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FISCAL IMPACT REPORT

SPONSOR: Lopez DATE TYPED: 2/24/03 HB _____

SHORT TITLE: Education Works Act SB 360/aSPAC

ANALYST: Weber

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

Responses Received From
Human Services Department

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment rectify a number of language changes that needed attention as cited by the Human Services Department in the original synopsis. The changes do not change the intent or potential result of SB 360.

Synopsis of Original Bill

Senate Bill 360 establishes a separate state-funded cash assistance program for students in higher education called the Education Works Program (EWP). Participation in the EWP is limited to 24 months, with limited provisions for extending the time limit.

Eligibility is based on full-time enrollment at a post secondary educational institution for those who do not already have a degree, whether the recipient is making satisfactorily progress as defined by the school, and contains income and resource limits.

SB 360 contains an emergency clause.

Significant Issues

The Human Services Department (HSD) reports that SB 360 uses many of the statutory requirements found in the New Mexico Works Act (NMWA) to guide the Education Works Act (EWA). HSD currently administers an Education Works Program (EWP) cash assistance program that contains many of the provisions found in the Education Work Act. Most of the statutory provisions of the Education Works Act mirror HSD's EWP.

Education Works is currently operating under regulation as part of the TANF services. This bill puts in statute an existing program. The TANF funds make possible many of worthy programs such as child care, childcare training, early childhood development, adult basic education and full day kindergarten to name only a few. Some, like full day kindergarten, have been supported only two years and others much longer. As the TANF program evolves, new and different support services may be developed that deserve attention. An example is the CHE funding initiated for FY04. SB 360 does not require annual funding but by putting existing programs in statute this natural evolution process may become more cumbersome. This may be particularly true since recent proposed federal legislation may create additional fiscal pressure on the TANF programs which makes flexibility desirable.

The following summarizes and comments on the major sections of the bill.

Section 2. DEFINITIONS.

Most definitions for the EWP mirror those in the NMWA, would provide for consistency between the Temporary Assistance for Needy Families (TANF)/NMW Cash Assistance Program and would simplify the administration of the two programs. There are some new definitions added, specific to the establishment of the EWP:

- "cash assistance" (page 1, line 25; page 2, lines 1-5) as defined requires an appropriation of state funds to the HSD to be attributed to the State's maintenance of effort (MOE) requirement in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; and to be used for cash payments to recipients of the EWP. SB 360 does not include the amount of state funds that can be appropriated either for MOE or cash payments to recipients.
- "dependent child" (page 2, lines 8-15) adopts the same definition in SB 360 as the amended definition that is currently included as an amendment to the NMWA in House Bill 122 (HB 122).
- "education works program" (page 2, lines 24-25; page 3, line 1).
- "recipient" (page 3, lines 11-3).

A revised definition of "services" (page 3, lines 16-21) defines services in the same way as the NMWA. However, under this definition, HSD would be required to provide an annual payment for education-related costs to a recipient of EWP. The amount would be determined by HSD; every recipient who attends one semester and receives EWP benefits would be eligible for an annual payment.

Section 3. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL EDUCATION PLAN--REVIEW PERIODS.

This section mirrors the application process for the NMWA at Subsections A, B, C, E, and F.

Subsection A: An application must be made in the county or district of residence by the applicant. A written application on an HSD application form must be made. The applicant must sign the application and provide information needed to determine eligibility of the applicant and any dependent children living with the applicant.

Subsection B: HSD must process an application that qualifies the benefit group for expedited food stamp benefits within 24 hours after the application is received (page 4, lines 24-25; page 5, lines 1-3).

Subsection C: The applicant must identify all mandatory benefit group members who live in the home. After approval of the application, the recipient must report changes in the membership of the benefit group (page 5, lines 4-8).

Subsection D This section would require HSD to act on an application no later than 30 days after an application is filed (page 5, lines 10-11). Instead of the requirement for HSD to complete a resource planning session (required in the NMWA), HSD would be required to "make referrals" under the Education Works Act.

