# RESOLUTION 31408

A RESOLUTION relating to the Seattle Indian Services Commission; making findings regarding the need for City intervention into the Commission's affairs; and authorizing the Mayor to undertake such intervention, all following a public hearing held with notice to the Commission.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:**

Section 1. Following a public hearing held before the City Council on September 26, 2012, and upon the request of the Mayor, and after notice to the Seattle Indian Services Commission ("Commission"), the City Council finds that:

A. The City formed the Commission in 1972 to serve the Native American residents of Seattle.

B. The Commission's primary assets are two buildings that the Commission owns and manages: the Pearl Warren Building, located at 606 12th Avenue South, Seattle, Washington, and the Leschi Center, located at 611 12th Avenue South, Seattle, Washington (the "Buildings").

C. The Commission financed the acquisition and construction of the Buildings by issuing special revenue obligation bonds (the "Bonds") that the City unconditionally guaranteed. The Commission derives most of its revenue from rents and other building charges.

D. Although the Commission has at times operated a gift shop and provided cultural programming, it does not currently do so. The Commission primarily acts as an umbrella

organization for other agencies that rent space in the Buildings and provide direct services to Seattle's Native American community.

E. As of December 31, 2011, the outstanding balance due on the Bonds was approximately six million five hundred thousand dollars ($6.5 Million), with a total monthly debt service obligation of $67,497.92.

F. Currently, the Commission has two tenants: the Seattle Indian Health Board (the "Health Board") and the Seattle Indian Center (the "Indian Center"). The Health Board's monthly rent is $77,130.67, and the Indian Center's monthly rent is $15,655.00. The Indian Center has not paid its full rent since January 2011 and it is currently in arrears in excess of $75,000.00.

G. On October 11, 2011, the State Auditor issued its 2010 Accountability Audit Report No. 1006665 concerning the Commission (the "2010 Report"), which report contained adverse findings in six different areas. This was the fifth consecutive bi-annual accountability audit to contain adverse findings concerning the Commission's operations.

H. The 2010 Report identified deficiencies in six different areas: (i) inadequate Commission Board oversight of the Commission's activities; (ii) financial reporting; (iii) internal controls; (iv) questionable expenditures; (v) conflicts of interest; (vi) and Building rent and repairs. The 2010 Report states that "[d]espite past recommendations, the [Commission's] Board provided no direction or oversight of former management's activities, resulting in significant issues that call into question the Commission's continued operations." Notably, the 2010 Report states that the lack of oversight "greatly increased the risk of unnecessary payments and a waste of public resources."

I. The 2010 Report also states that the Commission violated Washington state law in failing to file required audited financial reports with the State Auditor since 2008. While

not raised in the 2010 Report, since 2006 the Commission has also failed to file the annual report required under Seattle Municipal Code 3.110.400.A.

J. With respect to Building rent and repairs, the 2010 Report states that the Commission does not set annual fees sufficient to pay for all building-related costs including capital maintenance and repairs and basic operating costs; that the Commission has no capital reserves to pay for future capital costs or currently needed repairs; that the Pearl Warren Building is in need of approximately $2.5 million in repairs to bring it to rentable condition, but the Commission has no money to pay for it; and that the Commission did not have earthquake insurance for the Buildings, leading to additional risk of repairs that the Commission could not pay for. The 2010 Report adds that the Health Board has threatened to vacate the Pearl Warren Building due to its ongoing lack of repairs and generally poor condition.

K. In the 2010 Report, the State Auditor recommended that the Commission:

(1) ask the City to amend the Commission's charter to change the composition of the Commission's governing board (the "Governing Board"), making it independent of the Buildings' tenants;

(2) ask the City to temporarily take over its administrative functions, including collecting money and making payments;

(3) hire or contract with individuals experienced in property management, state law and government financial reporting to administer its operations; and

(4) set building use rates sufficient to meet its costs and immediately collect all past-due amounts.

L. To date, the Commission has not revised its charter nor taken other steps to address the State Auditor's recommendations described above.

M. The Commission has not had paid staff and since February 2011; a City employee has been performing tasks that would be the responsibility of the Commission's staff, such as preparing Commission agendas, reviewing invoices for payments with Commission members, and providing day-to-day operational advice and direction.

N. To date, the Commission has failed to commence any repairs to the Pearl Warren Building, and the City has expended in excess of $120,000.00 to fund studies to identify the source of water infiltration, develop cost estimates to address the needed repairs, and perform emergency repairs to temporarily address water infiltration problems. The deterioration of the Pearl Warren Building is reflected in a March 2006 appraisal obtained by the Seattle Indian Health Board, showing that the outstanding bond debt of the Pearl Warren Building then exceeded its appraised value by $1,885,000.00.

