, and adds a representative of a tribe with a fire station appointed by the governor to the fire protection grant council.

## **FISCAL IMPLICATIONS**

According to PRC, there could be as many as 150 new stations added to the grant list. The total amount available, however, for all fire districts does not change and so the funding for these new stations would be at the expense of other stations. This could reduce the current funding to municipal and county fire departments by as much as 15 to 20 percent.

Additionally the certification of numerous additional tribal fire departments would add additional burden to the State Fire Marshal's Division of the PRC in conducting inspections, audits and oversight without additional funding and an FTE. The projected annual cost of one FTE salary, benefits, vehicle, fuel, repair and maintenance of vehicle, travel expenses and uniforms is \$113.0. Vehicle replacement for this position would occur, on average, every two to three years.

HB49/HAFC relates closely with HB 114 which has further fiscal implications to the fire protection fund. HB 114 is described below.

## **SIGNIFICANT ISSUES**

The fire protection fund is funded from insurance premium taxes on property and vehicle insurance policies.

According to the State Fire Marshall, Native American fire departments have access to the Fire Protection Fund currently by agreeing to be administered by county governments and providing services through a county wide fire suppression system. Such agreements are legalized by resolutions of the counties. Numerous Native American fire departments are already receiving state funding in Otero, Rio Arriba, San Juan, McKinley, Cibola and Sandoval counties.

It is unclear what the status of those Native American fire departments already receiving funding would be upon implementation of this Act. Property and apparatus are titled to the counties and possibly could be claimed by the counties. If county resolutions creating Native American departments become void, those departments could be left without any apparatus or equipment and be required to reestablish without state funding through a one year probationary period.

IAD reports that many tribal areas are near sensitive and populated areas and because of the lack of adequate fire resources present a significant fire danger. According to IAD, "an assessment of the emergency management services currently provided on tribal land reveals that only 6 out of 22 tribes have full-time emergency management coordinators. Of the 22 tribes in New Mexico, 9 have fire department resources. This reduces a tribal community's ability to respond effectively to emergency situations as well as limits their ability to work with other tribal, local, county and state fire departments and districts to address regional fire safety and emergency management issues."

The bill would allow for tribes to be treated like counties, which unlike municipalities can create more than one fire district within their geographic boundaries. This would benefit large tribes as well as tribes with discontinuous land bases, like the Navajo Nation, because they would be able to better serve multiple smaller districts than one large district which may have rural or very inaccessible places.

Section 59-A-53-5 NMSA 1978 is also amended to remove the power of a Board of County Commissioners to terminate its service to an area within the county or in another county that is receiving services. Currently, counties may terminate fire services with the approval of the fire marshal.

### **PERFORMANCE IMPLICATIONS**

One of the budget performance measures of the State Fire Marshal Division is the percentage of funded fire departments or districts with an ISO rating of 8 or better. Because of the lack of water supply in many areas within tribal jurisdictions an ISO rating of 9 or 10 may be the best that is obtainable and could have a detrimental effect on the Division's performance measures.

### **ADMINISTRATIVE IMPLICATIONS**

The State Fire Marshal has raised concerns that issues may arise due to Indian Nation sovereignty and the Marshal's ability to enforce rules regarding training and expenditure requirements that are attached to the grants fire stations receive. The Marshal has concerns about how a JPA will work.

### **RELATIONSHIP**

HB 114 Postpone Fire Protection Fund Distribution- Delays increases in the distribution from the fire protection fund to the fire protection grant fund. Increased distributions are pushed forward by one year beginning in FY11, resulting in a recurring shift of revenue from the fire protection grant fund to the general fund.

HB 48 Indian Nation Emergency Medical Services (including tribes in the distribution of funds from the State Emergency Medical Services Fund along with municipalities and counties).

### **TECHNICAL ISSUES**

Section 59A-53-13(B) would indicate that "the joint powers agreement shall *state the proper jurisdiction* and procedure to recover any money distributed to that tribe from the fire protection fund and expended for purposes not expressly authorized by Chapter 59A, Article 53 NMSA 1978 or by rules duly promulgated by the marshal pursuant to that article." The Navajo Nation Code has a long-arm statute that indicates that contract cases must be prosecuted in Navajo Nation courts, while the state of New Mexico Constitution, Article 6-13, indicates that the state district court would have original jurisdiction. Either the tribe or the state will have to execute a sovereignty waiver in order to enter into the joint powers agreement. This issue may need to be clarified in the bill.

KB/svb