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FISCAL IMPACT REPORT

SPONSOR	Sens. Ortiz y Pino, Hemphill, Tallman and Pope/Rep. Chavez	LAST UPDATED	<u>2/3/2024</u>
		ORIGINAL DATE	<u>2/1/2024</u>
SHORT TITLE	CYFD Commission & Executive Director, CA	BILL NUMBER	Senate Joint Resolution 6/aSRC
		ANALYST	<u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS/Elections	No fiscal impact	No fiscal impact	\$75.0 to \$85.0	\$75.0 to \$85.0	Nonrecurring	General Fund
If SJR6 approved: CYFD Commission	No fiscal impact	\$25.0 to \$50.0	\$50.0 to \$480.0	\$75.0 to \$530.0	Recurring	General Fund
If SJR6 approved: CYFD Title IV-E	No fiscal impact	Indeterminate	Indeterminate	Indeterminate	Recurring	Federal funds

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Children, Youth and Families Department (CYFD)

New Mexico Attorney General (NMAG)

Health Care Authority (HCA) (formerly Human Services Department)

Agency Analysis was Solicited but Not Received From

Department of Health (DOH)

SUMMARY

Synopsis of Senate Rules Committee Amendment to SJR6

The Senate Rules Committee amendment to Senate Joint Resolution 6 increases the number of commission members to five, all subject to confirmation by the Senate, with no more than three of the five of the same political party. The additional members are the minority floor leaders.

Synopsis of Original Senate Joint Resolution 6

Senate Joint Resolution 6 (SJR6) proposes to amend the Constitution of New Mexico to create a Children, Youth and Families Commission to oversee and direct the activities of the Children, Youth and Families Department (CYFD).

SJR6 states beginning January 1, 2026, the commission will consist of three members appointed for six-year terms by the governor, president pro tempore of the Senate, and speaker of the House of Representatives, with each appointing one member, initially with staggered terms. SJR6 addresses powers and duties of the commission, vacancies, removals, and qualifications. On July 1, 2026, SJR6 tasks the commission with hiring an executive director to oversee CYFD.

The joint resolution provides the amendment be put before the voters at the next general election (November 2024) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

FISCAL IMPLICATIONS

The operating budget for the commission would presumably cover per diem and mileage for the commissioners, salary and benefits for the executive director, and office space. Costs will also be dependent on how often the commission meets and if virtually or in-person. In the beginning, commissioners may want to meet often, weekly even, to ensure a smooth transition. If commissioners are staff, the budget table suggests salaries of \$80 thousand for each of the members.

NMAG and CYFD caution that the state must ensure the changes do not jeopardize New Mexico's designation as the child welfare authority, or its ability to manage Title IV-E funds and meet federal performance standards. Any significant modification to CYFD's structure and governance would require revisions to the state plan, subject to federal approval. CYFD goes on to question whether using federal funds for the commission is permitted, since it is outside the state plan. Therefore, until a funding source is identified, a general fund appropriation for six months of expenditures in FY25 might be prudent.

Under Section 1-16-4 NMSA 1978 and the Constitution of New Mexico, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county. The estimated cost per constitutional amendment is \$75 thousand to \$85 thousand depending on the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

SJR6 seeks to provide a new leadership strategy for a struggling agency. CYFD cautions, however, that upheaval on the leadership level could have a trickle-down effect on employees seeking stability, potentially leading to an increased attrition rate in the frontline workforce.

Should this proposed constitutional amendment be approved by voters, then enabling legislation would be required to establish separate powers and duties for CYFD and the commission, including defining the professional qualifications for the three-member commission. NMAG strongly advises that future legislation should clearly define this legal structure to avoid conflicts with governor-appointed personnel, safeguarding the commission's integrity and effectiveness.

Comments from HCA include:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with

the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others... N.M. Cont. Art. 3 § 1.

This amendment could possibly fail judicial review on the point of commissioners being further limited by legislative strictures per Clause 1 (C) of the bill allowing the legislation to set qualifications for all three commissioners. This could trespass on the appointment powers as given in the bill, at least for the governor’s appointment. This could then be more likely to cross the existing constitutional limit of an elector approved amendment to matters of regular passage of law. There are other possible complications arising from the two-thirds of the power of the commission deriving solely from the Legislature which tends to contravene the original requirement of separation of powers.

PERFORMANCE IMPLICATIONS

NMAG also suggests fully examining SJR6’s potential impact on the state’s Indian Family Protection Act and the federal Indian Child Welfare Act.

ADMINISTRATIVE IMPLICATIONS

NMAG notes if approved by voters, SJR6 will necessitate updates to the Children’s Code N.M. Stat. Ann. §§ 32A-1-1 et seq. and New Mexico Administrative Code.

The commissioners will determine the job requirements for the position of executive director.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

May duplicate an appropriation in the General Appropriation Act for CYFD. If a contingency appropriation is not in the GAA for the commission to begin January 1, 2026, CYFD may have to help stand up the commission with existing staff and resources, which might undermine efforts as well as morale.

TECHNICAL ISSUES

In the title of the resolution, SJR6 says the executive director would “direct” CYFD; whereas in the body, the bill says the executive director would “oversee” CYFD. This may be a moot point.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The executive would continue to oversee and direct CYFD’s program and services.

POSSIBLE QUESTIONS

Is the leadership model being proposed one that has been successful in other states?

AHO/ss/ne/rl/hg