

LFC Requester:

Eric Chenier

AGENCY BILL ANALYSIS 2023 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☐ Amendment ☒
Correction ☐ Substitute ☐

Date 03/08/2023

Bill No: HAFC HB 11

Sponsor: Tara Jaramillo, Kathleen Cates,
Reena Szczepanski, Eleanor
Chavez & Marian Matthews
Short Office of Child Advocate
Title:

Agency Name
and Code 305–Office of the Attorney General
Number:
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.

BILL SUMMARY

Synopsis:

HB 11 enacts 14 new sections of the Children's Code, is referred to as the Office of Child Advocate Act ("Act"). As part of the creation of the Act, the bill sets definitions and outlines the duties of the office; creates the Office of Child Advocate that is administratively attached to the Office of the Attorney General and details their responsibilities; creates the position of State Child Advocate and sets their terms; creates the State Child Advocate Selection Committee and defines its duties and makeup; defines and prohibits conflicts of interest; requires that the CYFD and law enforcement provide the office with prompt reports regarding children who have been physically injured or where this is a significant risk to injury in the department's custody and any fatalities or restraints and seclusions of any children in the custody of the department and provides for some confidentiality; prohibits the state child advocate or office staff from being compelled to testify or produce evidence in any judicial or administrative proceedings and provides that any documents held or produced by the office are not subject to discovery, subpoena, or "other means of legal compulsion" and are not admissible as evidence; and allows individuals who are pursuing remedies pursuant to the act to also pursue other legal or equitable remedies.

Finally HB 11 appropriates \$500,000 from the general fund to the office of the attorney general to create and staff the office and provides that any unexpended funds remaining at the end of the 2025 fiscal year shall revert back to the general fund.

House Appropriations and Finance Committee ("HAFC") Amendments

The proposed amendments to HB 11 include the following:

- removing the appropriations language from the title;
- in Section 3, deleting the definition for "substitute caregiver";
- in Section 5, under the persons appointed by the governor, requiring the appointment of an individual who has lived experience in the foster care and juvenile system;
- in Section 6, specifying that the actions of "any persons", as well as entities who receive funding through the department, can be the subject of a complaint; deleting two phrases that broaden the scope of the office; clarifying that parent, guardian or custodians under investigation, not children, shall be investigated; requires that department provide updates on the progress of any investigation (without having to have achieved a final outcome first) to all interested parties within thirty (30) days of receipt; and directs the office to access information or records necessary to carry out the provisions of the Act;
- in Section 7, requiring a copy of the report required under this Section be provided to the Supreme Court; limiting and specifying what information the report shall include concerning placements; replacing the term "substitute caregiver" with "foster parents"; and limiting and specifying that the office shall include recommendations related to the department improving services;

- in Section 14, replacing the term “substitute caregiver” with “foster parents”; and
- deleting appropriations Section 17 in its entirety and renumbering the remaining sections.

FISCAL IMPLICATIONS

The amendment removes the \$500,000 appropriation to the OAG that would allow for creation and staffing of the office of the child advocate, and creates a head of office position and several investigative duties. Additionally, the bill requires annual reporting, as well as the creation and maintenance of a website. Without an appropriation, OAG will have to use funds in its existing budget and expand its current budget to create and staff this office.

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

See Administrative Implications.

ADMINISTRATIVE IMPLICATIONS

HB11 creates the office of child advocate and administratively attaches it to the OAG per Section 9-1-7 NMSA 1978. As a result, the OAG would be required to include the office’s budgetary requests in its own budget which could require additional resources for record-keeping and related administrative assistance for the office of child advocate.

Supporting the new agency will require significant resources, including legal counsel to assist in necessary rulemaking.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict: SB 373—Office of Child Advocate.

Conflict: HB 461—Children and Families’ Rights Act establishes the office of children’s rights.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.