Legislative Analysis

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FOSTER CARE IMPROVEMENT COMMISSION ACT

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House Bill 5801 as enrolled
Sponsor: Rep. Bronna Kahle
House Committee: Families, Children and Seniors
Senate Committee: Health Policy and Human Services
Complete to 2-6-23 ***(Vetoed by the Governor 10-7-22)***

SUMMARY:

House Bill 5801 would create a new act, the Foster Care Improvement Commission Act, to create the Foster Care Improvement Commission to provide certain oversight, research, and advisory functions with regard to child welfare and protection and children and youth services. The bill also would create the Children's Services Commission Fund.

Foster Care Improvement Commission

The bill would create the Foster Care Improvement Commission in the Department of Health and Human Services (DHHS), which would be responsible for setting up the commission and establishing its budget. The commission could appoint and employ an executive director and other individuals it considered necessary to assist in carrying out its duties. The commission would consist of the following 11 members:

- Three members representing the judicial branch:
  - One individual designated by the chief justice of the supreme court from the Child Welfare Services Division of the State Court Administrative Office (SCAO).
  - An individual appointed by the chief justice representing judges who adjudicate family matters or juvenile matters in the family division of circuit court.
  - An individual appointed by the chief justice representing attorneys who represent children and parents in juvenile matters.
- Four members representing the executive branch:
  - The director of the Children's Services Agency in DHHS.
  - An individual appointed by the governor representing DHHS foster care or Child Protective Services caseworkers.
  - An individual appointed by the governor representing foster youth.
  - An individual appointed by the governor representing parent partners.
- Four members representing the legislative branch:
  - An individual appointed by the Legislative Council to be the commission chair.
  - An individual appointed by the chair representing private foster care agencies.
  - An individual appointed by the chair representing foster parents.
  - An individual appointed by the chair representing a child welfare expert.

The commission or its advisory panels would have to reflect the diversity of Michigan and include individuals of racially and ethnically diverse backgrounds, genders, and generations.

Member service

Members of the commission would serve terms of three years or until a successor is appointed, except that members first appointed would serve terms of one year (three members), two years (four members), or three years (four members), as determined by the chair. Vacancies would be filled for the unexpired term in the same manner as the original appointment. The Legislative Council or the commission could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause. A member would not be entitled to compensation for commission service, but the commission could reimburse them for actual and necessary expenses incurred in serving on the commission.

Commission meetings

The chair would call the first meeting of the commission. The commission would have to meet at least quarterly, but could meet more frequently at the call of the chairperson or at the request of six or more members. A majority of members would constitute a quorum for transacting business. A vote in favor by a majority of members serving would be required for commission action. The commission would have to conduct its business in compliance with the Open Meetings Act, and a writing prepared, owned, used, possessed, or retained by the commission in performing an official function would be subject to the Freedom of Information Act.

Commission duties

The commission would have to do all of the following:

- Facilitate coordination across the three branches of state government and continuous, consistent leadership in the child protection area to ensure that efforts at progress and improvement are not hindered by changes in leadership in any branch.
- Review current data, laws, and processes for children and youth services in Michigan.
- Research best practices in other states regarding the seven national child welfare outcomes reported annually to Congress by the U.S. Department of Health and Human Services under the federal Adoption and Safe Families Act of 1997.
- Create advisory panels to provide insight and recommendations for improvements to the child welfare system. (The advisory panels would have to be composed of national experts in the area of child welfare and individuals who have experience in the child welfare system, such as current and former foster youth and foster parents.)
- Identify gaps, problems, and barriers for children and youth services in Michigan.
- Develop recommendations and advocate for legislative, administrative, and judicial administrative action to correct identified gaps, problems, and barriers to success and to accomplish the commitments of the modified implementation, sustainability, and exit plan under *Dwayne B. v Whitmer*.
- Develop initiatives with a focus on the following:
    - Primary prevention and early intervention across systems of care, including behavioral health services, early childhood development, and public health.

    - Identifying and addressing racial and ethnic disproportionality and disparity in the child welfare system.
    - Ensuring implementation of a braided financial strategy that receives funding from available private and public resources.
    - Bolstering kinship care and reunification strategies.
    - Support for youth aging out of the child welfare system.
- Ensure that DHHS is in compliance with applicable laws, policies, and procedures and is effectively implementing recommended improvements and best practices identified by the commission.
- Develop a communication strategy that brings attention to the foster care crisis, supports current foster care families, and engages new families by increasing public awareness of the needs of Michigan's foster care system.
- Serve as a liaison with public and private stakeholders, including foundations and the higher education community. (Foundation would mean a nonprofit corporation or a charitable trust that makes grants to organizations, institutions, or individuals for charitable purposes.)
- Serve as a clearinghouse for data and reporting for children and youth services in Michigan by reviewing reports of other child welfare-related commissions, boards, and task forces.[1]
- Compile data, assess current trends, and ensure that the commission's reports and recommendations are being considered and implemented.
- Work together with the Office of the Children's Ombudsman to share information and develop a consistent strategy of reform for the child welfare system in Michigan.
- Oversee a resource mapping of all federal- and state-funded programs serving youth to determine if there are overlapping programs, gaps in service delivery, or funding opportunities that the state may be eligible to utilize to meet unrecognized needs.
- Publish a publicly available annual report on the commission's activities, outcomes, and recommendations.

Children's Services Commission Fund

The bill would create the Children's Services Commission Fund in the state treasury. The state treasurer would have to deposit into the fund money and other assets received from the Children's Services Commission or any other source, direct the investment of money in the fund, and credit to the fund interest and earnings from those investments. DHHS would be the administrator of the fund for audits and could expend money from the fund, upon appropriation, only to carry out the provisions of the new act.

FISCAL IMPACT:

House Bill 5801 would likely increase state expenditures for DHHS by an indeterminate amount and would not have a significant impact on local units of government. The fiscal

[1] Such as the Child Welfare Services Division of SCAO, the Governor's Task Force on Abuse and Neglect, the State Child Death Review Team, the Children's Trust Fund, the Office of the Auditor General, the Foster Care Review Board program, and the monitors for the Dwayne B. v Whitmer implementation, sustainability, and exit plan.

impact of the bill would be dependent on the revenue source used to fund the Children's Services Commission Fund that is established within the treasury under the provisions of the bill. Any additional fiscal impact would be dependent on the amount of reimbursable costs incurred by members of the committee.

Vetoed 10-7-22:

In vetoing the bill, Governor Whitmer stated without elaboration that it violated the state constitution's separation of powers clause. As noted above, the bill would have allowed the Legislative Council to remove, for cause, a member of the commission. The Legislative Council is an entity in the legislative branch of government that consists of twelve members, six representatives and six senators, who are appointed by the Speaker of the House and the Senate Majority Leader. The bill would have created the Foster Care Improvement Commission in the Department of Health and Human Services, which is an executive branch entity. Allowing a legislative branch entity to exercise authority over the membership of an entity in the executive branch would appear to be the separation of powers issue referred to by the governor.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.