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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number	<u>HB239/aHEC</u>	Sponsor	<u>Romero, G. Andres</u>
Tracking Number	<u>.210945.4</u>	Committee Referrals	<u>HEC/HAFC</u>
Short Title	<u>Children's Savings Account Act</u>		
Analyst	<u>Rogne</u>	Original Date	<u>2/1/2019</u>
		Last Updated	<u>2/6/2019</u>

BILL SUMMARY

Synopsis of HEC Amendment

The House Education Committee Amendment to HB239 (HB239/aHEC) makes several changes, most notably replacing “authorized financial institution” with “authorized 529 vehicle,” so that HB239/aHEC would utilize 529 savings plans to hold and manage children’s savings accounts instead of financial institutions. The amendment also deletes the requirement to complete a financial education program prior to withdrawing funds from the owner’s children’s savings account.

Synopsis of Original Bill

House Bill 239 (HB239) would create the Children’s Savings Account Act with the purpose of empowering New Mexico families to save for their children’s higher education by providing for the creation and initial funding of children’s savings accounts for eligible individuals, defined as New Mexico citizens or legal residents less than six months of age who have a family or household income level that does not exceed 200 percent of the federal poverty level. This bill would require the State Treasurer to develop a process by rule for establishing and maintaining these accounts, including making an initial \$500 deposit in each account. HB239 would establish the Children’s Savings Account Council to provide oversight of the administration of the Children’s Savings Account Act. Lastly, HB239 creates the children’s savings account fund in the state treasury.

FISCAL IMPACT

HB239/aHEC appropriates \$7.5 million from the general fund to the Office of the State Treasurer for expenditure in FY20 and subsequent fiscal years to carry out the provisions of the Children’s Savings Account Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SUBSTANTIVE ISSUES

HB239/aHEC would require the State Treasurer to establish a process for opening and maintaining children's savings accounts for postsecondary or vocational education expenses for eligible individuals, defined as New Mexico citizens or legal residents less than six months of age who have a family or household income level that does not exceed 200 percent of the federal poverty level (which was \$50,200 for a family of four in 2018). The State Treasurer would be responsible for promulgating rules necessary to implement and administer the Children's Savings Account Act and could use up to 5 percent of appropriated funds to administer these provisions. HB239/aHEC would also require the State Treasurer to make an annual report each November to the governor and Legislative Finance Committee.

HB239/aHEC would require the State Treasurer to establish a process by rule for identifying individuals eligible for Children's Savings Accounts and open them in the owner's name, as well as making an initial deposit of \$500. HB239/aHEC would stipulate that allowable uses of children's saving account funds are limited to expenses for postsecondary or vocational education, expenses to participate in programs administered by the Workforce Solutions Department (WSD), and other uses specified by rule promulgated by the State Treasurer. The bill stipulates that in the case of a deceased account owner, deposits by the state would revert to the State Treasurer, and deposits by the account owner would be deposited directly to the account owner's spouse, dependent, or named beneficiary.

HB239/aHEC would utilize 529 savings plans to hold and manage children's savings accounts. According to the Higher Education Department's (HED) website, states sponsor 529 plans – qualified tuition programs authorized under section 529 of the Internal Revenue Code – that allow taxpayers to either prepay or contribute to an account for paying a student's qualified higher education expenses. New Mexico's 529 college savings plan, the Education Plan, offers a flexible and tax-advantaged way to save for a child's college tuition. According to its website, the Education Plan is distributed by OppenheimerFunds Distributer, Inc. which is one of the world's most reputable investment firms.

The bill states that to withdraw savings account funds, account owners must complete an accredited high school curriculum or receive a high school equivalency credential. HB239/aHEC would require that if an account owner withdraws money for an unallowable use, the account owner forfeits the \$500 initial deposit by the state. According to New Mexico's The Education Plan website, if money from 529 plans is not used to pay for qualified education expenses, earnings may be subject to federal income taxes and any applicable state income tax, as well as an additional 10 percent federal tax penalty on earnings. If the account owner does not withdraw the entire balance by the day the account owner reaches 26 years of age, the initial \$500 deposit by the state would revert to the State Treasurer, and the account owner may use the remaining balance without restriction. However, according to The Education Plan website, there are three options if the beneficiary does not use the 529 plan savings: keep the money in the account in case the beneficiary changes his or her mind in the future, change the account beneficiary, or make a nonqualified withdrawal.

Finally, HB239/aHEC establishes the Children's Savings Account Council to provide oversight of the administration of the Children's Savings Account Act, suggest possible changes, and obtain subject matter expertise by attending conferences and workshops related to asset-building strategies. Membership would consist of the lieutenant governor or their designee and eight

members appointed by the governor to represent the state geographically. The State Treasurer or their designee would serve as an ex-officio member of the council.

According to the Urban Institute, a Washington D.C. based think-tank, children’s savings accounts are associated with better educational outcomes, help develop financial capability, and encourage people to save more. Multiple states have instituted children’s savings account programs.

Prosperity Works, an Albuquerque nonprofit focused on asset-building, operates a child savings account program that has the highest saving rate in the nation when compared with other child savings account programs. Prosperity Works requires financial capability education, similar to requirements in HB239/aHEC. According to Prosperity Work’s website, 54 percent of families enrolled in the program save money for college, and 23 percent of families started emergency savings accounts.

According to the New Mexico Attorney General (AG), it is unclear how the State Treasurer would obtain the necessary information to establish an infant’s eligibility without obtaining parental consent. Additionally, it is unclear if children’s savings accounts would be initiated based on birth certificates, applications, or another process. The AG also notes that the initial deposit of \$500 may implicate the anti-donation clause of the Constitution of the State of New Mexico, however, in a 1997 opinion the AG said that a “a vocational institute may, consistent with the anti-donation clause, use public money for scholarships in the form of tuition waivers or reductions if the criteria used to award them are education-related and applied in a reasonable and even-handed manner.” Based on this 1997 AG opinion, it appears HB239/aHEC does not violate the anti-donation clause.

ADMINISTRATIVE IMPLICATIONS

According to the Regulation and Licensing Department (RLD), at least one member appointed to the Children’s Savings Account Council should have experience in the financial industry.

TECHNICAL ISSUES

HB239/aHEC does not address what happens if an account owner leaves the state, or if the family becomes no longer eligible according to poverty guidelines.

According to RLD, on page 3, lines 14 through 15 establishes an income limitation for eligibility, however, it does not specify a consistent source and timing for the calculation of the 200 percent of the federal poverty level threshold.

According to the AG, on page 2, lines 16 through 17, the term “eligible individual” should be amended to state “... criteria for ~~opening~~ establishing a children’s savings account,” since the eligible individual does not open the account, and the term “establish” is used elsewhere in HB239/aHEC.

ALTERNATIVES

The AG notes that the Section 21-21K NMSA 1978, the Education Trust Act, is already in statute, and HB239/aHEC could be incorporated into this Act.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)
- Regulation and Licensing Department (RLD)
- New Mexico Attorney General (AG)
- Children, Youth and Families Department (CYFD)
- Higher Education Department (HED)

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