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BILL



ANALYSIS

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Senate Bill 1232 (as enacted)
Sponsor: Senator Judy K. Emmons
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

PUBLIC ACT 565 of 2012

Date Completed: 7-1-13

CONTENT

The bill added Chapter XIIB, the "Michigan Indian Family Preservation Act", to the Probate Code to establish standards and procedures for proceedings that involve an Indian child, including proceedings for custody, guardianship, and adoption. In particular, Chapter XIIB does the following:

- Requires that, in Indian child custody proceedings, the best interests of the Indian child be determined in accordance with Federal law and Chapter XIIB.
- Requires courts to protect the best interests of Indian children and promote the stability and security of Indian tribes and families.
- Specifies that an Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who lives or is domiciled within the tribe's reservation; and allows a State court to exercise certain limited jurisdiction.
- Specify circumstances under which a State court may exercise jurisdiction over an Indian child custody proceeding and when it must transfer the proceeding to an Indian tribe's jurisdiction.
- Requires notification to the parent or Indian custodian of an Indian child in a child custody proceeding.
- Requires the Department of Human Services (DHS) to seek to determine at initial contact whether a child is an Indian child, and exercise due diligence to determine, document, and contact an Indian child's extended family members.
- Establishes procedures for voluntary petitions for guardianship or adoptive placement of an Indian child.
- Allows a parent or Indian custodian who consents to guardianship to withdraw consent at any time; and allows a parent who executes a consent to adoption to withdraw it at any time before entry of a final order for adoption.
- Establishes requirements for notice and proceedings when an Indian child is the subject of a child protective proceeding alleging neglect, including criteria for removal from a parent or Indian custodian and placement in foster care.
- Requires a court to accept the testimony of an expert witness who is a member of an Indian tribe or approved by the tribe, and/or who has knowledge of the tribe's customs and how they pertain to family organization and child-rearing practices.
- Requires a court to return an Indian child to his or her parent or Indian custodian if it determines that a petitioner improperly removed the child, unless doing so will subject the child to a substantial and immediate danger.

- **Specifies that the parent or Indian custodian has the right to court-appointed counsel if the court determines indigence.**
- **Requires an Indian child to be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met; and specifies orders of preference for certain types of placement.**
- **Establishes procedures concerning petitions for involuntary guardianship, including determining whether the child is an Indian child and whether a tribe has exclusive jurisdiction.**
- **Establishes procedures for adoption proceedings.**
- **Establishes procedures concerning an Indian child taken into custody under the juvenile code.**
- **Authorizes the State to enter into agreements with tribes in Michigan regarding the care and custody of Indian children, funding of their care and custody, and jurisdiction over child custody proceedings.**
- **Requires a Michigan court to give a copy of a final decree of adoption of an Indian child to the U.S. Secretary of the Interior and the tribal enrollment officer.**
- **Requires the DHS to publish an annual census of all Indian children in the Department's care and custody, without individually identifiable information.**
- **Allows an Indian child, parent, Indian custodian, or tribe to petition a court to invalidate an action for foster care placement or the termination of parental rights.**

Chapter XIIB defines "Indian" as any member of any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

"Indian child" means an unmarried person who is under the age of 18 and is either a member of an Indian tribe or eligible for membership in an Indian tribe, as determined by that tribe.

"Indian custodian" means any Indian person who has custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

The bill took effect on January 2, 2013.

Indian Child Custody Proceedings

Best Interests of the Child. In Indian child custody proceedings, the best interests of the Indian child must be determined in accordance with the Federal Indian Child Welfare Act and the policy specified in the Chapter XIIB. Courts must protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

Courts also must ensure that the DHS uses practices, in accordance with the Indian Child Welfare Act, Chapter XIIB, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children. When out-of-home care placement, adoptive placement, or preadoptive placement is necessary, the court must place an Indian child in a placement that reflects the unique values of the child's tribal culture and that is best able to assist him or her in establishing, developing, and maintaining a political, cultural, and social relationship with his or her tribe and tribal community.

Jurisdiction. An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who lives or is domiciled within the tribe's reservation. If a child is a ward of a tribal court, the tribe retains exclusive jurisdiction, regardless of the residence or domicile, or subsequent change in the child's residence or domicile.

The State court may exercise limited emergency jurisdiction if an Indian child who lives or is domiciled within the reservation is temporarily off the reservation and the State has removed the child in an emergency situation to prevent imminent physical damage or harm to the child. The court must comply with the emergency removal hearing requirements outlined in Michigan Court Rules and the juvenile code. The emergency jurisdiction will end when the removal or placement is no longer necessary

to prevent imminent physical damage or harm to the child.

