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FISCAL IMPACT REPORT

SPONSOR Castellano/Strickler/
Fajardo/Trujillo/ ORIGINAL DATE 2/1/2022 157/ec/aHHHC/
Gallegos LAST UPDATED 2/10/2022 HB aHAFC

SHORT TITLE Surrender of Infants SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$70.0-\$140.0	\$70.0- \$140.0	\$140.0- \$280.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to 2021 House Bill 18; duplicate of 2022 Senate Bill 168.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Attorney General's Office (NMAG)
 Early Childhood Education and Care Department (ECECD)
 Department of Finance and Administration (DFA)
 Indian Affairs Department (IAD)
 Public Education Department (PED)
 Children Youth and Families Department (CYFD)
 Department of Health (DOH)

Responses Not Received From

Public Regulation Commission (PRC)
 Human Services Department (HSD)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment strips the bill of its appropriation and makes several other changes:

- 1) It strikes daycare centers from the list of locations where a surrender safety device could be left.

- 2) It removes the requirement that the device be located on the property of and affixed to a safe haven site.
- 3) It removes a phrase making a safe haven site immune from liability for negligence in installing, operating or maintaining one of the devices, but maintains immunity for accepting an infant in such a device (though not for negligent handling of the infant subsequent to the acceptance of the infant).

Synopsis of HHHC Amendment

The House Health and Human Services Committee amendment removes CYFD as being responsible for issuing rules relative to the marking of safety surrender devices and their use (Section 4-A(2)) of the bill. As noted by CYFD, “This amendment leaves the safe haven sites free to develop their own signage and instructions, rather than requiring adherence to a uniform standard of signage and instruction... [but] CYFD has performance measures concerning the health and safety of children which may be affected by a lack of uniform standard in signage.”

Synopsis of Original Bill

House Bill 157, Surrender of Infants, appropriates \$70 thousand from the general fund to the Public Education Department for the purpose of educating the public about safe surrender of infants, including the location and use of surrender safety devices, and \$330 thousand from the general fund to the Department of Finance and Administration for the installation of surrender safety devices.

House Bill 157 amends the Safe Haven for Infants Act (Section 24-22 NMSA 1978) to allow surrender of infants that might otherwise be abandoned, in safety devices approved by the Legislature and installed, probably in fire stations and health care facilities in New Mexico.

Section 2 of the bill defines a “surrender safety device” as a location where the following must be characteristics

- 1) The infant will be safe there for up to 30 minutes, and have enough oxygen;
- 2) The unit can be attached to the outside of a building and be accessible by an attendant from within the building;
- 3) The inside portion of the box must have a glass door so an infant in the box can be seen by someone inside the building; and
- 4) The device sets off an alarm when an infant is placed into the device.

Section 2 also alters the definition of “safe haven site,” requiring that such a site be staffed 24 hours per day, seven days per week, referring to hospitals, law enforcement agencies, and fire stations, but also adds daycare facilities during those facilities’ hours of operation.

Section 3 of the bill would strike two segments of the current act (in Section 24-22-3)

- An infant must have been born within 90 days of being left; and
- The safe haven site must be deemed to have consent for medical services.

Section 4 of the bill makes provision for the surrender safety device use, making the person leaving the infant in the box not liable for abandonment or abuse if left there in good condition.

Section 5 amends Section 24-22-4 requiring procedures to be put in place at each site with a

safety device, including the requirement that information about adoption and counseling be made available to persons leaving infants there and information about how to contact CYFD to seek reunification with the infant. If practicable, the safe haven site is to provide CYFD with all available information about the infant.

Section 6 states an infant left at a safe haven site is deemed to have consent for medical services.

Section 7 enumerates CYFD responsibilities

- CYFD is deemed to have emergency custody of such infants;
- CYFD will investigate whether abuse or neglect of the infant has occurred;
- If the infant appears to be an Indian child, the tribe shall be notified and placement will follow state law (Section 32A-5-5 978 NMSA) regarding preference for placement with Native American families;
- The public will be made aware of the safety devices and other provisions of the Safe Havens for Infants Act by CYFD;
- Infants left at a safe haven act location will be deemed eligible for Medicaid.

Section 7 also gives PED the responsibility of performing educational activities, especially toward school children, about the existence of safe havens and safety devices, and the locations of the latter.

Section 8 indicates responsibilities of safe haven sites for installing the device in a safe and proper manner, monitoring the condition and restocking the safety device, noting the presence of an infant within the device, and instructing personnel on procedures according to the act.

