

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5656 SB	<b>Title:</b> Indian child welfare act
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## Estimated Cash Receipts

Agency Name	2011-13		2013-15		2015-17	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Social and Health Services	Non-zero but indeterminate cost. Please see discussion."					
<b>Total \$</b>	0	0	0	0	0	0

## Estimated Expenditures

Agency Name	2011-13			2013-15			2015-17		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Office of Attorney General	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Social and Health Services	Non-zero but indeterminate cost and/or savings. Please see discussion.								
<b>Total</b>	0.0	\$0	\$0	0.0	\$0	\$0	0.0	\$0	\$0

Local Gov. Courts *	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Other **									
Local Gov. Total									

## Estimated Capital Budget Impact

NONE

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\* See Office of the Administrator for the Courts judicial fiscal note

\*\* See local government fiscal note

FNPID 28818

FNS029 Multi Agency rollup

# Judicial Impact Fiscal Note

Revised

<b>Bill Number:</b> 5656 SB	<b>Title:</b> Indian child welfare act	<b>Agency:</b> 055-Admin Office of the Courts
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

Account	FY 2012	FY 2013	2011-13	2013-15	2015-17
Counties					
Cities					
<b>Total \$</b>					

### Estimated Expenditures from:

<b>Non-zero but indeterminate cost. Please see discussion.</b>
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*The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.*

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.

Legislative Contact: Jennifer Strus	Phone: (360)786-7316	Date: 02/04/2011
Agency Preparation: Gil Austin	Phone: 360-705-5271	Date: 02/16/2011
Agency Approval: Dirk Marler	Phone: 360-705-5211	Date: 02/16/2011
OFM Review: Cherie Berthon	Phone: 360-902-0659	Date: 02/16/2011

## **Part II: Narrative Explanation**

### **II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts**

Sections 1 through 21 constitute a new chapter in Title 13 to be cited as the “Washington State Indian Child Welfare act.” These sections incorporate provisions of the federal Indian Child Welfare act.

Sections 22 through 31 amend sections of RCW 13.34 to update references to the proposed Washington State Indian Child Welfare act.

Sections 32 through 34 amend sections of RCW 26 and RCW 74.13.350 to also update references to the proposed Washington State Indian Child Welfare act.

Section 5 is a new section requiring that any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child, must make a good faith effort to determine if the child is an Indian child by contact with the Indian tribe of which a child may be a member or may be eligible for membership. A written determination by an Indian tribe, or testimony by a person authorized by a tribe to make such a determination shall be considered conclusive the child is not an Indian child as to that tribe. When a tribe provides no response to notice, such a nonresponse shall not constitute evidence the child is not a member or eligible for membership. Any party to a proceeding, or an Indian tribe that subsequently determines the child is a member, may move the court for redetermination of a child's Indian status.

Section 13 is a new section dealing with evidentiary requirements. Before an Indian child can be placed in foster care placement the department or supervising agency must show that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts have not been successful. Court placement of an Indian child in foster care could require testimony of a qualified expert.

### **II. B - Cash Receipts Impact**

### **II. C - Expenditures**

Superior courts have followed the provisions of the federal Indian Child Welfare act and this bill incorporates those provisions into a Washington State act. As courts have been following the provisions of the federal act, this bill would not change much of their practices.

However, Section 5 of the bill may require courts to have longer hearings when a tribe does not provide a response concerning the child's tribal membership or eligible membership. There may also be additional hearings if a motion is filed with courts for the redetermination of the child's Indian status.

Additionally, Section 13 provides for expert evidentiary testimony at hearings where courts consider foster care placement or termination of parental rights of Indian children and this would likely lengthen many hearings.

The number of cases these sections would affect is unknown, so the result of the bill is an indeterminate increase in judicial workload. It is expected that the fiscal impact would be in excess of \$50,000 per year. The \$50,000 amount represents only about 15 days of superior court trial time on a statewide basis. Administrative Office of the Courts data reports that in 2009 there were 3,883 dependency filings and 1,934 termination of parental rights hearings. If even only a small percentage of these filings involve Indian children that would readily reach the \$50,000 threshold in terms of superior court trial time statewide.

## **Part III: Expenditure Detail**

## **Part IV: Capital Budget Impact**

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5656 SB	<b>Title:</b> Indian child welfare act	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

NONE

### Estimated Expenditures from:

Non-zero but indeterminate cost. Please see discussion.

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Jennifer Strus	Phone: (360)786-7316	Date: 02/04/2011
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 02/09/2011
Agency Approval: Sarian Scott	Phone: (360) 586-2104	Date: 02/09/2011
OFM Review: Matthew Bridges	Phone: (360) 902-0575	Date: 02/11/2011

Request # 11-125-1

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

Section 1 is a new section stating that this chapter shall be known as the Washington State Indian Child Welfare Act.

