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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/18/09

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 656/HJCS

SHORT TITLE Domestic Violence Victim Substitute Address SB \_\_\_\_\_

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Secretary of State (SOS)

Administrative Office of the District Attorneys (AODA)

Human Services Department (HSD)

*All respondents above provided analysis on original bill but their remarks remain relevant.*

### SUMMARY

#### Synopsis of HJC Substitute Bill

The House Judiciary Committee substitute for House Bill 656 substantially expands the Secretary of State's confidential address system by creating the Confidential Address Program Act. It clarifies that addresses registered under the Act are strictly confidential except by order of a court. It creates a process by which parties can apply for confidentiality and receive a certificate presentable to public bodies in lieu of providing a real address. An exemption is available to public entities that demonstrate the need for a real address. It also lays out the requirements the agency must follow when receiving an exemption, which is the most notable addition into the substitute. It provides for specific procedures for registration to vote with a confidential address.

### TECHNICAL ISSUES

The Administrative Office of the Courts explains that the process by which public entities may apply for and receive a genuine address (Section 7, p. 8) does not expressly provide for notice to the registrant. There are provisions in other parts of the bill that state notice has to be given as

soon as an exemption is granted, and that no notice and opportunity to contest shall be granted if the requesting entity is law enforcement. (Section 8.C and D, p. 11) Presumably, either the requesting entity or the Secretary of State will provide notice so that the registrant may oppose the request, if necessary. However, there is no requirement in the Bill for them to do so.

AOC further adds that the new material at Section 5.F (p. 6) states that a registrant shall only vote by absentee ballot, which makes sense because of the need for an actual address at a polling place on the general election day. However, later the bill seeks to amend NMSA 1978, Section 1-4-5.I (4)(b) (p. 14, l. 21) to require registrants to present their certification that they are in the program to the voting official in person on election day if the registrant has not provided the certification to the county clerk beforehand. This does allow the registrant a chance to vote with a substitute address in spite of failing to follow the process, but it detracts from the absolute rule found in the new Section 5.F.

### **OTHER SUBSTANTIVE ISSUES**

The Administrative Office of the District Attorneys expressed concern that the time it takes to route mail from the sender to the secretary of state and then to the participant may be a factor. If a trial is set quickly, which can happen in rural locations, there may not be enough time to get service of subpoenas for the trial as well as to set interviews. Thus, victims may not get timely notice of all proceedings.

AODA also adds that the provision providing that “It is unlawful for a person to knowingly attest falsely or to knowingly provide incorrect information on an application for participation in the confidential address program” is vague. There is no indication if this is to be a misdemeanor or felony or whether it’s the Attorney General of district attorneys that would prosecute.

AODA’s final concern is the provision that the participant will be notified when their information is disclosed unless that notification “is not otherwise prohibited by law, or when the request for disclosure is made by a law enforcement agencies conducting a criminal investigation where such notice would jeopardize the safety of law enforcement personnel.” Notification could jeopardize on going criminal investigations even when law enforcement safety was not at issue. Amending the provision to include the jeopardizing of on-going criminal investigations would help remedy this concern.

### **ALTERNATIVES**

Recommend adding a provision to Section 7 that requires the Secretary of State to notify the participant of a request for exemption unless it is from law enforcement.

EO/svb