Subsection E: HSD must issue a payment for childcare no later than five days after approval of an application for EWP (page 5, lines 12-14). HSD currently issues childcare payments to approved TANF or EWP cases.

Subsection F: HSD must promptly verify information provided on the application and must make a record of the applicant's circumstances. HSD must determine facts about the application to support the application or verify other information required by HSD. HSD may make a home visit to the applicant's home as long as adequate prior notice is given to the applicant (page 5, lines 15-21).

Subsection G: While the NMWA requires HSD and the applicant to develop an Individual Responsibility Plan that is work focused, the EWA requires HSD and the recipient to develop an Individual Educational Plan (IEP) that sets forth the educational goal of the recipient, identifies barriers to reaching the goal, identifies the steps necessary to reach the goal, and includes the services that HSD may provide to assist the recipient in meeting his educational goal (page 5, lines 22-5; page 6, lines 1-4).

Subsection G, paragraph 3 requires the IEP to include set periodic meeting dates in order to review financial eligibility and revise the recipient's IEP (page 6, lines 5-8). There are no provisions to complete a review of all eligibility factors to determine on-going eligibility, such as verifying grade point average (GPA), student status or enrollment to determine eligibility for EWP in the subsequent semester. In effect, the IEP sets in place the "certification period" for the recipient based on either a six-month period or at the end of the academic semester. The preferable meeting dates would be the end of the academic semester (the "certification period") for the EWP recipient because the six-month period would not necessarily coincide with the end of the semester, which is a crucial time

period for both HSD and the EWP recipient. It is at the end of the semester that grades are reviewed and on-going eligibility is determined in the current EWP.

The requirement in the IEP for a review of financial eligibility is comparable with HSD's requirement for a "recertification" of eligibility for all categories of assistance, such as the TANF/NMW and Food Stamp Program. HSD's recertification process includes a review of all eligibility factors for the program, including financial eligibility. Currently, the Work Program Contractors work with HSD to certify on-going eligibility for participation in the EWP based on grade point average, student status or enrollment for the subsequent semester and other factors that are specific to participation in the EWP.

The IEP limits the review to a financial review and IEP review, and does not include a review of all eligibility factors for the EWP program, such as grade point average (GPA), student status or enrollment for the subsequent semester.

Subsection H would require HSD (or a representative) and the EWP recipient to sign the IEP (page 6, lines 9-11), and prohibits HSD from allowing the recipient to refuse to participate in development of an IEP, to waive the requirement for an IEP and requires HSD to emphasize the importance of the IEP (page 6, lines 11-17).

There are no penalties or other consequences established by the Education Works Act in the event the recipient himself refuses, fails, or declines to participate in the IEP process. While HSD is prohibited from waiving the requirement and cannot allow a recipient to decline to develop an IEP, a recipient could conceivably fail, refuse or decline to participate in the IEP process and there would be no negative effect on the recipient.

Section 4. EDUCATION WORKS PROGRAM-ELIGIBILITY-RESTRICTIONS-REQUIREMENTS

Subsection A defines a recipient's eligibility to receive education works services or cash and requires that at the time of application the recipient meet certain conditions (P. 6, lines 20-25). Using the term "recipient" confuses the intent of this statutory provision because by definition (page 3, lines 11-13), a recipient is a person who receives cash assistance or services. A recipient is already eligible for services or cash, and would have already met the conditions in this Section.

To be eligible for EWP, the person must demonstrate that:

- 1) The recipient does not have a bachelor's degree;
- 2) the recipient has been accepted or enrolled in a two- or four-year post-secondary degree program; and
- 3) the degree the recipient will receive increases the person's ability to engage in full time employment.

Subsection B prohibits concurrent receipt of TANF funded cash assistance and State funded education works cash assistance (page 7, lines 5-8).

Subsection C requires the recipient to apply for all financial aid available from the post secondary educational institution (page 7, lines 9-11).

Subsection D establishes a 20-hour-a-week participation requirement for a recipient in the EWP. Those activities that are considered as meeting the participation requirement include class time, study time, work (as defined in Subsection H, page 8, line 6-9), work-study or volunteering. HSD would be required to attribute one and one-half hours of study time for each hour of class time (page 7, lines 12-17).

