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FISCAL IMPACT REPORT

SPONSOR SJC **DATE TYPED** 2/23/05 **HB** _____

SHORT TITLE Domestic Violence Hearing Officer Project **SB** 447/SJCS

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to domestic violence and the Family Violence Protection Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General
Children, Youth, and Families Department

SUMMARY

Synopsis of Senate Judiciary Committee Substitute

Senate Judiciary Committee Substitute for Senate Bill 447 amends the Family Violence Protection Act to create and define the qualifications and duties of a domestic violence special commissioner (a “domestic violence hearing officer” in the original bill) who is to serve at the pleasure of the chief judge of the judicial district to which the officer is assigned. These duties include the preservation and enforcement of adjudicatory powers under the Family Violence Protection Act.

The committee substitute for the bill makes changes to the qualifications and duties of the special commissioner. First, the committee substitute removes the requirement that the special commissioner’s experience in the practice of law include at least 20 percent in the area of family law or domestic relations matters. Next, the committee substitute eliminates the requirement that the special commissioner make a full time commitment as a special commissioner, eliminating the restriction from engaging in private practice while a special commissioner. The committee sub-

stitute for the bill eliminates the provision in the original bill that the hearing officer/special commissioner has the adjudicatory powers possessed by district courts under the Family Violence Protection Act and instead defines and qualifies all duties of the special commissioner as carrying out the provisions of the Family Violence Protection Act. With respect to the specific duties of the special commissioner, the committee substitute replaces the duties and powers in the original bill with the following:

- Review of petitions for orders of protection and motions to enforce and modification or termination of orders of protection;
- interview of petitioners, if deemed necessary;
- conduct of hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate these orders; and
- preparation of recommendations to the district court regarding petitions for orders of protection and motions to enforce, modify or terminate these orders.
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Finally, the committee substitute, having limited the powers and duties of the special commissioner in the original bill, requires that all orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective. The committee substitute for the bill still repeals Section 40-13-8 NMSA 1978, which addresses the domestic violence pilot program in the Eleventh Judicial District. There are currently part- and full-time domestic violence hearing officers in each judicial district. This bill simply justifies their existence.

Significant Issues

According to the Attorney General staff analysis:

“This Amendment to the FVPA stems in part, from the recent New Mexico case of *State v Lujan* wherein the Court raised serious concerns about the perceived lack of judicial review of orders of protection (in other words, were orders being rubber stamped by District Judges without independent review). This amendment would address the concerns raised by *Lujan* and clarify existing procedures followed in the order of protection process. SB 447 defines, in subsection B. the minimum requirements for qualification as a special hearing officer, adding more specified language as to the type of legal practice experience and requires that a special hearing officer position be an FTE, no longer on a part time basis or on a contract level. This may impose a fiscal burden on smaller jurisdictions which presently contract out or employ a special hearing officer on a part time basis only.

The powers and duties section uses the phrase in section A shall have the “adjudicatory powers” appears as though they will be given judge-like powers rather than the intended meaning which is explained in subsection B outlining their specific powers. Concerns that the phrase “adjudicatory powers” will cloak the special hearing officer with the robe of a judge is addressed by subsection C. (5) which tasks the hearing officer with preparing recommendations to the district court regarding disposition of request for orders of protection. In other words, and maybe what should have been stated- all orders must be signed by a district judge before the recommendations of a special hearing officer become effective. Special hearing officers do not have the authority to sign the order. They do have the authority and duty to conduct hearings, examine witnesses, take testimony,

introduce exhibits, and issue subpoenas in addition to other powers outlined in subsection A.

However, the tasks proscribed in section C subsection 1 and 2 are incorrect. Orders of protection in New Mexico are free, so these two subsections do not apply and should be deleted.

This act addresses the legitimacy of the position of special hearing officer by defining their roles.”

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

According to the Attorney General staff analysis, there is currently a draft amendment for the New Mexico Rules of Civil Procedure pending before the Supreme Court, which also addresses these concerns.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

According to the Attorney General staff analysis, the Family Violence Protection Act does not address concerns raised by *State v Lujan*. Without clarification of duties and powers of the special hearing officer, concerns will continue to be raised, and the integrity of the position and process itself questioned.

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