

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

ORIGINAL DATE 02/07/11

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE Native American Tax Settlement Fund Approp. SB 317

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	\$500.0	Non-Recurring	General fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$25.0		\$25.0	Nonrecurring	Native American Tax Settlement Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Military Affairs (DMA)

Indian Affairs Department (IAD)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 617 appropriates five hundred thousand dollars (\$500,000) from the general fund to the Taxation and Revenue Department (TRD) for the Native American veterans' income tax fund to make settlement payments to Native American veterans who had state personal income taxes withheld from their military income.

FISCAL IMPLICATIONS

The appropriation of five hundred thousand dollars (\$500,000) contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the general fund.

In 2009 an appropriation of \$1 million was allocated as follows: \$50 thousand each to TRD and to the Veteran's Services Department for administrative costs and \$900,000 to the Native Americans Veterans' Tax Settlement Fund for payment of settlements. As of January 25, 2011, the Department had received 1,087 claims, issued 626 refunds and denied 436 claims and currently has 25 pending claims. \$777,459 in refunds has been paid, with an average refund amount of \$1,242. After other expenses, the fund balance is now down to \$79,133.

SIGNIFICANT ISSUES

The bill appropriates \$500 thousand for disbursement according to Sections 7-2H-1 through 7-2H-4 NMSA 1978 to Native American veterans who had state income tax withheld from active duty military income while the veteran was domiciled on his or her own tribal lands or the tribal lands of their spouse

According to statute, settlement payments are to include the amount of state personal income taxes withheld from eligible Native American veterans that have not been previously refunded to the veterans plus interest. TRD and the Veterans' Services Department (VSD) may each use 5 percent of the balance of the fund to administer the fund.

VSD and TRD completed a Report on Income Tax Withholding on Native American Veterans and presented their findings to the Interim Indian Affairs Committee on October 3, 2008. The Indian Affairs Department (IAD) also assisted in the drafting of the report. The report found that there was a legal basis for a state personal tax exemption for Native American veterans residing on reservation lands dating from 1977. According to the report up to 7,651 Native American veterans in New Mexico may be eligible for settlements payments. However, some Native Veterans groups have indicated that they have records from veterans that verify improper tax withholdings dating to 1942

ADMINISTRATIVE IMPLICATIONS

TRD reports a moderate administrative impact; however, by statute TRD can draw down 5 percent of the balance of the Native American Tax Settlement Fund for administrative costs. Extensive communication and exchange of withholding information is required between the Department, Department of Veteran Services, US Department of Defense's: Defense Finance and Accounting Services (DFAS) and Defense Manpower Data Center (DMDC) and the various branches of military service. Manual tracking and logging is required. Require 0.5 FTE to continue the program at an estimated cost of \$25,000.

TECHNICAL ISSUES

The proposed appropriation is structured differently than present law Section 7-2H-3. That statute establishes an ongoing appropriation from the Native American Veterans' Tax Settlement Fund to the Department to make settlement payments. Amounts in the Fund are non-reverting.

The bill appropriates money directly to the Department for the same purpose and makes the new appropriation reverting. This could create confusion and complexity in the administration of the new appropriation.

OTHER SUBSTANTIVE ISSUES

The Native American Veterans' Settlement Fund Act (Fund), Senate Bill 541, passed during the 2009 Legislative session, amended the Native American Tax Settlement law by clarifying the eligibility for and administration of certain tax exemption refunds. One million (\$1,000.0) was appropriated to the Fund.

During FY 10, the Indian Affairs Department (IAD) collaborated with the TRD and the Department of Veterans' Services (DVS) to implement the Fund. These efforts included incorporating comments from the formal tribal consultation with tribal leaders on June 18, 2009 into the rules and forms. Following the consultation, the departments met to develop forms and procedures for processing the settlement claims. The IAD and DVS also worked to create outreach plans to ensure that information on the settlement process reaches as many tribal communities, Native Veterans' organizations and individual veterans as possible. The regulations became effective on December 1, 2009 and the DVS and TRD began implementing the regulations. As of June 23, 2010, the TRD reported 934 claims received and 483 refunds issued for a total amount of \$436,841 paid from the Fund.

AMENDMENTS

The bill should appropriate the \$500 thousand to the Native American Veterans' Tax Settlement Fund instead of TRD

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Certain Native American veterans will not be reimbursed per the Native American veteran's income tax settlement.

DL/bym