Subsection E establishes a 24-month time limit for receiving cash assistance from the EWP, but allows an extension of the 24-month time limit if the recipient demonstrates good cause (page 7, lines 18-20). Three good cause reasons are established by the Act: a recipient is ill, a recipient is caring for an aging parent of a special needs child, or a recipient has a learning disability or other kind of mental or physical disability (page 7, lines 21-25).

Allowing an extension of the 24-month time limit poses some concerns.

- A recipient who cares for a special needs child can demonstrate good cause and would be eligible for an extension of the time limit indefinitely, because a special needs child has special needs indefinitely, and the extension could last even beyond the four years it typically takes to earn a bachelor's degree.
- Similarly, a recipient who cares for an aging parent, whether or not the parent resides in the same home, may demonstrate good cause and would be eligible for an extension of the time limit indefinitely.
- Since the main factor that ends eligibility for EWP is an associates or bachelor's degree, a recipient with one of the good cause reasons could remain a recipient well past the 24-month time limit, as long as the recipient has not earned a degree.
- Perhaps the most troubling of the good cause reasons is "illness", which could be interpreted to mean that having a cold would extend the time limit.

It is recommended that an extension of the time limit be limited to an extension of one semester in the post-secondary educational institution when a recipient requires that one additional semester to earn a degree. This consideration would allow for a good cause reason (not only the three mentioned above) that precluded the successful attainment of a degree, but would not allow indefinite extensions of the time limit.

Subsection F limits the number of recipients in the EWP to the amount of State funding available for the program (page 8, lines 1-3).

Subsection G limits a recipient to only one degree, either an associate's or bachelor's degree (page 8, lines 4-5).

Subsection H defines the term "work" as it relates to the participation requirement for the recipient at Subsection D (page 7, lines 12-17). A recipient may use the activities in the definition of work toward the 20-hour-a-week participation requirement. HSD may define other activities that would be considered as work and would also be attributed toward the 20-hour-a-week participation requirement.

Section 5. FINANCIAL STANDARD OF NEED

Subsection A enables the Secretary of HSD to establish a financial standard of need (a maximum cash benefit amount) for the size of a benefit group, based on the availability of state funds for the EWP (page 8, lines 11-12). The financial standard of need in the EWP mirrors the NMWA, except that state funds are required for the EWP, and TANF block grant funds are used for the NMW cash assistance program under the NMWA.

Subsection B describes those income sources that cannot be used to determine eligibility or benefit amounts for applicants or recipients of EWP (page 8, lines 13-25; page 9, lines 1-10).

Subsection C establishes the maximum income limit for testing the eligibility of the benefit group. The income test uses gross earned and unearned income belonging to the benefit group. The maximum income must be equal to or less than 85% of the federal poverty guideline for the size of the benefit group (page 9, lines 11-14). The maximum income limit increases as the size of the benefit group increases. The federal poverty guideline is adjusted every year, so the maximum income limit by benefit group size would be adjusted by HSD every year.

Subsection D establishes the income eligibility test for the benefit group at the gross income and net income level. The benefit group's income cannot exceed 85% of the federal poverty guideline for the size of the benefit group. Once the benefit group passes the gross income test, the net income test is completed. The benefit group's net income is established by taking into account allowable disregards from earned income. The benefit group's earned and unearned income, after allowable disregards, must be less than the standard of need for the size of the benefit group (page 9, lines 15-24).

Subsection E establishes the disregards that are applied to the earned income for the benefit group (page 9, line 25; page 10, lines 1-24). The disregards are allowed in each month of participation in the EWP as long as State funds are available. The disregards under the Education Works Act mirror the disregards in the NMWA, except for the funding source. Once all disregards are applied, the resulting earned income and any unearned income are subtracted from the benefit group's standard of need. If the benefit group's countable income equals the standard of need the benefit group is not eligible for EWP benefits. The benefit group's countable income must be less than the standard of need for the size of the benefit group.

