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FISCAL IMPACT REPORT

SPONSOR: Lundstrom DATE TYPED: 03/04/03 HB 35/aHJC/aHAFC

SHORT TITLE: Individual Development Account Act SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Human Services Department (HSD)
- Department of Finance and Administration (DFA)
- Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of the HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 35 strikes the \$250.0 appropriation from the original bill. The Local Government Division of DFA would have to absorb the costs of administration within their existing budget.

Synopsis of the HJC Amendment

The House Judiciary Committee amendment to HB 35 makes a technical correction to page 7, line 16 by replacing “account owner” with program administrator.

Under Section 12(C), page 13, line 22, the language “and the food stamp program” is struck from the bill, thus reflecting that money withdrawn from individual development accounts for a purposes other than an allowable use shall not be counted as a resource for purposes of the food stamp program.

Synopsis of Original Bill

House Bill 35 establishes individual development accounts for eligible participants. The Individual Development Account Act will allow the local government division of the Department of Finance and Administration (DFA) to administer individual development programs. The Act requires DFA to annually solicit requests for proposals from nonprofit organizations and tribes interested in establishing individual development account programs. The Act will require participants to establish regular and reserve accounts sufficient to meet the matching fund commitments made to account owners by DFA.

Significant Issues

The intent of this bill is to provide economic stimulus and poverty reduction by helping working families to build personal assets for starting or expanding businesses, to fund higher education expenses, for purchasing homes and/or for making home improvements. The Local Government Division of DFA is charged with administering this program.

An account owner who withdraws funds from his individual development account for a use that is not allowable under the Act, forfeits a proportionate amount of matching funds from the reserve account, unless the entire amount of withdrawn money is repaid to the account within twelve months after it was withdrawn.

HB35 creates an advisory committee to provide oversight and administration of the individual development account program. The committee would consist of the Lieutenant Governor and eight members appointed by the Governor.

FISCAL IMPLICATIONS

House Bill 35 appropriates \$250.0 from the general fund to DFA for expenditure in fiscal year 2004 and represents a recurring expense to the general fund. No more than five percent of the appropriation may be used for administration. Any unexpended or unencumbered balance at end of fiscal year 2004 shall revert to the general fund.

ADMINISTRATIVE IMPLICATIONS

HSD states that it is difficult to predict how many of their current clientele would take advantage of this opportunity and what effect it would have on the overall administration of TANF and Food Stamp Programs.

This Act and consequent amendment to the New Mexico Works Act (NMWA) will require HSD to promulgate regulations to implement statutory changes. The changes would become effective July 1, 2003.

Training would have to be initiated and presented by regional trainers of the HSD Income Support Division to field staff who determine eligibility for participation in TANF/NMW cash assistance and Food Stamp Programs.

The DFA Local Government Division is charged with administering this program and may utilize up to \$12.5 of the appropriation in this bill for such purpose.

According to the Children, Youth, and Families Department (CYFD), the Act will require the department to establish additional accounting mechanisms to account for the fiduciary relationship between children in foster care who are 16 years or older and have earned income as defined in the Act including disability income. This would require accounting for the deposits and withdrawals of each individual participant and would require an annual reporting to account owners and DFA. This would also require a mechanism to determine and apply matching funds as provided in the Act. Additional accounting requirements would take away time from current staff and thus other accounting processes may be affected.

Children in foster care over the age of 16 currently receiving disability payments from the Social Security Administration (SSA) may be eligible for this program since the definition of earned income in the Act includes disability payments. Some children receive Supplemental Security Income. CYFD currently administers these accounts. CYFD as representative payee for these children adheres to SSA requirements for use of these payments. Payments are used to meet immediate and reasonably foreseeable day-to-day needs for food and housing and personal needs such as clothing, recreation and miscellaneous expenses. Balances in these accounts cannot exceed \$2.0, or eligibility is affected. Conflict in managing these accounts may occur under this Act.

OTHER SUBSTANTIVE ISSUES

The Human Services Department Office of the General Counsel lists the following concerns relating to HB35:

The definition of "matching funds" does not include the actual match rate, but allows the director to adopt a formula (page 3, lines 6-10).

HB35 requires the establishment of a reserve account where matching funds will be held to match the withdrawals by an individual for an allowable use. The director is required to report at least quarterly to account owners the amount of money in the reserve account for use by "the account owner" to match withdrawals for allowable uses" (page 7, lines 11-17). See the section on Amendments in this analysis.

A definition of "household" is not included in HB35. The provisions in HB35 limit the establishment of an individual development account for "a member of a household with earned income that is no more than two hundred percent of the federal poverty guidelines for the size of the household" (page 5, lines 5-7). The only income attributed to the income limit for the "household size" would be the earned income of the household member who will be the IDA owner. The establishment of household size is left to the director and may be changed at the discretion of the director.

HB35 requires that individual development account funds, any interest earned and matching funds deposited in a reserve account be disregarded when eligibility or benefit amount for the Temporary Needy Assistance for Families/New Mexico Works (TANF/NMW) cash assistance program (page 13, lines 5-10), the Food Stamp Program and Medicaid (page 13, lines 11-18).

In addition, HB35 allows the money withdrawn from an individual development account

for a purpose other than an allowable use to be counted as a resource for NMW, Food Stamps and Medicaid if the money is not re-deposited into the individual development account within "the twelve-month allowable period" (page 13, lines 19-23). There is no formal definition of "the twelve-month allowable period"; the only other reference to a "twelve month allowable period" is described on page 9, lines 18-25 and relates only to the forfeiture of matching funds from the reserve account.

On May 13, 2002, President Bush signed The Farm Security and Rural Investment Act of 2002 (P.L. 107-171), aka the "Farm Bill". The Nutrition Title of the Farm Bill provides an option to States to adopt the resource guidelines from either the State's TANF or Family Medicaid program to the Food Stamp Program (FSP). This provides for simplification of regulations for all programs. The option in the Farm Bill allows the exclusion of all individual development accounts from consideration as a resource subject to the FSP resource limits because the Human Services Department (HSD) can adopt either the TANF or Family Medicaid rules, whichever is more advantageous. In New Mexico, the Family Medicaid program, known as JUL Medicaid does not have a resource limit and the HSD intends to adopt the Medicaid rules to the FSP within the provisions of the option in the Farm Bill.

The option in the Farm Bill for resource exclusions does not allow exclusion of the following: cash money on hand, amounts in a financial institution that are readily available to the household (such as a checking or savings account), or any assets that USDA finds are essential to the equitable treatment of eligibility (which are forthcoming in the next few years).

HSD cannot comply with the provisions found on page 13, lines 19-23, namely that HSD must defer counting the money withdrawn from an IDA for an unallowable use for 12 months, because the federal regulations for the Food Stamp Program directly conflict with the mandates of this provision. Federal FSP regulations and the provisions in the Farm Bill option described in the paragraph above do not allow the Department to defer consideration of a withdrawal from an individual development account as a resource for any length of time. The FSP requires that such a withdrawal is considered a resource, subject to the appropriate resource limit, in the month received or available, i.e., the money becomes a readily available resource. The FS household must show that it spent down the money under the applicable resource limit by the end of the month in which the money became available. HSD will have to ask for a waiver of FSP regulations if this provision remains as written in HB35. HSD has not been successful in the past in getting approval from FNS to waive regulations based on federal statute.

There are other concerns about administration of this provision. If HSD must defer consideration for twelve months in order to allow the account owner to repay the individual development account, and the owner does not do so, is the original amount that was withdrawn compared to the resource limit for the program in the thirteenth month? The provision as written implies this could be the case. Or, if the account owner repaid part of the original withdrawal, is the balance owed to the individual development account counted as a resource and subject to the limit for each program?

According to CYFD, the Act does not address what is to occur when an eligible individual no longer meets the criteria for opening an account. For example, it is unclear what is to occur

when the individual no longer meets the income requirements or is no longer in foster care.

AMENDMENTS

HSD recommends the following amendments to HB35:

An amendment is suggested to add a definition of "household" at Section 2, DEFINITIONS.

An amendment is suggested to revise the language on page 7, line 16 from "account owner" to "program administrator".

An amendment to NMSA 1978, Section 27-2B-7, financial standard of need, in the NMWA should be made to indicate that interest earned on the account is exempt from the gross income test, the net income test and the cash payment calculation.

RLG/prr:njw