Section 9 grants immunity to safe haven sites for accepting infants, adding to Section 24-22-8's immunity clause language dealing with safe haven surrender devices.

Section 10 gives PED the task of educating the public, especially students, on the Safe Haven for Infants Act and the locations of safe havens and surrender safety devices.

Section 11 appropriates \$70 thousand to the PED for its educational activities specified in Section 10, and \$330 thousand to the local government division of DFA to install surrender safety device at state-owned safe haven sites.

Section 12 establishes an emergency.

FISCAL IMPLICATIONS

The twice amended bill has removed the appropriation, thereby invalidating the next paragraph. Agencies have not yet had an opportunity to comment on how the lack of an appropriation would affect those agencies. The amount shown in the table above indicates that PED has previously indicated that the \$70 thousand appropriation in the original bill might not be sufficient. That amount and twice that amount have been entered into the above table as an approximation.

The appropriation of \$70 thousand to PED contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall revert to the general fund; the appropriation of \$330 thousand to PED contained in this bill

is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the general fund.

The Safe Haven Baby Box website states the following: “Did you know that we do not request any tax dollars to fund our efforts? Every SHBB program is completely funded by the generous support of our donors.” That being the case, it is assumed that the appropriation through DFA would be used for installing the safety surrender devices, but not for purchasing them. Safety boxes, according to a January 2022 article/broadcast story at KRQE.com about approval of installing such a box in Española, New Mexico, cost about \$20 thousand each to install, with an annual lease payment to the Safe Haven Baby Box Company of \$200 per year.

It is not clear from the bill how many safety boxes would be installed or how the annual lease fee be would paid for. However, DFA calculates as follows: “[The] appropriation to DFA Local Government Division includes “state-owned” requirement. This will limit the eligibility of safe haven sites as recipients of the funds compared to the definition provided of “safe haven sites” in the act.

It is estimated that the appropriation to DFA could potentially support the installation of 17-22 surrender safety devices at state-owned safe haven sites, using an estimate of \$15 thousand - \$20 thousand per device installation.

PED suggests that more funding might be needed to implement its portion of the bill than the \$70 thousand allotted to it, but has not estimated what further economic impact would occur on that department with passage of the bill. CYFD states that it “may see a slight increase in the number of children in its care due to higher awareness of the Safe Haven Act. CYFD can absorb this through its current funding.”

SIGNIFICANT ISSUES

DPS mentions a significant concern with placement of safety boxes at law enforcement agencies: “the device may be utilized for other purposes than what it is meant for. It is a large device with a large opening. With the current dislike of law enforcement this device allows for access of certain dangerous items being placed inside the device that may cause harm to staff inside the building.”

The National Safe Haven Alliance (nationalsafehavenalliance.org) estimates that more than 4,422 infants have been saved through its programs, which include promotion of baby boxes. The only apparently available devices meeting the specifications of House Bill 18 are manufactured by a non-profit organization, Safe Haven Baby Boxes, which has boxes installed in Ohio, Indiana, Florida, and Arkansas; the organization’s website, shbb.org, states in its 2020 annual report (the last available on the site) that 10 infants have been safely left in its boxes in Indiana, and one has been left in the Arkansas box; in 2020 a total of six infants had been left in the safety surrender devices. Other states have updated Safe Haven Laws to accommodate Safe Haven Baby Boxes, including Arizona, Maine, Missouri, Kentucky, Oklahoma, Louisiana, and Pennsylvania. The Safe Haven Baby Box organization, which has 501c3 status, makes potential users aware of their availability in states where they have located the devices, through billboards and a toll-free telephone line. There is no mention on either website of sabotage being carried out using one of these devices.

Being able to surrender an infant into an anonymous safety box may provide another useable safe option for parents who might be shamed by having to turn an infant over in person. Proponents indicate that their availability may reduce the incidence of infanticide. As pointed out by DOH, “This bill could have a positive effect on public health by reducing infanticide and injury/death as a result of unsafe abandonment.”

DPS notes that it has “the following facilities: (3) Uniform District Offices (24 Hours), that will require upgrades with the device. The use of the box would trigger a silent alarm alerting 911 dispatch and the fire department of a drop-off.

ECECD notes the risk associated with abandonment of infants and infanticide:

According to the Centers for Disease Control and Prevention (CDC), the highest risk for infant homicide is on the day of birth. All 50 states and Puerto Rico have enacted Safe Haven Laws to address infant abandonment and endangerment. The infant homicide rate on the day of birth decreased from 222.2 per 100,000 person-years during 1989–1998 to 74.0 during 2008–2017 (66.7% decline), but remains at least 5.4 times higher than the rate at any other time in life. Without an anonymous safe surrender option, mothers in crisis sometimes leave their infants in unsafe and even life-threatening situations, despite the Safe Haven for Infants Laws...