In any State court child custody proceedings for an Indian child not living or domiciled within the reservation of the child's tribe, the court, in the absence of good cause to the contrary, must transfer the proceeding to the Indian tribe's jurisdiction, absent objection by either parent and upon the petition of either parent or the child's Indian custodian. The tribal court may decline the transfer.

When a court makes a good cause determination, adequacy of the tribe, tribal court, or tribal social services may not be considered. A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:

- The Indian tribe does not have a tribal court.
- The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to them, and the Indian tribe is unable to mitigate that hardship.

In any State court child custody proceeding, an Indian child, the Indian custodian of the child, and the child's tribe have a right to intervene at any point in the proceeding.

Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act and Chapter XIIB.

The State must give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings, to the same extent given to the public acts, records, and judicial proceedings of any other entity.

Notice & Determination of Indian Heritage

In a child custody proceeding, if the court knows or has reason to know that an Indian child is involved, the petitioner must notify the parent or Indian custodian and the child's tribe, by registered mail with return receipt requested, of the pending child custody proceeding and of the right to intervene. If the identity or location of the

parent or Indian custodian and the tribe cannot be determined, notice must be given to the Secretary of the Interior. The Secretary will have 15 days after receiving the notice to give the requisite notice to the parent or Indian custodian and the tribe.

No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the parent or Indian custodian and the tribe or the Secretary receives the notice. Upon request, the parent, Indian custodian, or tribe must be granted up to 20 additional days to prepare for the proceeding. If the petitioner or court later discovers that the child may be an Indian child, all further proceedings must be suspended until notice is received by the tribe or the Secretary. If the court determines after a hearing that the parent or tribe is prejudiced by lack of notice, the earlier decisions made by the court must be vacated and the case must proceed from the first hearing. The petitioner will have the burden of proving lack of prejudice.

The DHS must actively seek to determine at initial contact whether a child is an Indian child. If the Department makes an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, it must exercise due diligence to contact the tribe or tribes in writing so that the tribe may verify membership or eligibility for membership. If the DHS cannot make an initial determination as to which tribe or tribes a child may be a member, at a minimum the Department must contact in writing the tribe or tribes located in the county where the child is located and the Secretary of the Interior.

Circumstances under which a court, the DHS, or other party to a child custody proceeding has reason to believe a child involved in a child custody proceeding is an Indian include any of the following:

- Any party to the case, Indian tribe, Indian organization, or public or private agency informs the court that the child is an Indian child.
- Any public or State-licensed agency involved in child protective services or family support discovers information that suggests that the child is an Indian child.
- The child gives the court reason to believe he or she is an Indian child.

- The court knows that the residence or domicile of the child, his or her biological parents, or the Indian custodian is a predominantly Indian community.
- An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

The DHS must exercise due diligence to determine, document, and contact an Indian child's extended family members in accordance with the Federal Fostering Connections to Success and Increasing Adoptions Act. If applicable, determinations and documentation should be conducted in consultation with the child or parent's tribe.

A written determination or oral testimony by a person authorized by an Indian tribe to speak on its behalf, regarding a child's membership or eligibility for membership in the tribe, will be conclusive as to that tribe.

The petitioner must document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and provide that documentation, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer guardian ad litem, parent, or Indian custodian.

Each party to a foster care or termination of parental rights proceeding involving an Indian child will have a right to examine all reports or other documents filed with the court upon which any decision with respect to that proceeding may be based.

Voluntary Petition for Guardianship or Adoptive Placement

If both parents or the Indian custodian voluntarily consents to a petition for guardianship under the Estates and Protected Individuals Code (EPIC), or to adoptive placement or the termination of parental rights for the express purpose of adoption by executing a release or consent under the Michigan Adoption Code, the requirements described below must be met.

To be valid, consent must be executed on a form approved by the State Court Administrative Office (SCAO), in writing, recorded before a judge of a court of competent jurisdiction. The form must be accompanied by the presiding judge's certification that the terms and consequences of the consent were fully

explained in detail and were fully understood by the parent or Indian custodian. The court also must certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or custodian understood. Consent will not be valid if it is given before the birth of the Indian child, or within 10 days after birth.

