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## FISCAL IMPACT REPORT

SPONSOR Martinez, A LAST UPDATED 2/2/2023  
ORIGINAL DATE 2/2/2023  
BILL  
SHORT TITLE CYFD Policies & State Rules Act NUMBER House Bill 187  
ANALYST Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$411.0	\$411.0	\$822.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

## SUMMARY

### Synopsis of House Bill 187

House Bill 187 amends the Children's Code to mandate that all internal policies, procedures, guidelines, and directives issued by CYFD be promulgated in accordance with the State Rules Act.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

CYFD said, absent an appropriation, it cannot absorb the fiscal implications of promulgating all internal policies, procedures, guidelines, and directives issued by CYFD in accordance with the State Rules Act with existing resources. A minimum of 4 FTE will be required, including at least one hearing officer, in addition to expansions to the publication and advertising budget, for a minimum annual expense of \$600 thousand.

CYFD did not provide any analysis indicating how they arrived at the \$600 thousand estimate. However, if promulgating these rules does require 4 FTE as stated above the cost is estimated at

\$361 thousand, using CYFD’s average FTE cost of \$90.27 thousand annually. Another \$50 thousand annually would be needed for advertising costs. The estimate is nonrecurring because the department should be able to promulgate the additional rules with a two-year timeframe.

## SIGNIFICANT ISSUES

CYFD provided the following:

It is unclear why CYFD is the only agency that this bill affects, particularly as CYFD, as a state agency, follows policies issued by other agencies with respect to financial, administrative, and human resources operations.

“Rule” is defined by NMSA 1978 §14-2-2(F) as “any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency”. As internal directive documents are not binding on persons or entities outside the agency, any requirement that an agency promulgate its internal directive documents through the State Rules Act runs counter to this definition.

Promulgating regulation requires:

- A minimum of thirty days notice prior to the public hearing;
- A minimum of thirty days public comment period;
- A public hearing presided over by an agency representative or hearing officer; and
- Production of a rulemaking record, included a transcript of the hearing, a copy of all comments received during the public comment period or made at the hearing.

While these requirements may be waived in an emergency situation, no emergency rule may permanently amend or repeal an existing rule, and emergency rules expire if not subsequently adopted through the statutory process.

Requiring CYFD to undertake a minimum 45 day process every time an internal directive requires change or replacement would significantly inhibit CYFD’s ability to timely and effectively provide guidance to its employees. This bill inappropriately elevates internal policy and procedure to the authority of regulation as a special category of law, thereby granting internal policy and procedure the same force of law as regulation.

## ADMINISTRATIVE IMPLICATIONS

CYFD said the department cannot absorb the administrative implications of promulgating all internal policies, procedures, guidelines, and directives issued by CYFD in accordance with the State Rules Act with existing resources. Because the act requires a minimum of 30 days, followed by public hearing and preparation of rulemaking record, CYFD would be unable to timely issue targeted guidance concerning internal processes and staff duties in order to address emergent situations.