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FISCAL IMPACT REPORT

SPONSOR Ivey-Soto ORIGINAL DATE 2/07/17
 LAST UPDATED 2/28/2017 HB _____

SHORT TITLE Confidential Substitute Address Act SB 245/aSJC/aSFl#1

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney (AODA)
- Law Office of the Public Defender (LOPD)
- Secretary of State (SOS)
- Crime Victims Reparation Commission (CVRC)

SUMMARY

Synopsis of Senate Floor Amendment #1

Senate Floor Amendment 1 corrects the title of the Secretary of State by removing the second instance of “the.” Originally, the bill titled the office as “the Secretary of the State.”

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 245 adds a new Section 9 regarding participant voter record confidentiality.

The new section requires the Secretary of State to maintain a secured module in the State Voter Registration Electronic Management System. Records in the module shall not be viewable to anyone except designated SOS staff and will not appear in the voter file.

Once a person has been certified as a participant in the Act, SOS shall determine if the person is a voter and transfer the participant’s voter registration to the secure module. If the person is not a voter but is eligible to be an elector, the SOS shall offer the person the opportunity to register to vote and enter their information in the secured module.

If a person is decertified as a participant in the Act, the SOS shall transfer voter information from the secured module to the voter file and shall deliver all certificates of registration to the county clerk of the county of the participant's latest residential address on file with the SOS.

The new section requires the SOS to mail an absentee ballot to the registered participant for statewide elections, and that the ballot would be returned, tallied, and canvassed by the SOS in the same manner as provisional ballots are handled.

The new section requires the SOS to prepare a confidential report to the State Canvassing Board regarding the program participants and the tallied votes.

The new section provides for procedures for election recounts and contests of elections.

The amendment renumbers the succeeding sections accordingly.

Synopsis of Bill

SB 245 proposes to enact the "Confidential Substitute Address Act," to improve mechanisms by which the state can continue to protect domestic violence victims against discovery and exempt the records from inspection under the Inspection of Public Records Act. Under existing law the Secretary of State (SOS) generates a substitute address for a domestic violence victim who wants a residence or delivery address to remain confidential, as an added layer of protection against abusers.

SB 245 bill repeals NMSA 1978, Sec. 40-13-11, the state's first substitute address protections for domestic violence victims, and replaces it with an Act that is more procedurally detailed. The existence of Sec. 40-13-11, which passed as HB 216 in 2007 on a 37-0 vote in the senate, is evidence the legislature endorses the need to protect the confidentiality of abuse victims and their families. SB 245 makes no substantive change to the protections the State already endorses, but provides details of a program to effect that protection.

SB 245 maintains the current legal requirements as the SOS: generate a confidential substitute address for a participant in the confidential substitute address program, accept legal service for and forward mail to the participant, keep the address confidential except by order of a court, and train staff who may assist an applicant or program participant.

SB 245 imposes additional burdens on program applicants and participants: certify that the confidential substitute address is legitimately needed for protection, contact other agencies that require an address to inform them of the substitute address, update the SOS on changes in the participant's delivery address and notify the SOS when the substitution is no longer necessary.

SB 245 imposes additional burdens on the SOS, requiring the SOS to: build and secure database of confidential substitute addresses and restrict access to the information, issue a substitute address card for participants, screen paid and volunteer staff who may be in contact with applicants or participants for domestic violence misdemeanors or felonies, maintain a record of legal service and notices accepted on behalf of participants in advance of forwarding the information to the substitute address, continue to forward mail to an applicant for six months after the participant is no longer in the program, clear the records after a participant leaves or is removed from the substitute address program.

SB 245 requires other agencies, including schools, that receive information of a participant's confidential substitute address to maintain the telephone and email information as well as substitute address information in confidence.

FISCAL IMPLICATIONS

In response to the amendment, SOS states it is currently working on implementing a new modernized voter registration and election management system and has already outlined system specifications that would include a secured module as specified within the provisions of this bill. Therefore, the SOS expects to be able to accommodate the provisions outlined in the bill without significant fiscal impact.

SOS explains it already operates this program, referred to as the Confidential Address Program (CAP), and already meets the majority of the required provisions such as the relevant security and storage requirements. The primary cost of administering CAP is forwarding mail received on behalf of participants to their real physical addresses. This cost has already been absorbed by the operating budget of the SOS.

SOS goes on to explain there may be some fiscal impact with new language regarding 40 hours of training on domestic violence and to conduct the required criminal background checks on staff members for the SOS staff involved in administering the program.

Additionally, the SOS is required by the Act to provide identification cards for program participants which may result in minimal additional cost. These ID cards would be used by participants to access services from other governmental agencies.

AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The AODA explains the most significant fiscal impact will be on the secretary of state, who must implement and administer the program. Other state entities, including the district attorneys, will need to comply with the requirements of SB245 when a participant presents a confidential substitute address identification card, and when processing inspection of public records act requests. This will result in additional time and effort, and some increased costs.

CVRC analysis states Victims of Crime Act (VOCA) federal funds would be able to enhance this program, with an FTE and other operating expenses.

