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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/19

SPONSOR Ruiloba LAST UPDATED _____ HB 553

SHORT TITLE Disposition of Certain Unclaimed Property SB _____

ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 New Mexico Attorney General (NMAG)
 Department of Cultural Affairs (DCA)
 Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Bill 553 would amend Section 29-1-14 NMSA 1978 to require law enforcement to allow the Indian Affairs Department access to any unclaimed property valued at over \$500 and being held by a state or local law enforcement agency for the purpose of inspecting and selecting items that may be appropriate for repatriation to an Indian nation, tribe, or pueblo as cultural and patrimonial property. In addition, the bill also would allow state museums access to agency inventory records for the purpose of inspecting and selecting items that are appropriate for transfer to a state museum collection. It also makes clear that a law enforcement agency's authority to sell personal property does not extend to items of cultural or patrimonial property to an Indian nation, tribe or pueblo or to items of significant historical value.

FISCAL IMPLICATIONS

The Indian Affairs Department explains the department may incur staff time and perhaps travel costs to support the activities of this bill. No other responding agencies noted a fiscal impact.

SIGNIFICANT ISSUES

IAD explains:

Page 2, line 5, item (1) indicates that law enforcement shall allow access by Indian Affairs Department (IAD) to review agency inventory records for the purpose of inspecting and selecting items that are appropriate for repatriation to an Indian nation, tribe or pueblo as cultural and patrimonial property. Currently the IAD does not have the staff to support this type of review, which would require professionals who work within the requirements of specific federal laws, such as the Native American Protection and Repatriation Act (NAGPRA, 25 U.S.C. 3001 et seq.), the Archaeological Resources Protection Act (ARPA, 16 U.S.C. 470aa–470mm), the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d), and the Migratory Bird Treaty Act (16 U.S.C. 703–712).

The Cultural Affairs Department is the agency staffed with this expertise, specifically the State Historic Preservation Officer (SHPO) under the Historic Preservation Department, to perform initial review of the inventory records; the Game and Fish Department could also aid in the determination of eagle and other migratory bird feathers.

According to a recent U.S. Government Accountability Office (GAO) [report](#) to Congressional Requesters regarding Native American cultural property “...cultural items belong to the tribe as a whole, rather than the property of one individual...Native Americans view these cultural items as priceless because of their importance to tribal heritage and identity and, in many cases, their role in religious or healing practices.” Recent review of auction websites that sell Native American articles shows, in general, that many items have a fair market value under \$500. House Bill 553 establishes a threshold of \$500 in considering whether the item is sold or destroyed. The market value threshold of \$500 should not be relevant to cultural items.

DCA points out the bill does not discuss how items which may be included within the purview of a federal land management authority should be addressed.

PERFORMANCE IMPLICATIONS

IAD explains “the SHPO could develop consultation protocols with tribal historic preservation officers (THPOs), who could be a primary contact in the determination of the inventory of cultural items that fall under House Bill 553. The IAD, under the State-Tribal Collaboration Act, could serve as coordinator and communicator in places where the Cultural Affairs deems appropriate.”

IAD also states “there are 23 federally recognized nations, tribes and pueblos within New Mexico, each with their own ways of determining cultural items that could be considered under House Bill 553. A 30-day deadline to review, consult and establish provenance of a cultural item is highly ambitious.”

TECHNICAL ISSUES

IAD suggests the following:

On page 2, line 8, insert the word “affiliated” before Indian nation. A quick search revealed there is no state definition for “cultural and patrimonial property.” The federal law NAGPRA (25 U.S.C. 3001 Subpart 3), defines cultural items as “... and “sacred objects” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, ...”. Section 18-6-3 NMSA 1978, New Mexico Cultural Properties Act defines “cultural property” as a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

IAD explains Native American nations, tribes and pueblos have, for hundreds of years, faced the near destruction of their customs, languages and traditional ways by the constant loss of cultural items important to them. House Bill 553 sets an important precedent in allowing state law enforcement agencies to work with state agencies to repatriate potentially important cultural items back to the nations, tribes and pueblos. Not enacting this bill would continue the destruction of potential cultural resources that are integral to the overall vitality of nations, tribes and pueblos.

TE/al