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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/13

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE Local Substitute Care Review Boards SB 413

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	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)
Department of Finance & Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 413 amends three sections of the Citizen’s Substitute Care Review Act, sections 32A-8-1 through 7, NMSA 1978. That Act establishes local substitute care review boards (LSCRBs or review boards) to conduct independent and objective monitoring of children placed in the custody of the Children, Youth and Families Department (the CYFD). The State’s ability to receive federal grant funds pursuant to The Child Abuse Prevention and Treatment Act (CAPTA, 42 U.S.C. Section 5106a) depends on the New Mexico state plan including the creation and maintenance of citizen review panels. This Act fulfills that requirement for New Mexico.

Currently, the Act provides that the DFA shall fund a contract with a non-profit organization to operate a statewide system of local substitute care review boards. SB 413 amends Section 32A-8-3 to remove the requirement that the contracting entity be a non-profit, to change the contractor’s duties from “operation” of the review boards to “provide services” to those boards, and to require the contractor provide reports to the review boards within specified time frames. SB 413 also allows DFA to use up to one percent of appropriated funds for administrative expenses.

SB 413 also amends Section 32A-8-4 to authorize the DFA (rather than its contractor) pay per diem and mileage to members of the statewide advisory committee (SAC) that is created in the existing Act.

The SB 413 amendments to Section 32A-8-5 restructure the review boards. Under existing law, the contractor establishes these boards, based on criteria determined by the SAC. Under SB 413, there must be a review board for each county. Each review board is composed of five members appointed by the county commission and who must represent to the maximum extent feasible the various socioeconomic, racial and ethnic groups of the community the review board serves. The members serve terms of three years at the pleasure of the county commission. SB 413 includes the existing ban that prevents employees of the DFA, the CYFD, and the AOC from serving on a review board. Two or more counties may agree to merge their boards after receiving approval from the Secretary of DFA and the director of the AOC, and a county may establish additional LSCRBs with the consent of those two public officials if additional boards are needed to manage that county's caseload.

FISCAL IMPLICATIONS

The DFA advises this bill will not have an impact on the general fund. It reports that HB 11 contains an appropriation from the general fund to the DFA for \$405,700 and an appropriation of \$174,300 of federal Title IVE funds (through the CYFD) to fund the Act. The DFA believes SB 413 will allow it to better support the SAC and the review boards by allowing more flexibility in the use of funds appropriated to implement the Act.

SIGNIFICANT ISSUES

The DFA provides this analysis of the need for the changes contained in SB 413:

Under the Act, as currently written, the roles and responsibilities of the contractor, the LSCRBs, and the SAC are significantly ambiguous. This has led to tensions and distrust amongst the parties. The intent of SB 413 is to clearly define the roles and responsibilities of the contractor, the review boards, and the SAC in order to ease tensions and create a productive environment. The review boards will be responsible for reviewing the cases of foster children, the contractor will be responsible for providing the staff support the boards need to do those reviews, and the SAC will review the activities of the boards and make recommendations to the CYFD, the courts, and the legislature regarding statutes, policies, and procedures relating to substitute care.

SB 413 requires that the county commissions, which are neutral but interested third parties, appoint the members of a LSCRB. The county commissions understand the needs of their communities. In addition, requiring five member review boards will ensure that cases are reviewed regularly even when some members are sick or unable to attend the board reviews. Currently, some review boards are made up of one or two members, which makes it difficult to function when a member is unable to attend.

Under the current contract administered by the DFA, the contractor has the responsibility of paying per diem and mileage to the SAC, and for staffing the

SAC meetings. This relationship unofficially makes the SAC beholden to the contractor, when it is intended to be an independent committee that makes recommendations to the state. Giving DFA the ability to pay per diem and mileage to the SAC will keep it an independent body.

However, the AOC calls attention to another issue that arises under HB 413. Although judges rely on independent, knowledgeable, and experienced volunteers on these review boards to provide reports to the court, under SB 413, it is not clear who is responsible for determining the criteria or qualifications for membership on local review boards.

Under existing law, the SAC is responsible for determining criteria for membership and tenure on review boards. That responsibility is removed in SB 413 (see the stricken subsection B on page 6), and the only criterion governing members' appointment by county commissions is the direction that each board represent to the maximum extent feasible the various socioeconomic, racial and ethnic groups present in the community it serves. Also, a member's tenure is left to the pleasure of the appointing county commission. Given these changes, it is unclear what knowledge, experience and other qualifications members will bring to each review board. Similarly, it is unknown whether the existing training requirements, both the new member one-day training and the ongoing training obligations (outlined on the New Mexico Citizens Review Board website at <http://www.nmcrb.org>) will continue to apply, along with the existing consequence of removal from a review board if the required training is not timely completed.

PERFORMANCE IMPLICATIONS

The DFA notes that SB 413 allows DFA to use up to one percent of the funds appropriated for the implementation of the Act for administrative expenses, and explains that this funding will increase its ability to procure a contractor and provide sufficient oversight of the contract, in addition to providing administrative support to the SAC.

OTHER SUBSTANTIVE ISSUES

The DFA requests the title of the appropriation currently contained in HB 11 (page 37, line 9), be amended to read, "For the Implementation of the Children's Substitute Care Review Act," instead of "Citizens' review board."

MD/blm