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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/15
 SPONSOR SPAC LAST UPDATED 3/19/15 HB _____
 SHORT TITLE Substitute Care Review Administration SB 115/SPACS/aSFI #1
 ANALYST A. Sánchez/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SFI#1

The Senate Floor Amendment #1 to the Senate Public Affairs Committee substitute for Senate Bill 155 changes the appointing authority for the two public members of the state advisory committee with expertise in the area of substitute care from the chief justice of the supreme court to the governor and makes other related, minor changes.

Synopsis of Original Bill

Senate Public Affairs Committee substitute for Senate Bill 115 amends Section 32A-8-3 NMSA 1978 by designating the Administrative Office of the Court instead of the Department of Finance and Administration to administer the substitute care citizen review board system using either AOC staff or through a contract.

Also, effective July 1, 2015, it restructures the composition of the state advisory committee for a total membership of eleven (11) persons as follows:

- the secretary of the Children, Youth & Families Department
- the director of the Protective Services Division

- the attorney general
- a justice of the supreme court
- three children’s court judges
- two individuals between seventeen and thirty years of age who were formally in foster care
- two public members with expertise in the area of substitute care

In addition, effective July 1, 2015, it designates the chief justice instead of the secretary of Department of Finance and Administration to appoint the following state advisory committee members: the three children’s court judges, the two individuals between seventeen and thirty years of age who were formally in foster care and the two public members with expertise in the area of substitute care. Furthermore, it designates the chief justice of the Supreme Court to select a chair, vice chair and other officers of the state advisory committee as the chief justice deems necessary instead of the state advisory committee.

This bill also requires the state advisory committee to study the purpose, structure, functions and oversight of the substitute care review boards and to make a report with its recommendations to the department, the courts and the appropriate interim legislative committees, on or before November 1 of each year to include recommendations regarding any changes to the local substitute care review boards.

The Administrative Office of the Courts is also required to report to the legislative health and human services committee in 2018 and every four years thereafter regarding the effectiveness and functions of the Citizen Substitute Care Review Act.

Next, the bill removes “local boards” and instead requires the state advisory committee to establish no fewer than three substitute care review boards, requires the Administrative Office of the Courts or a contractor selected by the Administrative Office of the Courts to administer substitute care review boards and clarifies that to the extent possible, the composition of each board will represent the various socioeconomic, racial and ethnic groups of the community that each board serves.

This bill further requires that the state advisory committee determine the structure for each substitute care review board and to appoint the members and officers of each substitute care review board, in consultation with local children's court judges and the chief justice of the Supreme Court.

Next, it requires Guardians Ad Litem to report to the court instead of requiring Guardians Ad Litem to attend local substitute care review board hearings. It also requires Guardians Ad Litem to represent and protect the cultural needs of the child they represent

Finally, it also removes the requirement that the department submit a copy of the adjudicatory order, the dispositional order, notice of the initial judicial review and a progress report to the local substitute care review board and removes language permitting local substitute care review boards to review the dispositional order and to report its findings and make recommendations to the court.

FISCAL IMPLICATIONS

This bill transfers all appropriations, funds, and costs relating to the Citizen Substitute Care Review Act from the Department of Finance and Administration (DFA) to the AOC on July 1, 2015. The \$404.6 thousand general fund and \$239.9 internal service/inter-agency transfers appropriations to DFA are contained in House Bill 5.

It also transfers all records, money, property, equipment and supplies relating to the Citizen Substitute Care Review Act from DFA to the AOC on July 1, 2015.

According to the AOC, it is unable to administer a statewide system of substitute care review boards without the transfer of state and federal funds from DFA. The AOC will hire staff to ensure the work is accomplished in a timely and comprehensive manner.

DFA reports that the SPAC substitute for SB 115, removes the need for the CRB's to review any case prior to judicial review and to submit a report to the court. The bill states that the state advisory committee shall review and study the purpose, structure, functions and oversight of the substitute care review boards, along with the establishment of no fewer than three substitute care review boards. Currently in HB 5 and SB 210 \$644.5 is allocated to Citizen Substitute care review with the current structure of at least 26 local substitute care boards reviewing individual cases prior to judicial hearings and preparing reports for the court record. If this structure will not be in place in FY16 the appropriate amount of funds needed to support the substitute bill would need to be reconsidered.

SIGNIFICANT ISSUES

CYFD reports that the state substitute care review board system must comply with 42 USC 5106a(c).