O. The Cooperation Agreement between the City and the Commission pertaining to the City's Bond guaranties requires the Commission to fund a Capital Reserve Fund for each of the Pearl Warren Building and the Leschi Center. The Commission has not maintained the Capital Reserve Funds as required and the Commission has no other assets available to it to repair the Pearl Warren Building.

P. The Commission's failure to address the water intrusion problems at the Pearl Warren Building has resulted in deterioration and waste of the asset, has seriously jeopardized the rent revenue servicing the Bonds, and has adversely impacted the Commission's ability to generate future rent revenue from the building in support of the Commission's purpose and to service the Commission's debt.

Section 2. After reviewing the request and recommendations of the Mayor, the reports of the State Auditor, and the Commission charter, and being further advised in this matter, the City Council further finds that the assets of the Commission have been or are committed to be misapplied or wasted, and that a fresh start is needed with respect to the Commission.

Section 3. Based upon the findings, the Mayor or his designee is authorized and directed to intervene in the affairs of the Seattle Indian Services Commission using the paramount power of the City over its public corporations under RCW 35.21.745 and as authorized under SMC 3.110.440.A.2, and A.8, in order to correct the deficiencies identified in the 2010 Report and to ensure that the Commission's on-going operations are consistent with all legal requirements. Such actions may include, but are not limited to, terminating the Commission Governing Board (also referred to as the "Council" in the Commission Charter); appointing an interim Governing Board; revising and re-issuing the Commission charter; revising the Commission's rules and regulations to reflect the revisions to the charter; and all other measures that the Mayor or his designee determines necessary and appropriate to accomplish the purposes of this Resolution, which purposes specifically include preventing the Commission from defaulting on its Bond obligations and ensuring that the Buildings funded by the Bonds do not continue to deteriorate and become wasted assets.

Adopted by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its adoption this_____ day of _____, 2012.

_____

President _____of the City Council

THE MAYOR CONCURRING:

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 6, 2011

# FISCAL NOTE FOR NON-CAPITAL PROJECTS

| Department: | Contact Person/Phone: | CBO Analyst/Phone: |
|---|---|---|
| LEG | Tony Kilduff | n/a |

**Legislation Title:**
A RESOLUTION relating to the Seattle Indian Services Commission; making findings regarding the need for City intervention into the Commission's affairs; and authorizing the Mayor to undertake such intervention, all following a public hearing held with notice to the Commission.

**Summary of the Legislation:**
This legislation establishes the findings of fact to support the City's intervention in the affairs of the Seattle Indian Services Commission ("Commission"), and provides the legislative authority for the City to do so under SMC 3.110.440.A.2, and A.8 (as authorized by RCW 35.21.745) to correct the deficiencies identified

**Background:**

The Commission, which was established in 1972 by the City to provide services to the Indian community in Seattle, owns two buildings. Both were financed with bonds guaranteed by the City, making the City liable in the event of default. One of the buildings, the Pearl Warren, has fallen into serious disrepair through neglect and mismanagement and its key tenant has given notice that it will leave if the problem is not corrected quickly. The loss of the tenant would force default. The cost of the repairs, estimated at $2.5 million, are well beyond the financial capability of the Commission.

Furthermore, the state auditor has noted serious deficiencies in the management and conduct of the Commission in several audits over the last ten years. None of these has been addressed by the Commission which now seems to be incapable of action.

The Commission's failure to correct the deficiencies detailed by the auditor and the wasting of the assets under its control makes intervention by the City both necessary and urgent.

Please check one of the following:

__X__ **This legislation does not have any financial implications.**
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

## Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
NO

b) **What is the financial cost of not implementing the legislation?**
The City may be obliged to meet the debt service on the Commission's bonds, estimated at $450,000 per year.

c) **Does this legislation affect any departments besides the originating department?**
(If so, please list the affected department(s), the nature of the impact (financial, operational, etc), and indicate which staff members in the other department(s) are aware of the proposed legislation.) NO

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.) NONE.

e) **Is a public hearing required for this legislation?**
(If yes, what public hearing(s) have been held to date, and/or what public hearing(s) are planned for the future?)
Yes. A public hearing will be noticed at introduction.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
(For example, legislation related to sale of surplus property, condemnation, or certain capital projects with private partners may require publication of notice. If you aren't sure, please check with your lawyer. If publication of notice is required, describe any steps taken to comply with that requirement.)
No.

g) **Does this legislation affect a piece of property?**
(If yes, and if a map or other visual representation of the property is not already included as an exhibit or attachment to the legislation itself, then you must include a map and/or other visual representation of the property and its location as an attachment to the fiscal note. Place a note on the map attached to the fiscal note that indicates the map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.)
NO

h) **Other Issues:**

## List attachments to the fiscal note below: