SENATE BILL 95

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO PUBLIC ASSISTANCE; CLARIFYING THAT FUNDS IN AN INDIVIDUAL DEVELOPMENT ACCOUNT SHALL NOT BE CONSIDERED IN ELIGIBILITY CALCULATIONS FOR BENEFITS UNDER THE NEW MEXICO WORKS ACT OR THE EDUCATION WORKS ACT; ADDING DEFINITIONS TO THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT; ESTABLISHING LIMITS ON ADMINISTRATIVE EXPENSES AVAILABLE TO A PROGRAM ADMINISTRATOR UNDER THE ACT; ESTABLISHING QUALIFICATIONS FOR MEMBERS OF THE INDIVIDUAL DEVELOPMENT ACCOUNT COUNCIL; ESTABLISHING MINIMUM STATE MATCHING FUNDS; EXPANDING THE ALLOWABLE USES FOR FUNDS IN INDIVIDUAL DEVELOPMENT ACCOUNTS; EXPANDING THE TYPE OF ACCOUNT TO WHICH FUNDS IN AN INDIVIDUAL DEVELOPMENT ACCOUNT MAY BE TRANSFERRED; LISTING THE MEANS-TESTED PROGRAMS FOR WHICH ACCOUNT FUNDS ARE DISREGARDED FOR PURPOSES OF ELIGIBILITY; MAKING AN APPROPRIATION.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8, as amended) is amended to read:

"27-2B-8. RESOURCES.--

A. Liquid and nonliquid resources owned by the benefit group shall be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

(1) two thousand dollars ($2,000) in nonliquid resources;

(2) one thousand five hundred dollars ($1,500) in liquid resources, excluding funds deposited in an individual development account established pursuant to the Individual Development Account Act or a qualified tuition program, as defined in Section 529 of the Internal Revenue Code of 1986;

(3) the value of the principal residence of the participant;

(4) the value of burial plots and funeral contracts for family members;

(5) individual development accounts; and

(6) the value of work-related equipment up to one thousand dollars ($1,000).

C. Vehicles owned by the benefit group shall not be
considered in the determination of resources attributed to the
benefit group."

SECTION 2. Section 27-2D-6 NMSA 1978 (being Laws 2003,
Chapter 317, Section 6, as amended) is amended to read:

"27-2D-6. RESOURCES.--

A. Liquid and nonliquid resources owned by the
benefit group shall be counted in the eligibility
determination.

B. A benefit group may at a maximum own the
following resources:

(1) two thousand dollars ($2,000) in nonliquid
resources;

(2) one thousand five hundred dollars ($1,500)
in liquid resources, excluding funds deposited in an individual
development account established pursuant to the Individual
Development Account Act or a qualified tuition program, as
defined in Section 529 of the Internal Revenue Code of 1986;

(3) the value of the principal residence of
the participant;

(4) the value of burial plots and funeral
contracts for family members;

(5) individual development accounts; and

(6) the value of work-related equipment up to
one thousand dollars ($1,000).

C. Vehicles owned by the benefit group shall not be
considered in the determination of resources attributed to the
benefit group."

SECTION 3. Section 58-30-2 NMSA 1978 (being Laws 2003,
Chapter 362, Section 2, as amended) is amended to read:

"58-30-2. DEFINITIONS.--As used in the Individual
Development Account Act:

A. "account owner" means the person in whose name
an individual development account is originally established;

B. "allowable use" means a lawful use that complies
with the provisions of the Individual Development Account Act,
or rules adopted pursuant to that act;

C. "authorized financial institution" means a
financial institution authorized by the office to hold and
manage individual development accounts and reserve accounts;

D. ["director" means the director of the office]
"department" means the workforce solutions department;

E. "earned income" means wages from employment,
payment in lieu of wages, income tax refunds, disability
payments, tribal distributions, or earnings from self-
employment or acquired from the provision of services, goods or
property, production of goods, management of property or
supervision of services;

F. "eligible individual" means a person who meets
the criteria for opening an individual development account;

G. "financial institution" means a bank, bank and
trust, savings bank, savings association or credit union
authorized to be a trustee of individual development accounts,
the deposits of which are insured by the federal deposit
insurance corporation or the national credit union
administration;

H. "indigent" means an individual who, taking into
account present income, liquid assets and requirements for
basic necessities of life for the individual and the
individual's dependents, is unable to pay the costs of
allowable uses as set forth in the Individual Development
Account Act;

[G-] I. "individual development account" means an
account established and maintained in an authorized financial
institute by an eligible individual participating in an
individual development account program pursuant to the
provisions of the Individual Development Account Act;

[H-] J. "individual development account program"
means a program approved by the [office] department to
establish and administer individual development accounts and
reserve accounts for eligible individuals and to provide
financial capability training or financial coaching required by
the [office] department for account owners;

[I. "financial institution" means a bank, bank and
trust, savings bank, savings association or credit union
authorized to be a trustee of individual retirement accounts as
defined by federal law, the deposits of which are insured by
the federal deposit insurance corporation or the national
credit union administration;

J. "indigent" means an individual who, taking into
account the present income and the liquid assets and the
requirement for other basic necessities of life for the
individual and the individual's dependents, is unable to pay
the costs of allowable uses as set forth in the Individual
Development Account Act;

K. "matching funds" means money deposited in a
reserve account to match the withdrawals for allowable uses
from an individual development account according to a
proportionate formula that complies with rules adopted by the
[director] secretary;

L. "nonprofit organization" means an
instrumentality of the state or a local government or an
organization described in Section 501(c)(3) of the Internal
Revenue Code of 1986 and exempt from taxation pursuant to
Section 501(a) of that code;

[M. "office" means the office of workforce training
and development;

N. ] M. "program administrator" means a nonprofit
organization or tribe that is selected pursuant to the
Individual Development Account Act to offer an individual
development account program pursuant to a contract with the
[director] secretary;

[N.] "reserve account" means an account established pursuant to the Individual Development Account Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner; [and]

O. "secretary" means the secretary of workforce solutions; and

P. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within New Mexico."

SECTION 4. Section 58-30-3 NMSA 1978 (being Laws 2003, Chapter 362, Section 3, as amended) is amended to read:

"58-30-3. INDIVIDUAL DEVELOPMENT ACCOUNTS.--An individual development account may be established for an eligible individual as part of an individual development account program if the written instrument creating the account sets forth the following:

A. the account owner is an eligible individual according to program requirements at the time the account is established;

B. the individual development account is established and maintained in an authorized financial institution;

C. deposits to an individual development account
shall be made in accordance with the rules adopted pursuant to
the Individual Development Account Act;

D. withdrawals from an individual development
account shall only be made in accordance with the Individual
Development Account Act [and rules adopted pursuant to that
act] for allowable uses;

E. the matching amount that will be deposited in
the reserve account for each dollar deposited by the account
owner in the individual development account; and

F. the financial institution in which an individual
development account is held shall not be liable for withdrawals
made for uses other than allowable uses."

SECTION 5. Section 58-30-4 NMSA 1978 (being Laws 2003,
Chapter 362, Section 4, as amended) is amended to read:

"58-30-4. ELIGIBLE INDIVIDUALS.--

A. Except as set forth in Subsections B and C of
this section, an eligible individual shall have earned income
and shall be:

(1) eighteen years of age or older;

(2) a citizen, [or] legal resident, [of]
refugee, asylee or person otherwise legally present in the
United States at the time the person opens the person's
individual development account;

(3) a resident of New Mexico; and

(4) an indigent.
B. A child in foster care is an eligible individual if the child is:
   (1) fifteen years of age or older;
   (2) an indigent;
   (3) a citizen, or a legal resident, of the United States; a refugee or an asylee or otherwise legally present in the United States at the time the person opens the person's individual development account; and
   (4) a resident of New Mexico.

C. A child is an eligible individual if the child is:
   (1) at least fifteen years of age and not more than eighteen years of age;
   (2) a member of a family whose members are all indigents;
   (3) a citizen, or a legal resident, of the United States; a refugee or an asylee or otherwise legally present in the United States at the time the person opens the person's individual development account; and
   (4) a resident of New Mexico.

SECTION 6. Section 58-30-5 NMSA 1978 (being Laws 2003, Chapter 362, Section 5, as amended) is amended to read:

"58-30-5. RESPONSIBILITIES OF THE [OFFICE] DEPARTMENT.--

A. The [office] department shall adopt rules implementing the provisions of the Individual Development
Account Act.

B. The [director] secretary shall make an annual report each November to the governor and to the legislative finance committee.

C. The [office] department shall use no more than five percent of the money appropriated to fund the Individual Development Account Act to administer that act, not including the costs of the program administrator.

D. A program administrator shall use no more than twelve percent of the funds allocated to the program administrator for implementation and administration of the program."

SECTION 7. Section 58-30-6 NMSA 1978 (being Laws 2003, Chapter 362, Section 6, as amended) is amended to read:

"58-30-6. INDIVIDUAL DEVELOPMENT ACCOUNT COUNCIL.--

A. The "individual development account council" is created. The council shall:

(1) provide oversight of the administration of the Individual Development Account Act;

(2) suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state; and

(3) obtain subject matter expertise through attendance at conferences and workshops related to proven and promising asset-building strategies.

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B. The individual development account council shall meet at least two times in a calendar year to perform its duties.

C. The individual development account council shall consist of the lieutenant governor or the lieutenant governor's designee and eight members appointed by the governor to represent the state geographically; provided that the members shall include representatives of a participating financial institution, a philanthropic institution, a community college and a nonprofit workforce entrepreneurial training provider and at least one representative from a nonprofit or educational institution providing financial coaching within a service area containing fewer than twenty thousand persons, as shown by the most recent decennial census. The [director] secretary or the [director's] secretary's designee shall serve as an ex-officio member of the council.

D. Appointed members of the individual development account council shall receive per diem and mileage pursuant to the Per Diem and Mileage Act for attendance at required meetings and at authorized conferences and workshops and shall receive no other compensation, perquisite or allowance for their participation on the council.

E. The [office] department shall provide adequate staff support and administrative services for the individual development account council."
SECTION 8. Section 58-30-7 NMSA 1978 (being Laws 2003, Chapter 362, Section 7, as amended) is amended to read:

"58-30-7. ADMINISTRATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. An individual development account may be established for an eligible individual; provided that the money deposited in the account is expended for allowable uses for the account owner or the account owner's spouse or dependents unless otherwise approved by the program administrator.

B. An individual development account program shall be approved and monitored by the [director] secretary for compliance with applicable law, the Individual Development Account Act and rules adopted pursuant to that act.

C. The program administrator shall establish a reserve account sufficient to meet the matching fund commitments made to all account owners participating in the individual development account program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses.

[Notwithstanding any matching commitment otherwise required]
The amount of state funds deposited in a reserve account during a calendar year to match deposits from any single account owner shall not exceed the higher of:

(1) two thousand dollars ($2,000); or
(2) an amount determined by rule; [of the office] provided that the cumulative reserve account deposits shall total not less than one hundred twenty-five percent of the prior calendar year match to deposits beginning in the second year of the individual development account program; and further provided that the state shall match deposits of every account owner dollar-for-dollar up to two thousand dollars ($2,000) in a calendar year.

D. The program administrator shall provide financial education, including financial coaching and other necessary training guidance and electronic reminders pertinent to encourage deposits and to achieve goals of allowable uses by account owners, develop partnerships with financial institutions, distribute matching funds and manage the operations of an individual development account that is established within the program.