Notice of the pending proceeding must be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB. Consent must contain the following information:

- The Indian child's name and date of birth.
- The name of the child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
- The name and address of the consenting parent or Indian custodian.
- A sworn statement for the translator, if any, attesting to the accuracy of the translation.
- The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to petition to terminate the voluntary placement or consent at any time.
- For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement, as well as the name and address of the prospective foster care parents if known at the time.
- For consent to termination of parental rights or adoption of an Indian child, the name and address of the person or entity that will arrange the preadoptive or adoptive placement.

If the placement is for the purposes of adoption, a consent of the Indian child's parent or Indian custodian must be executed in conjunction with either a consent to adopt or a release, as required under the Michigan Adoption Code. A parent or Indian custodian who executes a consent under Chapter XIIB may withdraw it any time before entry of a final order of adoption, by filing a written demand requesting the child's return. Once a demand is filed with

the court, the court must order the child's return. Such a withdrawal of consent will constitute a withdrawal of a release or a consent to adopt executed under the Adoption Code.

A parent or Indian custodian who executes a consent under these provisions for the purpose of guardianship may withdraw consent at any time by sending written notice to the court substantially in compliance on a form approved by the SCAO that the parent or custodian revokes consent and wants the child returned.

A release executed under the Michigan Adoption Code during a pendency of a neglect proceeding under the juvenile code will be subject to Section 15 of Chapter XIIB (described below). If the release follows the initiation of a neglect proceeding, the court must make a finding that culturally appropriate services were offered.

A parent who executes a consent to adoption under the Michigan Adoption Code may withdraw that consent at any time before entry of a final order for adoption, by filing notification of the withdrawal of consent with the court.

In a direct placement, a consent by a parent or guardian must be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

- That the parent or guardian has received a list of community and Federal resource supports and a copy of the written document regarding adoption information that the Foster Care and Adoption Services Act requires an adoption facilitator to give to each individual who inquires about services.
- As required by the Michigan Adoption Code, that the parent or guardian has received counseling related to the adoption of his or her child or waives the counseling with the signing of the verified statement.
- That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption, except for lawful payments that are itemized on a schedule filed with the consent.
- That the validity and finality of the consent are not affected by any collateral or separate agreement

between the parent or guardian and the adoptive parent.

- That the parent or guardian understands that it serves the welfare of the child for the parent to keep the child placing agency, court, or DHS informed of any health problems that he or she develops that could affect the child.

The statement also must indicate that the parent or guardian understands that it serves the child's welfare for the parent or guardian to keep his or her address current with the child placing agency, court, or DHS in order to permit a response to any inquiry concerning medical or social history for an adoptive parent of a minor adoptee or from an adoptee who is at least 18.

Neglect Proceedings

Under Section 15 of Chapter XIIB, if an Indian child is the subject of a child protective proceeding alleging neglect under the juvenile code, including instances in which the parent or Indian custodian executed a release under the Michigan Adoption Code during the proceeding, or if the child is the subject of a guardianship proceeding under EPIC or the juvenile code, the following requirements must be met:

- Notice of the pending proceeding must be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB.
- The proceeding must be conducted in accordance with Michigan Supreme Court rules and Section 15.
- Section 25 of Chapter XIIB applies in a guardianship proceeding under EPIC.

(Section 25, described below, deals with petitions for involuntary guardianship.)

An Indian child may be removed from a parent or Indian custodian, placed into foster care, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence that:

- Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
- The active efforts were unsuccessful.

- The continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. Also, the evidence must include testimony of at least one expert witness who has knowledge of child-rearing practices of the Indian child's tribe.

A party seeking a termination of parental rights to an Indian child must demonstrate to the court's satisfaction that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that the active efforts were unsuccessful.

No termination of parental rights may be ordered in a Section 15 proceeding without a determination, supported by evidence beyond a reasonable doubt, including testimony of at least one qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Any Indian child who is the subject of any action for termination of parental rights under State law, any parent or Indian custodian from whose custody the child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that it violated any provision of Section 15.

Expert Witnesses

If the testimony of a qualified expert witness is required, the court must accept either of the following, in the following order of preference:

- A member of the Indian child's tribe, or a witness approved by the tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how those customs pertain to family organization and child-rearing practices.
- A person with knowledge, skill, experience, training, or education who may speak to the Indian child's tribe and its customs and how those customs

pertain to family organization and child-rearing practices.

A party to a child custody proceeding may present his or her own qualified expert witness to rebut the testimony of the petitioner's qualified expert witness.

Improper Removal or Retention of Custody

If a court determines at a hearing that a petitioner in an Indian child custody proceeding has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court must decline jurisdiction over the petition and immediately return the child to his or her parent or Indian custodian unless doing so would subject the child to a substantial and immediate danger or threat of danger.