The first two disregards applied to the earned income of the benefit group (page 10, lines 5-13) allow for part of the earned income of the recipient, or both parents in a two-parent benefit group who are working, to be excluded from consideration when figuring the net income test for the first two years of receiving EWP cash assistance. These two conditions require HSD to exclude all the earned income that exceeds the work requirement rate set by HSD pursuant to the Education Works Act (page 10, lines 6-7 and lines 12-13). The Education Works Act laid out in SB 360 does not specifically include or define a "work requirement" for purposes of the EWP.

SB 360 does establish a participation requirement for the recipient of EWP of 20-hours-a-week and includes work as defined in the EWA (see Section 4, Subsections D and H).

The discussion concerning the exclusion of earned income that exceeds the work requirement set by HSD could arguably authorize HSD to set a separate "work requirement" in addition to the 20-hour-a-week participation requirement at Section 4, Subsection D.

The EWA provides for a monthly disregard from earned income of \$125.00 for a single parent benefit group and then one-half of the remainder. If there is a two-parent benefit group, the Act provides for a disregard from earned income of \$225.00 for each parent and then one-half of the remainder for each parent (page 10, lines 14-18).

Monthly payments made for child-care can be subtracted from either earned or unearned income. The disregard is capped at \$200.00 for a child under age two and \$175.00 for a child age two or older (page 10, lines 19-22).

The costs of self-employment income and business expenses can be disregarded from earned income (page 10, line 23-24).

Subsection F authorizes HSD to recover overpayments of EWP cash assistance on a monthly basis, but the amount recovered must be 15% or less of the standard of need for the benefit group (page 11, lines 1-20).

Section 6. RESOURCES

Subsection A establishes the requirement to count both liquid and non-liquid resources owned by the EWP benefit group when determining eligibility (page 11, lines 4-6).

Subsection B establishes a \$2,000 resource limit for non-liquid resources (page 11, lines 9-10) and a \$1,500 liquid resource limit (page 11, lines 11-12).

The value of the principal residence of the recipient cannot be considered as a resource at all (page 11, lines 13-14).

The value of burial plots and funeral contracts for family members cannot be considered as a resource (page 11, lines 15-16).

An individual development account (IDA) held by any benefit group member cannot be considered as a resource (page 11, line 17).

The value of work-related equipment up to a value of \$1,000 cannot be considered as a resource (page 11, lines 18-19).

Subsection C excludes all vehicles owned by the benefit group from consideration as a resource (page 11, lines 20-22). All vehicles used for transportation to and from work, school or for daily living will not be considered when determining the resources available to the benefit group (see the definition of vehicle, Section 2, Subsection P). Recreational vehicles owned by the benefit group would be considered when determining the resources available to the benefit group. SB 360 adopts the vehicle exclusion language that is currently included as an amendment to the NMWA in HB 122. This resource

exclusion mirrors the Food Stamp Program resource exclusion for vehicles and would result in simplification of the administration of the various programs by HSD.

Section 7. INELIGIBILITY

Subsection A lists the persons who are not eligible to be included in the benefit group (page 11, lines 23-25; page 12, lines 1-25; page 13, lines 1-25; page 14, lines 1-18).

- An inmate or patient of a non-medical institution cannot participate in EWP.
- A person who transferred real property in the two years before applying for EWP cannot participate unless he received or receives a reasonable return for the property; attempted to or attempts to receive a reasonable return; or attempted to or attempts to regain the real property. Once the person applies for EWP, HSD would have to verify one of the three conditions existed or will exist in order to continue with the application process.
- A minor unmarried parent who cares for a child over 12 weeks of age and has not completed his or her high school education cannot participate in EWP unless he or she participates in educational activities leading toward a high school diploma or participates in an alternative educational or training program approved by HSD.
- A minor unmarried parent who resides in a home other than a residence with a parent, legal guardian or other adult relative cannot participate in EWP unless HSD:

After taking into account the needs of the minor unmarried parent, refers or relocates the parent to a second chance home, a maternity home or other appropriate adult supervised supportive living arrangement;

Determines the unmarried minor parent has no parent, legal guardian or other appropriate adult relative with which to reside;

Determines the whereabouts of a parent, legal guardian or other appropriate adult relative are unknown;

Determines the minor unmarried parent is not allowed to live with a parent, legal guardian or other adult relative;

Determines the minor unmarried parent has been subjected to extreme cruelty or serious physical or emotional harm, sexual abuse or exploitation in the home of the parent, legal guardian or other appropriate adult relative;

Finds that the minor unmarried parent or child of the parent would be in imminent danger or would be seriously harmed if they live with the parent, legal guardian or other adult relative;

Determines that it is in the best interests of the minor unmarried parent to waive the requirement.