According to DFA, the substitute bill allows the Supreme Court chief justice to appoint all members of the SAC, excluding members from CYFD and the Attorney General (AG). The AG should be an "ex-officio" member to avoid a real or perceived conflict of interest. To balance the SAC structure, the public members could be appointed by the governor. Members of CYFD on the SAC also could be considered a conflict of interest as the role of the CRBs is to review case information provided by CYFD. State agencies to be considered on the SAC could be the secretary or designee from the Human Services Department and the Public Education Department. Adding two former foster care individuals will add a valuable perspective to the committee.

DFA points out that the SPAC substitute for SB115 removes the local boards and therefore the ability these boards to perform independent review of cases prior to judicial hearings and for the independent review and for the CRB report to become a part of the child's permanent court record.

AOC reports that a citizen review board is one of the requirements for federal funding in support of State efforts to identify and reduce child abuse under the Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. 5101 et seq. The purpose of these panels is to provide new opportunities for citizens to play an integral role in ensuring that States are meeting their goals of protecting children from abuse and neglect. All fifty states, Puerto Rico, and the District of Columbia have some form of a citizen review board, with the requirement of CAPTA to have a

minimum of three citizen review boards.

New Mexico's existing statutory provisions create many challenges. First, citizen review boards are required to report to the courts, resulting in a requirement for more reporting than can be accomplished by the boards and less value than courts get from other sources, such as court appointed special advocates (CASA). Second, citizen review board volunteers do not understand their role nor are they adequately trained to perform their work. Lastly, volunteer reports are not timely nor are the reports relevant or helpful to the courts. The state advisory committee has the opportunity to start fresh and look at what other states are doing, including having the citizen review boards do thematic reviews and/or develop policy. Feedback will be solicited from citizen review board volunteers statewide to learn the challenges with the current board system and hear recommendations for improving the structure and functions of the boards. Although federal law requires a minimum of three citizen review boards, the state advisory committee, upon further study, shall determine the appropriate number of boards needed for New Mexico.

The most significant issue identified with the substitute bill is the rewrite of Section 32A-8-6, to no longer require the local substitute boards to review every dispositional judgment and report to the courts. Instead, the state advisory committee will study the citizen review boards, establish boards, provide direction, adopt rules, enhance training, and identify focus areas and case selection criteria for the boards statewide to run efficient and effective.

The administrative office of the courts currently manages several programs related to children and families, such as safe exchange and supervised visitation, children's court mediation, court appointed special advocates (CASA), magistrate court DWI drug courts, court improvement, and court appointed attorneys.

The Supreme Court supports the passage of SPAC's substitute for SB 115.

According to CYFD, this bill eliminates all existing local substitute care review boards and replaces with at least three substitute care review boards which will focus on areas and case selection criteria as identified by the state advisory committee. In addition, it eliminates the current requirement of reviewing all cases statewide prior to any judicial review.

CYFD also reports this bill transfers the administration of the substitute care citizen review board system to the Administrative Office of the Court. Since local substitute care review boards review cases and make recommendations for changes to the child welfare system, it is possible that by having the courts providing oversight of substitute care review board system and the authority to appoint state advisory committee membership could be seen as a conflict of interest since the courts are a component of the child welfare system.

ADMINISTRATIVE IMPLICATIONS

Effective July 1, 2015, the rules, regulations and contracts relating to the Citizen Substitute Care Review Act are transferred to the AOC from the DFA.

RELATIONSHIP

The SPAC substitute for Senate Bill 115 relates to the General Appropriation Act, DFA receives funding for the Citizen Substitute Care Review in it.

TECHNICAL ISSUES

DFA points out that on page 4, line 8 references "local substitute care review boards," which appears inconsistent with the intent to remove references to "local" from substitute care review boards throughout the bill.

AMENDMENTS

DFA suggests considering changing the composition of the SAC to exclude one member from CYFD and, instead, include either the secretary or designee of the human services department or the public education department. The governor should appoint the two public members in consultation with the chief justice of the Supreme Court. The two other state agencies provide services to families involved in children court cases and could add perspective that may prove helpful to the administration of the substitute care review boards, to the SAC and to the overall system of child welfare cases. In addition, as the supreme court justice, in consultation with district court judges, will be selecting all members of the substitute review care boards, the credibility and perceived integrity of the SAC maybe be stronger if the judicial and executive branches are involved in appointing members to the SAC while the legislative branch provides oversight; and if CYFD is limited to one member on the SAC.

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