Indigence & Court-Appointed Counsel

In a case in which a court determines indigence, the parent or Indian custodian has the right to court-appointed counsel in a removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that the appointment is in the best interest of the child. If State law makes no provision for appointment of counsel in those proceedings, the court must notify the Secretary of the Interior promptly upon appointment of counsel.

If State law does not require the appointment of a lawyer-guardian ad litem for the child, the court may, in its discretion, appoint a lawyer-guardian ad litem for the child upon a finding that the appointment is in the best interest of the child.

Placement

Except for a placement for guardianship under EPIC where both parents submit a consent for the guardianship, an Indian child must be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child must be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

Absent good cause to the contrary, the foster care or preadoptive placement of an Indian child must be in the following order of preference:

- A member of the child's extended family.
- A foster home licensed, approved, or specified by the Indian child's tribe.
- An Indian foster home licensed or approved by the DHS.
- An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

Absent good cause to the contrary, the adoptive placement of an Indian child must be in the following order of preference:

- A member of the child's extended family.
- A member of the child's tribe.
- An Indian family.

The burden of establishing good cause not to follow the order of preference will be on the party requesting the deviation.

The court may not find good cause to deviate from the placement preferences without first ensuring that all possible required placements listed above have been thoroughly investigated and eliminated. All efforts made to place the child according to the preferences must be provided to the court in writing or stated on the record. The court must address efforts to place an Indian child in accordance with these provisions at each hearing until the placement meets the requirements.

The court's determination of good cause not to follow the order of preference must be based on one or both of the following conditions:

- A request is made by a child of sufficient age.
- A child has an extraordinary physical or emotional need as established by testimony of an expert witness.

If an Indian child's tribe establishes a different order of preference, the DHS or court ordering the placement must follow the tribe's preference.

The DHS or court must maintain a record of each placement of an Indian child showing the efforts to comply with the order of

preference specified above. The record must be made available at any time upon the request of the Secretary of the Interior or the Indian child's tribe.

The standards to be applied in meeting the placement preferences must be the prevailing social and cultural standards of the Indian tribe or tribes in which the parent or extended family lives or maintains social and cultural ties.

Chapter XIIB states that nothing in it prevents the emergency removal, protective custody, or subsequent placement of an Indian child who is a resident of or is domiciled on a reservation but is temporarily located off the reservation.

All efforts made to identify, locate, and place a child according to these provisions must be documented and, upon request, made available to the court, tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

Petition for Involuntary Guardianship

Under Section 25 of Chapter XIIB, if a petition for a guardianship is filed and determined to be involuntary, and the court knows or has reason to know that the child is an Indian child, the court may order the DHS or a court employee to conduct an investigation of the proposed guardianship and file a written report of the investigation. In addition to information required under EPIC, the report must include whether the child is an Indian child and the identity and location of the child's parents, if known. If the child is an Indian child, the report also must address all of the following:

- The tribe or tribes of which the child is a member or eligible for membership.
- Whether the child and family need culturally appropriate and other services to preserve the Indian family.
- The identity and location of extended family members and, if none can be found, what efforts were made to locate them.

Notice of the pending proceeding must be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB. If the court knows or has reason to know that the proceedings involve

an Indian child, the court must conduct a hearing to determine all of the following:

- Whether the tribe has exclusive jurisdiction.
- Whether the current placement with the guardian meets the requirements of Chapter XIIB.
- Whether it is in the child's best interest to order the guardianship.
- Whether a lawyer-guardian ad litem should be appointed to represent the Indian child.

If the tribe has exclusive jurisdiction, the court must issue an order terminating the guardianship or dismissing the petition.

If a petition for guardianship is filed and is to be accompanied by consent to a voluntary placement of an Indian child, the consent must be executed in accordance with the provisions of Chapter XIIB dealing with voluntary placement. If the Indian child's parents do not execute a consent, the petition will be considered to be for an involuntary guardianship and the requirements of Section 15 must be met.

A parent or Indian custodian who executes a consent for the purpose of guardianship may withdraw his or her consent at any time by sending the court written notice substantially in compliance on a form approved by the SCAO that the parent or Indian custodian revokes consent and wants the child returned. The guardianship will be terminated when the court receives from a parent or Indian custodian notice to withdraw consent to the guardianship, and the child must be returned immediately to the parent or custodian.

If the court discovers that a child may be an Indian child after a guardianship is ordered, the court must provide notice of the guardianship and the potential applicability of the Indian Child Welfare Act, in compliance with Michigan Court Rules and the Indian Child Welfare Act, to the tribe, the parents or Indian custodian, and the current guardian on a form approved by the SCAO.

