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## FISCAL IMPACT REPORT

SPONSOR HLLCS ORIGINAL DATE 3/4/19  
LAST UPDATED \_\_\_\_\_ HB 671/HLLCS  
SHORT TITLE Navajo Chapter Cultural Resources Study SB \_\_\_\_\_  
ANALYST Edwards

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	\$100.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Cultural Affairs (DCA)

### SUMMARY

#### Synopsis of Bill

The House Local Government, Land Grants and Cultural Affairs Committee Substitute for House Bill 671 makes a \$100 thousand appropriation to the Department of Cultural Affairs to conduct a comprehensive cultural resources study and inventory report within the Navajo chapters of Ojo Encino and Torreon-Star Lake. The study will be done by a recognized expert in archaeology and ethnohistory.

The bill details the methods and technology the study shall utilize.

### FISCAL IMPLICATIONS

The appropriation of \$100 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY20 shall revert to the general fund.

DCA explains “the broad term ‘cultural resources’ (page 1 line 21) encompasses both 1) archaeological sites and 2) modern cultural uses of the environment, referred to as traditional cultural properties (TCP). Sufficiency of funding cannot be accurately assessed without knowing what areas of the Chapters have already been subject to archaeological and TCP inventories. The

Ojo Encino Chapter encompasses a little under 100 square miles, and the Torreon/Star Lake Chapter is at least 30 percent more in area, perhaps closer to 140 square miles. While the funds in the proposed legislation are inadequate for an intensive pedestrian archaeological survey of this area (with or without remote sensing information), the funding may be adequate for a TCP inventory of the area, assuming local community support and involvement.”

## **SIGNIFICANT ISSUES**

DCA explains:

Rather than listing specific types of development on page 2 lines 5 and 6, cultural resources information should be independent of any specific development (road, pipeline, house site, fiber optic line, etc.). Every future new development project will be required to synthesize existing information (as would be generated by this proposed legislation) as well as generating updated information on cultural resources in the immediate vicinity of the development.

A systematic approach to cultural resources (and especially TCPs) will need to meld information across land ownership categories (tribal, federal, state, and private). This raises coordination issues which can be overcome, but it will take a concerted effort at cooperation by multiple agencies. A single year will be insufficient to both achieve inter-jurisdictional agreements and the actual inventories, but the challenges are not insurmountable given time and effort. A recognized expert in archaeology and ethnohistory conducting the cultural resource survey will be required to obtain necessary permits from Navajo Nation Historic Preservation Department and Bureau of Indian Affairs per Navajo Nation regulation.

This effort cannot supersede or replace requirements of state, federal, and tribal legislation concerning cultural resources. Confidentiality issues will come up, because some of the most important Native American uses of landscapes also are the most secret in a religious and cultural sense. The Navajo Nation has its own Tribal Historic Preservation Office (THPO) and there may be issues with the confidentiality of information on the cultural resources and traditional cultural properties identified during the survey and through documentation of interviews with elders, residents and traditional users of the land. Navajo Nation may restrict the dissemination of the report in order to protect cultural properties or traditional use areas.

## **PERFORMANCE IMPLICATIONS**

DCA states:

If funded as “Contractual Services” to HPD within the DCA Preservation Program, HPD could contract with outside consultants or with the enterprise function of the Archaeology Division of the DCA Preservation Program. HPD would guide the performance in consultation with the Navajo Nation Historic Preservation Division, and contracted consultants (the Archaeology Division or others) would conduct the inventories.

Execution will require coordination and agreement between the State of New Mexico and the Navajo Nation. Analogous agreements already exist, but not yet for the TCP aspects of cultural resources.

**TECHNICAL ISSUES**

DCA suggests: the following amendments:

- Remove language linked to particular types of development activity.
- Limit the legislation to TCPs rather than archaeological sites.
- Expand the term of the proposed project to three years, to accommodate the needs of intergovernmental consultation and to allow the development and consideration of confidentiality legislation for TCPs independent of the confidentiality that exists for archaeological sites, and allow a budgetary assessment after two years to determine if additional funds are necessary to accomplish the goals of the legislation.

**OTHER SUBSTANTIVE ISSUES**

DCA explains “the report shall include records of all surveyed parcels in the chapters in addition to current information on those parcels, a survey of all proposed oil or gas well sites, roads and pipeline rights of way; and investigation of known traditional cultural properties.” Proposed oil and gas well sites, roads and pipeline rights of way may have already been surveyed by the Navajo Nation so new surveys may not be necessary. In addition, there may be few “known” traditional cultural properties. Usually, elders and traditional users of the land will need to take part in the cultural resources survey or a separate ethnographic survey in order to identify traditional cultural properties.

TE/sb/al