F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2-10-06
SPONSOR Beffort **LAST UPDATED** 2-14-06 **HB**

SHORT TITLE Family Opportunity Accounts **SB** 379/aSPAC/aSFC

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	$2.000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB112, Relates to SB067,

Relates to Appropriation in the General Appropriation Act – Special Appropriations – Executive recommends $2,000.0, HAFC recommends $500.0

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	$2,000.0		Recurring	Family Opportunity Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of Workforce Training and Development (OWTD)
Children, Youth and Families Department (CYFD)
Human Services Department (HSD)

SUMMARY

Synopsis of SFC Amendments

The amendments adopted by the Senate Finance Committee strike Senate Public Affairs Committee Amendments 4 and 5, redefine “indigent” by deleting “who can normally support himself and his dependents on present income and liquid assets available to him but,” and stipulate that, in selecting program administrators, the director shall “ensure that a substantial number of family opportunity accounts will serve.”

Synopsis of SPAC Amendment

This Senate Public Affairs Committee amendment allows other local governmental entities to provide the matching funds, not just the federal or state government. This will allow local municipalities and counties to provide matching funds. The amendment also makes one technical correction for an item which was marked as new material incorrectly.

HB112 which is the duplicate of this bill has also been amended in this same manner.

Synopsis of Original Bill

Senate Bill 379 appropriates $2,000.0 from the general fund to the family opportunity fund for the purpose of carrying out the provisions of the Family Opportunity Accounts Act
The bill amends the Individual Development Account Act to be entitled the Family Opportunity Accounts Act, changes the eligibility requirements removing the earned income requirement being less than 200% of federal poverty and replaces it with a newly defined requirement of indigence, establishes criteria for program administrators, creates the Family Opportunity Accounts Council charged with the oversight administration of the Act, and adds language for approval of the Family Opportunity Accounts Programs.

The bill creates the family opportunity fund in the state treasury. The provisions of the Individual Development Account Act currently are administered by the Office of Workforce Training and Development, which would continue to administer the provisions of this bill.

FISCAL IMPLICATIONS

The appropriation of $2,000.0 contained in this bill is a recurring expense to the general fund. The family opportunity fund. The family opportunity fund is non-reverting.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Funds used for allowable purposes do not impact Medicaid income eligibility.

The state matching funds have been capped at $2,000 per year per individual.

SIGNIFICANT ISSUES

The eligibility criterion is being changed significantly. The current statute uses an income standard of 200% of the federal poverty level (FPL). This proposes to change the eligibility requirement to a definition of "indigent" mostly derived from a New Mexico Supreme Court ruling in Humana of New Mexico, Inc vs. Board of County Commissioners of the County of Lea, New Mexico.

1. FPL is a cut and dry eligibility standard which works well for almost all social programs
2. The definition of indigent is vague and may allow individuals with income levels higher than 200% participate. An individual who earns an adequate living but is in debt and unable to pay the costs to purchase a home, car, or start a business may qualify.
3. An individual who may not be below 200% of the FPL but not indigent might not qualify.
4. The change in eligibility criteria is due to a narrow interpretation of the "anti-donation clause" by DFA.
5. Questions pertaining to the "anti-donation" clause may need to be investigated further.

- Reduces the amount available for administration from 10% to 5%. Depending on the size of the appropriation, this may be a significant issue for OWTD. OWTD needs a sufficient amount of administrative budget to administer and monitor the program administrators, as well as provide for the financial training programming. The statute requires a nine member advisory council which meets twice a year with per diem and mileage reimbursement.

- The responsibility to provide the financial training has been passed to the program administrator. It is unclear if the program administrator will also take an additional administrative allocation for providing the training or if it is a component of the 10% or 5% OWTD allocation.

- The financial training curriculum has not been addressed. There should be a minimum amount of class or course hours required taught by a degreed instructor.

- Clarifies the RFP process for selecting program administrators.

- The bill adds language to guide the selection of program administrators to ensure geographically diverse populations are served. This may limit the ability of some non-profits to respond to the RFP if their population is concentrated such as Native Americans living on tribal lands or densely populated Hispanic locations.

- Another program administrator preference is given to those which can ensure the highest possible match. This may limit rural area non-profits who do not have the expertise to obtain federal funds to match with state funds.

- Another program administrator preference is given to one which will benefit families with children. Foster children who may be eligible to participate beginning at age 16, may be limited from participating in the program.

- Counting money as a resource one year after withdrawal, if not approved by the program administrator, is problematic for eligibility determination.