Adoption Proceedings

If a release or consent to adoption under the Michigan Adoption Code is executed, consent to voluntary placement of an Indian

child also must be executed by both parents in accordance with Chapter XIIB.

At any time during an adoption proceeding, a court may order visitation between the Indian child and one or more members of the child's tribe and extended family members.

Notice of the pending proceeding must be given as prescribed by Michigan Supreme Court rule, the Indian Child Welfare Act, and Chapter XIIB.

Upon application by an Indian individual who has reached the age of 18 and who was subject to adoptive placement, the court that entered the order of adoption must inform the individual of his or her tribal affiliation, if known, of the individual's biological parents; and provide any information necessary to protect any rights from the individual's tribal relationship.

After the entry of a final order of adoption of an Indian child in any State court, the parent may withdraw consent on the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final order of adoption. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the final order of adoption and return the child to the parent. No adoption that has been effective for at least two years may be invalidated under this provision unless otherwise permitted under State law.

Notwithstanding State law to the contrary, whenever a final order of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and court must grant the petition unless there is a showing, in a proceeding subject to Indian Child Welfare Act, that the return of custody is not in the best interests of the child.

Child Taken into Custody

If an Indian child is taken into custody under the juvenile code, the subsequent placement must terminate immediately when the removal and placement are no longer necessary to prevent imminent physical damage or harm to the child. If a child is

taken into custody under the juvenile code and the child is under the exclusive jurisdiction of an Indian tribe or is domiciled on a reservation but temporarily located off the reservation, the court must initiate a child custody proceeding immediately and do either of the following:

- Transfer the child to the jurisdiction of the appropriate Indian tribe.
- Return the child to the parent or Indian custodian.

State-Tribal Agreements

Chapter XIIB authorizes the State to enter into agreements with tribes in Michigan regarding the care and custody of Indian children, funding of the care and custody of those children, and jurisdiction over child custody proceedings. This includes agreements that may provide for transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between the State and Indian tribes.

Unless an agreement provides otherwise, both of the following apply:

- The agreements may be revoked by either party upon 180 days' written notice to the other party.
- Revocation of an agreement does not affect any action or proceeding over which the court already has jurisdiction.

DHS Review

The DHS, in consultation with Indian tribes in Michigan, must establish standards and procedures for the Department's review of cases subject to Chapter XIIB and methods for monitoring its compliance with the Indian Child Welfare Act and Chapter XIIB.

Adoption Decree

A Michigan court entering a final decree or order in any Indian child adoptive placement must give the Secretary of the Interior and the tribal enrollment officer of the appropriate tribe a copy of the decree or order together with other information necessary to show the following:

- The name, date of birth, and tribal affiliation of the child.

- The names and addresses of the biological parents, if known.
- The names and addresses of the adoptive parents.
- The identity of any agency having files or information relating to the adoptive placement.

If court records contain a statement of identifying information of the biological parent or parents that their identity remains confidential, the court must include the statement with the other information sent to the Secretary and the tribal enrollment officer.

Annual Census

The DHS annually must publish a census with no individually identifiable information of all Indian children in the Department's care and custody. The census must include, by county and statewide, information regarding the Indian children on all of the following:

- Legal status.
- Placement information and whether it complies with Chapter XIIB.
- Age.
- Sex.
- Tribe in which the child is a member or eligible for membership.
- Accumulated length of time in foster care.
- Other demographic information considered appropriate concerning all Indian children who are the subject of child custody proceedings.

Petition to Invalidate Court Action

Any Indian child who is the subject of an action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody an Indian child is removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that it violated Chapter XIIB.

Severability

If any provision of Chapter XIIB or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other

application of Chapter XIIB that can be given effect without the invalid provision or application. For this purpose, the provisions of Chapter XIIB are severable.

MCL 712B.1-712B.41

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill's requirements to provide culturally sensitive child welfare services to Indian tribes and children are already Department of Human Services policy. Additionally, in the absence of a State-level policy, the Federal policy (under the Indian Child Welfare Act of 1978 – ICWA) should apply to relevant matters in the State of Michigan. However, since ICWA requirements had not been codified in State law, evidently the requirements were sometimes overlooked and advocates for Indian children had to engage in an appeals process, which can be lengthy. Therefore, by providing clarity in State law, the bill has the potential to marginally reduce caseload and administrative costs to both State and local court systems.

Fiscal Analyst: Frances Carley
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.