Section 2 is a new section stating that this chapter applies in all child custody proceedings as that term is defined in the act. The provisions of this chapter would apply in the event of a conflict with RCW 13.32A, RCW 13.34, or RCW 26.33.

Section 3 is a new section that states legislative findings and intent.

Section 4 is a new section that defines the terms “active efforts,” “adoptive placement,” “best interests of the Indian child,” “child custody proceeding,” “court of competent jurisdiction,” “department,” “foster care placement,” “Indian,” “Indian child,” “Indian child’s family” or “extended family member,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe” or “tribe,” “member” and “membership,” “parent,” “preadoptive placement,” “qualified expert witness,” “Secretary of the interior,” “termination of parental rights,” “tribal court,” and “tribal customary adoption.”

Section 5 is a new section requiring that any person seeking the foster care placement of, termination of parental rights over, or the adoption of, a child make a good faith effort to determine whether the child is an Indian child by contacting any Indian tribe in which the child may be a member or may be eligible for membership. A written determination by an Indian tribe or testimony by an authorized person attesting that a child is or is not a member or eligible for membership shall be conclusive that the child is or is not an Indian child. If a child has been determined not to be an Indian child, redetermination of that status may occur at any time based upon new evidence, redetermination by the child’s tribe, or newly conferred recognition by the tribe.

Section 6 is a new section providing that an Indian tribe shall have conclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state’s concurrent jurisdiction, where the tribe has expressly declined to exercise its exclusive jurisdiction, or where the state is exercising emergency jurisdiction.

Section 7 is a new section addressing notice in child custody proceeding in which any party or the court knows, or has reason to know, that the child is or may be an Indian child.

Section 8 is a new section addressing transfer of jurisdiction.

Section 9 is a new section authorizing intervention by the Indian child, the Indian child’s tribe or tribes, and the Indian custodian in any child custody proceeding involving an Indian child.

Section 10 is a new section requiring the state to give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian custody proceedings.

Section 11 is a new section providing a right of counsel in child custody proceedings if the court determines the Indian

child's parent or Indian custodian is indigent. Counsel may be appointed if the court finds that the appointment is in the best interests of the Indian child.

Section 12 is a new section providing a right of access to evidence.

Section 13 is a new section establishing evidentiary requirements relating to foster care placement and termination of parental rights.

Section 14 is a new section addressing choice of law.

Section 15 is a new section authorizing a court to order emergency removal of an Indian child, including one who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, or the emergency placement of such child in a foster home or institution, to prevent imminent physical damage or harm to the child. Certain specified requirements are imposed on the party that obtained the emergency removal or placement.

Section 16 is a new section addressing voluntary consent to foster care placement by an Indian child's parents or Indian custodian, including requiring that such consent be executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood in English, or that it was interpreted into a language that the parent or Indian custodian understood.

Section 17 is a new section addressing the improper removal of an Indian child.

Section 18 is a new section addressing the removal of an Indian child from adoptive or foster care placement.

Section 19 is a new section establishing placement preferences. Notwithstanding the listed placement preferences, if the child's tribe establishes a different order of placement preference, the court or agency effecting the placement must follow the tribe's order of preference.

Section 20 is a new section requiring the Department of Social and Health Services (DSHS) to establish standards and procedures for its review of cases subject to this chapter and methods for monitoring its compliance with the provisions of the Federal Indian Welfare Act and this chapter. A court of competent jurisdiction is required to vacate a court order and order additional proceedings as are necessary for the appropriate disposition for certain violations of this chapter, including, but not limited to, failing to provide adequate notice, failing to recognize the jurisdiction of an Indian tribe, and failing to give full faith and credit to the public acts, records, or judicial proceedings of an Indian tribe.

Section 21 is a new section and is a severability clause.

Section 22 amends RCW 13.32A.152 to add a reference to section 7 of this act.

Section 23 amends RCW 13.34.030 to add a reference to section 4 of this act.

Section 24 amends RCW 13.34.040 to add references to section 4 of this act and this act.

Section 25 amends RCW 13.34.065 to add references to section 4 of this act and this act.

Section 26 amends RCW 13.34.070 to add references to sections 4 and 7 of this act.

Section 27 amends RCW 13.34.105 pertaining to the duties of a guardian ad litem, the requirement in the case of an Indian child as defined in section 4 to know, understand, and advocate the best interests of the Indian child.

Section 28 amends RCW 13.34.130 to add references to sections 4 and 19 of this act.

Section 29 amends RCW 13.34.132 to delete a requirement pertaining to a parent of an Indian child as defined in federal law.