- HSD will need to amend state rules to mirror the new terminology, e.g., "family opportunity accounts" instead of IDA, indigent, etc.

After an account has been established, an account holder may be eligible to keep the account even after his/her income has increased.

This bill refers to childcare as a support category available for temporary assistance and a monthly maximum amount allowable.

Page 7 lines 9 – 12 deletes language providing eligibility for a child in foster care at 200% of the federal poverty level and replaces it with "indigent" eligibility. The use of the definition of "indigent" in relation to a child in foster care may eliminate many foster children. Few children in foster care would qualify as being indigent as they do not typically have liabilities in excess of income.

PERFORMANCE IMPLICATIONS

State general fund dollars used in matching family Opportunity Accounts might be credited toward the TANF Maintenance of Effort (MOE) requirement; however, under the federal Budget Reconciliation Bill for TANF reauthorization which is likely to pass this spring and become effective on October 1, 2006, families must be meeting the federal work participation rates. This might be difficult to track the credit for MOE for participants under the Family Opportunity Accounts Act. HSD may opt to exclude some or all of these general fund dollars form the MOE requirement.

ADMINISTRATIVE IMPLICATIONS

OWTD will need an employee responsible for RFP, monitoring and assessing the success of this program.

OWTD will be required to fund the financial training aspect of the IDA concept out of the administrative allocation.

A nine member advisory council which meets twice a year is entitled to per diem and mileage and the administrative support of OWTD staff. The proposed administrative allocation change to 5% may not be sufficient.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to an appropriation in the General Appropriation Act – Special Appropriations – Executive recommends $2,000.0, LFC recommends $500.0,

This bill relates to SB067 which appropriates $1,000.0 from the general fund for expenditure in 2007 – 2010 with no more than $250.0 expended per year for the purpose of implementing the individual development account program. At the end of 2010, any unexpended or unencumbered balance shall revert to the general fund. SB067 does not change the current IDA statutes, it provides for phased-in funding.

TECHNICAL ISSUES

The bill creates a family opportunity fund to carry out the provisions of the Family Opportunity Accounts Act. The language in this section states "… and money in the fund shall not be transferred to any other fund at the end of a fiscal year". The Section 58-30-5 of the current statute allows 10% of the money appropriated for the Individual Development Account Act to be used to administer the act. Limiting the ability to transfer the 10% administrative allocation to the Office of Workforce Training and Development to one fiscal year reduces the Department's ability to properly use the funds.

OTHER SUBSTANTIVE ISSUES

HSD has identified a number of legal issues:

1. Section 58-30-2(J): The definition of "indigent" is vague and ambiguous and open to different interpretations that are or may be inconsistent with existing statutes and regulations governing the Department's public assistance programs.

2. HB 112 allows the account holder to establish sub-accounts that, without more specific guidelines, could open the door to abuse of the program.

3. HB 112 would essentially require a retroactive determination of eligibility. If an improper withdrawal of account funds is not repaid within a given 12-month period, the withdrawn amount would then be countable as a resource. There is no retroactive denial in Medicaid, and ISD would have no way of retroactively determining eligibility in such a situation. (e. g., See Section 58-30-12.)

4. In Sections 58-30-(A) and (B), the financial eligibility standards have been removed without identifying what constitutes an eligible individual.

5. In Section 58-30-5(B), it is not clear whether the director may report orally to the governor or is required to submit a written annual report, which would be preferable.

6. Section 58-30-6 has been improperly amended. Language that appears in the original statute should be restated and lined out to indicate deletion. That step has been omitted.

7. The "family opportunity accounts council" should be defined in the Definitions Section (58-30-2).

8. Section 58-30-7(C) allows the office of workforce training and development to establish a matching amount exceeding the maximum two thousands dollars, without any stating any legal justification or program criteria.

9. In Section 58-30-8(A)(6), the use of the term "recipient" is ambiguous and confusing.

10. Section 58-30-10(B) allows money in a reserve account to be deposited into a family opportunity account, without proper safeguarding and tracking, in the event the director is unable to obtain and certify a new program administrator

ALTERNATIVES

Fund the IDA program as it currently exists in statute in a phased-in process. Additional legal council can be sought to determine if a conflict exists with the anti-donation clause, as well as, the best eligibility criteria to use.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not passed – the original act (IDA's) will continue to be an unfunded Act/Program. Federal money is continuing to be held unused because the Act requires matching funds for federal money to be spent. Also, if the changes in the original Act are not passed, but an appropriation alone is passed, the original bill may violate the anti-donation clause –which DFA has warned about.

DL/yr:nt