- A minor child who has been out of the home or is expected to be out of the home for 45 days is not eligible to participate in EWP.
- A person who does not provide a social security number or refuses to apply for one cannot participate in EWP.
- A person who is not a resident of this State cannot participate in EWP.
- A person is ineligible to participate in EWP for 10 years if he fraudulently misrepresents residency in order to receive assistance in two or more states at one time. This condition is called concurrent receipt of assistance.
- A person who is a fleeing felon or a probation or parole violator cannot participate in EWP.
- A person who receives Supplemental Security Income (SSI), tribal TANF, or general assistance from the Bureau of Indian Affairs (BIA) cannot also receive EWP benefits.
- A parent who does not assign support rights to the State of New Mexico as required by the federal Social Security Act cannot participate. A parent would have to demonstrate good cause for his failure or refusal to help HSD in establishing paternity, obtaining child support or to help HSD in establishing paternity.

Subsection B defines a "second chance home" as it is used in Subsection A of this Section and as it relates to a minor unmarried parent and his or her eligibility to participate in the EWP (page 14, lines 19-25).

Subsection C establishes New Mexico's authority to exempt all citizens of the State from the requirement in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWOR) of 1996 that prohibits participation by a person convicted of a drug-related felony. All persons who have been convicted of a drug-related felony would be able to apply for and receive EWP benefits if otherwise eligible (but not while residing in a correctional facility).

Section 8. FAIR HEARINGS REVIEW AND APPEAL

This section provides for the right of an applicant or recipient of EWP to have a fair hearing if he or she disagrees with an action taken by HSD, including a delay in processing an application for cash or services, a denial of an application or part of an application, or reduction, suspension or termination of benefits.

HSD has established procedures in place for complying with the fair hearing provisions outlined all subsections of this Section. The provisions in this Section mirror the fair hearing requirements in the NMWA for TANF/NMW recipients.

Section 9. SATISFACTORY PARTICIPATION

Subsection A requires a recipient to be a full time student, as defined by the school, in order to maintain satisfactory participation in EWP. A failure to maintain full time student status would result in ineligibility for EWP and closure of the EWP case because there would be no eligible benefit group members. In such a situation, the individual may still apply for the TANF/NMW cash assistance program.

Subsection B requires a recipient to be placed on probationary status by HSD if the recipient's grades fall below the academic standard of the school. The recipient can be placed on probationary status for one semester. The sole purpose of the probation period would be to allow the recipient to bring up his grades (page 18, lines 16-18).

Subsection B also requires HSD to place a recipient on probationary status if the recipients overall grade point average (GPA) falls below 2.0 on a four point scale (C-average). The sole purpose of the 2-month probation period would be to allow the recipient time to bring up his overall GPA. Such a probationary period can be allowed for a maximum of two semesters (page 18, lines 18-22).

- Using the term "semester" may be interpreted to mean that only those recipients who attend school on a semester system may be given the probationary period and those on a quarter system would not be eligible for consideration.
- Conceivably, both requirements in this subsection could be in effect during the same school term. A recipient's grades could fall below the standard of the school and his GPA could fall below 2.0 in the same school term, resulting in probationary status in the next school term (for both reasons). This means the recipient would be eligible for a maximum of two probation periods (or 10 months of EWP based on a semester system).
- There is a possibility of three additional probationary periods if each condition in Subsection B occurs at a different time. This means the recipient would be eligible for a maximum of three probationary periods (or 15 months of EWP based on a semester system).
- To avoid the obvious inconsistency and unfairness of the provisions of Subsection B that would affect a recipient based solely on chance, an amendment is suggested that would allow the recipient a maximum of two additional probationary periods if either condition were found to exist in a school term.

