

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Robinson DATE TYPED: 02/27/03 HB _____

SHORT TITLE: Authority for Child & Spousal Support Orders SB 817

ANALYST: Weber

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Attorney General
 Human Services Department

SUMMARY

Synopsis of Bill

Senate Bill 817 (SB 817) would authorize administrative establishment of child and medical support orders through child support hearing officers.

SB 817 would grant Hearing Officers the power to “issue and modify support orders and orders of withholding, impose and remove liens, determine parentage, impose civil penalties and take all other actions necessary to ensure compliance with support obligations.”

SB 817 would grant these Hearing Officers “concurrent jurisdiction with the district courts in all actions brought: (a) to enforce or modify support orders resulting from a dissolution of marriage; (b) pursuant to the Support Enforcement Act; (c) pursuant to the Mandatory Medical Support Act; (d) pursuant to the Uniform Interstate Family Support Act; or (e) pursuant to the Uniform parentage Act.”

SB 817 grants Hearing Officers adjudicatory powers possessed by the district courts for cases within their jurisdiction, and permits parties to appeal from a decision of the hearing Officer to the Court of Appeals.

It corrects language to comport with the Temporary Assistance for Needy Families program instead of the former Aid For Dependent Children program.

SB 817 would establish the procedure for appeal from a Child Support Hearing Officer's decisions directly to the Court of Appeals.

The Hearing Officer positions would be exempt positions appointed by the Human Services Department (HSD) Secretary.

Significant Issues

The Human Services Department reports that the grant of concurrent jurisdiction with the District Courts for cases within the Hearing Officers' jurisdiction, with a right to appeal Hearing Officer decisions to the Court of Appeals, creates a mini-district court judgeship for these hearing officers, which appears to run afoul of:

- a) N.M. Const. Art. III, Section 1 regarding the distribution of powers between the three branches of government
- b) N.M. Const. Art. VI, Section 1 regarding the judicial power vested in the courts; see e.g. Mowrer v. Rusk, 95 N.M. 48 (1980).
- c) N.M. Const. Art. VI, Section 13 establishing District Court Jurisdiction
- d) N.M. Const. Section 14 establishing District Court Judges' qualification
- e) the purpose and mission of the Judicial Standards Commission, which could not review the qualifications or conduct of these Hearing Officers as it could for other judges

The designation of the positions as "exempt" may hinder a hearing officer's independent judgment and discretion. Exempt positions may also result in high turnover, which may have negative impact on scheduling and consistency in the decisions rendered through this process.

The Attorney General adds this bill would significantly limit the scope of judicial review of a hearing officer's order by restricting appellate review to that limited to the record made before the hearing officer, in contrast to the existing law, which allows a district to conduct a de novo (new evidentiary) hearing if it chooses.

Conduct occurring before a hearing officer who is the employee of an executive agency rather than the judicial branch may not be found to constitute contempt committed before a court, and thus may not be subject to punishment in the same manner or to the same extent as that committed before a court.

TECHNICAL ISSUES

The Attorney General points out the following technical matters.

- a) In Section 20(D), line 18 on page 38 refers to "court" at the end of the sentence. It appears that that reference is actually to a hearing conducted by a hearing officer, and that reference should be corrected to so reflect.
- b) In Section 22(B), lines 10-12 on page 40, the bill directs that the procedure for perfecting an appeal to the court of appeals "shall be as provided in the Rules of Appellate Procedure". As they exist currently, there is no rule of appellate procedure that applies when

Senate Bill 817 -- Page 3

an appeal is taken directly from a hearing officer's order to the court of appeals, without going through district court. Either this provision should be restructured, or a new rule will be necessary.

- c) A provision setting out the proper venue for a hearing under the Child Support Hearing Officer Act should be added.

MW/yr