E. An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account.

F. More than one eligible individual per household may hold an individual development account.

G. An account owner shall complete a tested financial education program, including financial coaching, prior to the withdrawal of money from the account owner's account.
individual development account for allowable uses unless written approval is obtained from the program administrator."

SECTION 9. Section 58-30-8 NMSA 1978 (being Laws 2003, Chapter 362, Section 8, as amended) is amended to read:

"58-30-8. ALLOWABLE USES--WITHDRAWALS FROM INDIVIDUAL DEVELOPMENT ACCOUNTS--FORFEITURE OF MATCHING FUNDS FROM RESERVE ACCOUNT--LOSS OF ELIGIBLE INDIVIDUAL STATUS.--

A. Allowable uses of the money withdrawn from an individual development account are limited to the following:

(1) expenses to attend an approved post-secondary or vocational educational institution, including payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence as defined in rules adopted pursuant to the Individual Development Account Act that is the first principal residence acquired or constructed by the account owner within the previous five years;

(3) costs of major home improvements or repairs on the home of the account owner;

(4) capitalization or costs to start or expand a business, including capital, plant, equipment, operational and inventory expenses, attorney and accountant fees and other costs normally associated with starting or expanding a business;
(5) acquisition or repair of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner; and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased or if the recipient is eligible to maintain the account, the account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

B. Unless otherwise approved by the program administrator pursuant to the provisions of Subsection D of this section, account owners qualifying as eligible individuals pursuant to the provisions of Subsection B or C of Section 58-30-4 NMSA 1978 shall not be permitted to withdraw money from an individual development account until such time as the account owners have completed a high school curriculum at a public or accredited private New Mexico high school or received a [high school equivalency credential] general educational development certificate.

C. Except as provided in Subsection D of this section, if an account owner withdraws money from an individual
development account for a use other than an allowable use, the account owner forfeits a proportionate amount of matching funds from the reserve account, as set forth in the agreement between the program administrator and the account owner.

D. The program administrator may approve a withdrawal by an account owner from an individual development account to be used for a purpose other than an allowable use only for serious emergencies as specified in the rules adopted by the [office] department. For such an approved withdrawal, the proportionate matching funds in the reserve account shall remain in the reserve account for twelve months following the withdrawal and, if an amount equal to the withdrawn money is redeposited in the individual development account within the twelve months, the matching funds shall again be available to match withdrawals for allowable uses.

E. At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's individual development account and deposited in another individual development account or a qualified tuition program, as defined in Section 529 of the Internal Revenue Code of 1986, established for an eligible individual who is the account owner's spouse or dependent."

SECTION 10. Section 58-30-9 NMSA 1978 (being Laws 2003, Chapter 362, Section 9, as amended) is amended to read:

"58-30-9. APPROVAL OF INDIVIDUAL DEVELOPMENT ACCOUNT
PROGRAMS.--

A. The [office] department shall issue a request for proposals from nonprofit organizations or tribes interested in establishing an individual development account program. A proposal submitted in response to the request shall:

1. describe the geographic area to be served and the potential individuals who will be assisted by the program;

2. state the amount, if any, of requested distributions of state money from the individual development fund;

3. describe the source and the amount of any private or other public funds, if any, that will be used to supplement the requested distributions from the individual development fund;

4. state the amount, not to be less than one dollar ($1.00), that will be deposited in the reserve account for each dollar deposited in an individual development account;

5. describe the expertise, experience and other qualifications of the proposer and its employees; and

6. contain such other information as required in the request for proposals and rules of the [director] secretary.

B. The [director] secretary shall issue a request for proposals to determine if an interested nonprofit
organization or tribe is eligible to be a program
administrator, determine the legal sufficiency of submitted
proposals, evaluate the proposals and, after consulting with
the individual development account council, select the program
administrators.

C. In selecting program administrators, the
[director] secretary shall:

(1) ensure that geographically diverse
populations throughout New Mexico will be served by individual
development account programs; and

(2) ensure that a substantial number of
individual development accounts will serve families in which
one or more children are living with their biological or
adoptive mother or father, or with their legal guardian.