Subsection C requires a recipient to attend classes and participate as required by the standard of the school (page 18, lines 24-25). In addition, the recipient is required to report "anything that may affect his ability to participate in the education works program" (page 19, lines 1-3).

The requirement to report anything that may affect participation in EWP implies there are physical, mental or situational reasons that in the recipient's opinion make him unable to participate in the EWP. There is no other reference in the Act that makes a recipient

responsible for reporting "changes" that may affect eligibility for EWP based on all factors outlined in the Act. This requirement implies the recipient must report personal circumstances or barriers, but there is a question whether HSD can use the paragraph in Subsection C as a requirement for the recipient to report those conditions that may affect the benefit group's eligibility to participate in EWP. HSD would have to take action to ensure appropriate referrals are made to assist the recipient with any declared barrier to participation. HSD has a system in place for assisting recipients of the current EWP program with barriers. HSD also has rules in place under the currently active EWP for requiring a recipient to report changes affecting eligibility to participate in the program.

Subsection C, paragraph 3, requires the recipient to provide HSD with copies of any financial aid award letters (page 19, lines 4-5). HSD would still be required to verify that the recipient had applied for all financial aid available (page 7, lines 9-11). While the requirement for the recipient to provide any financial aid award letters assists HSD, this requirement may not be the only step necessary to verify the recipient had applied for all financial aid available.

Subsection C, paragraph 4, requires a recipient to provide HSD with copies of his grades as they become available (page 19, lines 6-7). Providing HSD with grades would certainly be a mandatory requirement to determine eligibility for EWP in the subsequent semester, as well as the need to place a recipient on probationary status. The provision allowing the recipient to provide such grades "as they become available" is open ended and not conducive to HSD's administration of the EWP in the Act. HSD must accurately determine eligibility for participation in the EWP and would be required to determine a recipient's eligibility to continue in the EWP by the end of each school term for the subsequent school term. The clause "as they become available" is subject to myriad interpretations and does not place responsibility on the recipient to assist HSD in the requirement to re-assess eligibility at the end of the school term.

For example, a student leaves the state at the end of the school term and before receiving his grades in the mail. The student returns at the beginning of the next school term, approximately one month later. Of course the clause "as they become available" could certainly be interpreted as the grades became available when the recipient checked his mail upon returning to the school.

This provision is unfair to HSD and may result in an overpayment of cash assistance to the recipient if HSD has not verified the recipient's enrollment in the college or university for the subsequent semester. Administratively, this requirement would be very difficult to track and HSD would be greatly challenged by this open-ended requirement.

Subsection D allows HSD the option to require a recipient of EWP benefits to apply for the TANF funded and time limited NMW cash assistance program if the recipient fails to meet the four requirements of Subsection C above (page 19, lines 8-11). HSD may close the EWP case of the recipient.

HSD would have to issue a written notice to the recipient informing him that he may apply for TANF/NMW if he fails to attend classes, fails to participate in the education process as required by the standard of the school, fails to report anything that may affect

his ability to participate in the EWP, fails to provide HSD with copies of any financial aid award letters; or fails to provide HSD with copies of his grades as they become available.

The recipient has the right to appeal the action taken by HSD.

FISCAL IMPLICATIONS

Under the current EWP, HSD has been appropriated \$2,000.0 for the last two years from the general fund and is counted toward Maintenance of Effort (MOE). While there is no appropriation attached to SB 360, there is a \$2,000.0 appropriation for EWP contained in the General Appropriation Act.

ADMINISTRATIVE IMPLICATIONS

The EWA would require HSD to amend the NMW cash assistance rules and implement the EWP rules by emergency interim regulations, with a public hearing that follows the emergency rules.

Field staff will require training on the rules for the EWP under this Act.

ISD2 programming would be required on the eligibility system to incorporate the changes to the EWP made in this Act.

MW/yr:pr