Section 30 amends RCW 13.34.136 to add a reference to a tribal customary adoption as defined in section 4 of this act.

Section 31 amends RCW 13.34.190 to add references to sections 4 and 13(3) of this act.

Section 32 amends RCW 26.10.034 to add references to section 4 of this act and this act.

Section 33 amends RCW 26.33.040 to add references to section 4 of this act and this act.

Section 34 amends RCW 74.13.350 to add a reference to section 16 of this act.

Section 35 is a new section that provides that sections 1 through 21 will constitute a new chapter in Title 13 RCW.

This bill is assumed effective July 1, 2011.

## **II. B - Cash receipts Impact**

*Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

Indeterminate fiscal impact.

This workload would need to be funded by Legal Service Revolving Fund dollars.

The client is assumed to be DSHS.

## **II. C - Expenditures**

*Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

Indeterminate fiscal impact.

This workload would need to be funded by Legal Service Revolving Fund dollars.

Assumptions:

1. We assume the enactment of this bill has the potential to be significant in terms of legal services provided by the AGO
2. We assume that fiscal impact cannot be quantified because the bill does not create new procedures or require new hearings.
3. We assume interpretation or construction by parents' counsel, if accepted by the courts, could make hearings much longer and more litigious, thus increasing costs significantly.
4. We assume that it may be determined that DSHS's requirement to prove active efforts and arrange for the testimony of expert witnesses at the initial shelter care hearing is likely to significantly increase the complexity and length of these hearings.
5. We assume DSHS must consider any child who may be an Indian child to be an Indian child until it is determined not to be the case. This will create a higher legal standard for intervention in such cases and may put children at risk of harm.
6. We assume a different standard for Indian Child Welfare Act cases, and it is likely to lead to increased litigation and appeals including the possibility of constitutional equal protection and due process challenges.

### **Part III: Expenditure Detail**

### **Part IV: Capital Budget Impact**

NONE

### **Part V: New Rule Making Required**

*Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.*

None.



# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5656 SB	<b>Title:</b> Indian child welfare act	<b>Agency:</b> 300-Dept of Social and Health Services
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

### Estimated Expenditures from:

Non-zero but indeterminate cost. Please see discussion.

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

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- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

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Agency Approval: Ken Brown	Phone: 360-902-7583	Date: 02/10/2011
OFM Review: Sandi Triggs	Phone: (360) 902-0553	Date: 02/11/2011

Request # 11SB5656.1-1

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

Most of the sections of the bill are similar to the federal Indian Child Welfare Act (ICWA), the following is new language or modifications, which would cause fiscal impact:

Section 3 is legislative intent, which if codified would become substantive law.

Section 4(1) includes a definition of active efforts and states that “active efforts” require more direct involvement with the family than reasonable efforts.

Section 4(17) adds a definition of “qualified expert witness” and requires that such expert witnesses be from or approved by the child’s tribe, which would reverse existing legal precedence in this state that allows expert witnesses in ICWA cases to be Department social workers with expertise in Indian issues and cultural standards or, in some cases, therapists or counselors for the children.

Section 6 would require courts and the Department to proceed on the assumption that ICWA applies whenever a tribe fails to respond. This is likely to increase the length and costs of litigation in such cases by imposing ICWA requirements and evidentiary standards to cases where they are not legally necessary.

Section 7 requires that notice be made by registered mail, return receipt requested. While this is consistent with the federal act, state statutes only require certified mail, return receipt requested, and this has been upheld by the Court of Appeals as an acceptable alternative. Registered mail with return receipt costs \$10.60; certified mail with return receipt costs \$5.10, a difference of \$5.50 for every notification for every child.

Section 13 states that “before an Indian child can be placed in a foster care placement the department or supervising agency must show that active efforts have been made”, which would require the Department to prove active efforts and arrange for the testimony of expert witnesses at the initial shelter care hearing, instead of at the dependency fact finding hearing as is now the practice.

Section 15 expands the scope of the federal ICWA standard on emergency removal of an Indian child, regardless of residence or domicile of the child.

### II. B - Cash receipts Impact

*Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

### II. C - Expenditures

*Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

As of January 2011, 2,076 tribal youth were in an out-of-home placement and could potentially be impacted by this

legislation.

The new language described above could potentially increase court time and subsequently the length of time a child must remain in care before permanency can be obtained. On average, each month that a child stays in care longer costs approximately \$900.

In addition, the bill increases the risk of potential litigation and appeals against DSHS.

The number of children and cases that would be impacted by this bill is unknown; therefore, the fiscal note is indeterminate.

### **Part III: Expenditure Detail**

### **Part IV: Capital Budget Impact**

NONE

### **Part V: New Rule Making Required**

*Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.*

New and/or amended rules may be needed under implementation of this legislation.