SIGNIFICANT ISSUES

CVRC analysis points out “this program is utilized in approximately 22 other states with certain victims as listed on this bill and has been successful at keeping their information confidential. Most of these states who have confidential address programs fund their programs with full-time employees (1 or 2 FTE and even with small amount of staff time). The funding ranged from \$245.8 thousand to \$1.2 million for mailings. For this program to be successful [...] an FTE [is needed,] or as stated in the bill, an “applicant assisting” with additional operating expenses such

as training, travel costs, building lease, phone, office supplies, postage, advertising and indirect cost. Membership to the National Association of Confidential Address Program would be encouraged to keep up with best practices in the nation. States that have invested funds to this program, have proven to be successful. Although, our state provides this program currently, very few service providers who work with these victims know this program exists, much more outreach and training needs to be conducted state wide and membership to the national association would be encouraged.

The AODA explains SB 245 replaces the existing substitute address provision in Section 40-13-11 NSMA 1978. That provision only protects the victim of domestic violence, not the victim's child or another household member. Section 40-13-11 NMSA 1978 is a very short provision, and does not provide details on the administration of the program, and does not contemplate cooperation by other state entities in protecting the confidentiality of the participant.

AOC submits the following analysis:

1) Confidential substitute address (CSA) laws help protect victims of domestic violence. The current law in Section 40-13-11 NMSA 1978 permits a victim or victim's representative to apply for a CSA when the victim's safety is believed to be at risk. SB 245 creates additional hurdles for a victim to gain certification at a time when haste in obtaining protection may be called for and at a time when a victim's life may be in chaos. Specific provisions that may impact a victim's safety are: requiring that an application assistant participate in the process and sign the application and requiring that the applicant deliver a copy of the program ID card to each agency.

2) There is no provision in SB 245 for including those previously registered with the SOS pursuant to Section 40-13-11 NMSA 1978 in the program without meeting the SB 245 requirements for certification. One of those requirements is that the application include a statement that the applicant has confidentially relocated in the past 90 days or will relocate within the state in the next 90 days. If an applicant is currently protected pursuant to Section 40-13-11, the person could have to reapply and complete the specified conditions for certification in SB 245, leading to a possible lapse in safety for the victim as certification to participate in the Confidential Substitute Address Program is pending.

3) Courts use CSAs to protect victims of domestic violence. If the courts fall under the definition of "agency" contained in SB 245, a court will need to wait to be contacted by a participant before using the certified participant's CSA. Again, there is no provision for carryover into the newly created Confidential Substitute Address Program for those who currently have a substitute address pursuant to Section 40-13-11 NMSA 1978. If current participants are required to reregister and meet all of the requirements of the CSAA, this could create a problem for the courts regarding the timely sending of notices and will threaten the safety of domestic violence victims involved in court matters.

4) SB 245 does not contain a method of providing temporary, emergency certification nor an expedited, truncated certification process for domestic violence victims who believe they are in imminent danger and need of a CSA.

PERFORMANCE IMPLICATIONS

CVRC explains as a service provider to victims of crime, two victims have been referred to this program at the secretary of state. A collaboration with the New Mexico Coalition of Sexual

Assault Programs, The New Mexico Coalition Against Domestic Violence and the Coalition to Stop Violence Against Native Women would be strongly encouraged. Each of these agencies works closely with the clients listed on this bill and would facilitate trainings statewide.

ADMINISTRATIVE IMPLICATIONS

The OAG points out SOS is required to provide training by CYFD or its successor agency for training of its paid and volunteer staff prior to allowing the staff to interact with applicants and participants. The OAG Open Government Division provides legal counsel to the SOS, and staff time would likely be required to assist in the SOS with promulgating new rules under the Confidential Substitute Address Act. The OAG Open Government Division also provides information and training on the Inspection of Public Records Act to government employees, media, and the public. Changes to exemptions under IPRA may result in additional questions raised to the OAG.

AODA analysis explains state entities will need to comply with SB245 when a participant presents a confidential substitute address identification card, and when processing inspection of public records act requests. Issues will likely arise when an entity denies an inspection of public records act request for contact information about a participant, even though the participant has been “decertified” from the program. There is no provision to notify agencies that a participant has been decertified. Entities that provide legal notice, such as the district attorneys, will have to factor in additional time when providing notice to participants, because the notice will not be perfected until three days after it is accepted by the secretary of state. This could complicate some legal proceedings that are conducted on very short time lines.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The OAG states a number of other bills introduced this session also add exceptions to IPRA, including SB 149 – Crime Victim & Witness Confidentiality.

TECHNICAL ISSUES

AOC suggests it may be helpful to include an amendment to permit those already registered for a CSA under Section 40-13-11 NMSA 1978 to be automatically certified for participation in the SB 245 Confidential Substitute Address Program or to undertake an expedited, truncated certification process.

OTHER SUBSTANTIVE ISSUES

OAG analysis explains since SB 245 repeals existing law under which the SOS has already generated some confidential substitute addresses, it might be helpful to add language in SB 245 to address how existing records collected by SOS should be transferred to the new program.

Neither existing law nor SB 245 addresses problems that could arise from creation of new substitute addresses—for instance, how the substitute addresses can remain confidential while also reflecting placement in a participant’s proper voting precinct or school district boundary.