The expansion of safe haven sites to include licensed child care facilities will have a potentially significant impact on child care center operations and regulation. The implications of a new duty to accept surrendered infants for all licensed child care facilities warrants discussion regarding the effect a potentially charged situation such as surrendering an infant may have on staff as well as children at facilities. Child care facilities would be required to adjust their policies and procedures as well as train staff on Safe Haven procedures in the event an infant were surrendered at their facility. Further, the impact of secondary trauma on child care staff cannot be overlooked. Secondary traumatic stress for caregivers is extremely high and if staff are receiving children who have been willingly given up the impact to their psychological well-being must be accounted for and responded to systemically.

CYFD has added the following points regarding its added duties related to infant abandonment:

Firefighters, law enforcement agencies, and hospital staff are critical in maintaining the welfare of infants and children in New Mexico. Those personnel help CYFD determine what cases may need immediate intervention and which families may be in need of support services. The existing Safe Haven Act is part of a continuum of services available to at-risk families.

It is unclear from this bill who is responsible for maintenance and functioning of the safety devices, certification of the devices, or promulgating rules and procedures regarding their operation. Should one malfunction, it is unclear where liability may land should a child be harmed due to a faulty device, as the safe haven sites are immunized from said liability.

This bill adds provisions for safe haven sites to install and maintain surrender safety devices and for the department to promulgate rules regulating the installation, inspection and monitoring of surrender safety devices. The regulatory provisions CYFD the

department to develop expertise in order to promulgate and implement rules regarding the installation, inspection and monitoring of surrender safety devices; and to hire or train existing staff on determining whether surrender safety devices adequately provide for the safety of an infant if the infant is properly secured within the device for a period of at least three hours and the other requirements for a surrender safety device.

While this bill accounts for immunity for the Safe Haven sites for the operation, installation and maintenance of the devices, it does *not* provide any similar immunity to CYFD for its inspection or approval of the devices. Should a device malfunction, CYFD could face liability for the injury or potential death of a child.

There is no method for holding someone accountable for leaving an infant over 90 days in one of these devices.

There is no method for identifying a person leaving an infant in one of these devices should the child be left in a condition in violation of NMSA 30-6-1. [NMAG makes the same point.]

Section 4(A)(2) states that the surrender safety device be “conspicuously marked as a safe surrender location pursuant to rules issued by the department with directions for use”, but the bill does not define “the department” at any point, nor is there a definition of “department” in NMSA 1978 §24-22-2. It is unclear which of the three departments named in the bill – CYFD, PED, or DFA – will be responsible for issuing these rules.

DOH notes that “Those affected by the bill are parent(s) in New Mexico that want to surrender an infant safely but may be shamed by this. This bill allows them to surrender their baby safely without this bias, shame and stigma. Younger, impoverished, and birthing people may be disproportionately impacted by the legislation.”

ADMINISTRATIVE IMPLICATIONS

The bill requires the PED to perform public outreach functions to educate the public about the Safe Haven for Infants Act, including developing literature about the Act and location of surrender safety devices and distributing it to safe haven sites. Existing or new PED staff would be required to develop the literature and conduct public outreach functions.

The bill also requires the PED to promulgate rules for the dissemination of information to students regarding the Safe Haven for Infants Act, including the location safe haven sites and surrender safety devices. Existing or new PED staff would be required to conduct the rulemaking process.

DUPLICATE AND RELATIONSHIP

Duplicate of Senate Bill 168.

Related to 2021 House Bill 18, which also addressed surrender safety devices but contained no references to education regarding safe havens nor made an appropriation.

AMENDMENTS

IAD suggests adding the following amendments:

- In Section 2, define “student.” The term “student” is consistently used throughout HB 157. An explanation or description of “student” is not provided in the definitions section.
- In Section 2, define “safe haven site” to include social services located on tribal lands.
- In Section 7(D), include ECECD with PED to provide outreach and education of the infant surrender safety device program.
- In Section 11, include ECECD with PED to conduct the education of students regarding the *Safe Haven for Infants Act*.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Infants could be surrendered by a parent or other person according to the current provisions of the Safe Haven for Infants Act, but parents would not have the option of leaving them anonymously in a safe surrender device like the Safe Haven Baby Box.

LAC/al/acv