D. The [director] secretary shall enter into
contracts with the selected program administrators.

E. The [director] secretary shall approve an
individual development account program submitted by a program
administrator before the program establishes individual
development accounts or reserve accounts or provides services
required by the Individual Development Account Act to eligible
individuals.

F. An individual development account and a reserve
account may be established only in an authorized financial
institution.

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G. The [director] secretary shall monitor all individual development account programs to ensure that individual development accounts and reserve accounts are being operated according to the contract provisions, federal law, the provisions of the Individual Development Account Act and rules adopted pursuant to that act."

SECTION 11. Section 58-30-10 NMSA 1978 (being Laws 2003, Chapter 362, Section 10, as amended) is amended to read:

"58-30-10. TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. An individual development account program shall be terminated if the:

(1) [office] department determines that the program is not being operated pursuant to the provisions of the contract between the program administrator and the [director] secretary, the Individual Development Account Act or rules adopted pursuant to that act;

(2) provider of the program no longer retains its status as a program administrator; or

(3) program administrator chooses to cease providing an individual development account program.

B. Upon termination of an individual development account program, the [director] secretary shall administer the program until a qualified program administrator is selected to administer the program. If, after a reasonable period, the
[director] secretary is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated individual development account program, money in a reserve account shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program."

SECTION 12. Section 58-30-11 NMSA 1978 (being Laws 2003, Chapter 362, Section 11, as amended) is amended to read:

"58-30-11. REPORTING.--A program administrator operating an individual development account program pursuant to the Individual Development Account Act shall report at least annually to the [director] secretary, as set forth in the rules of the [office] department. Individual account owners shall not be identified in the report. The report shall include:

A. the number of eligible individuals making contributions to individual development accounts;

B. the total money contributed to each individual development account and deposited into each reserve account;

C. the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the individual development account program;

D. the amounts withdrawn from individual development accounts [for either] identifying the allowable uses [or for] and uses other than allowable uses and the
amounts withdrawn from reserve accounts;

E. the balances remaining in individual development accounts and reserve accounts; and

F. other information requested by the [director] secretary to monitor the costs and outcomes of the individual development account program."

SECTION 13. Section 58-30-12 NMSA 1978 (being Laws 2003, Chapter 362, Section 12, as amended) is amended to read:

"58-30-12. ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS.--

A. Money deposited into an individual development account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners shall be disregarded for the purposes of determining eligibility for benefits and for determining benefit amounts pursuant to the New Mexico Works Act.

B. When determining eligibility for benefits and determining benefit amounts due under the [food stamp program] supplemental nutrition assistance program, children's health insurance program, child care and development block grant and medicaid, the human services department shall, pursuant to the authority granted by 7 USCA 2014 (d) and (g), disregard money deposited into an individual development account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account.
owners.

C. Money withdrawn from an individual development account for a purpose other than an allowable use shall be counted as a resource for purposes of the New Mexico Works Act or medicaid unless the withdrawal is approved by the program administrator and an amount equal to the amount withdrawn is replaced within the twelve-month allowable time period pursuant to Subsection D of Section 58-30-8 NMSA 1978."

SECTION 14. Section 58-30-13 NMSA 1978 (being Laws 2006, Chapter 96, Section 13, as amended) is amended to read:

"58-30-13. INDIVIDUAL DEVELOPMENT FUND CREATED.--The "individual development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the [office] department for the purposes of carrying out the provisions of the Individual Development Account Act. Expenditures shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the [director] secretary of workforce solutions or the [director's] secretary's designee."

SECTION 15. APPROPRIATION.--Five hundred thousand dollars ($500,000) is appropriated from the general fund to the individual development fund for expenditure in fiscal year 2020.
and subsequent fiscal years to carry out the purposes of the individual development fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2020.