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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Lopez	<b>ORIGINAL DATE</b>		<b>LAST UPDATED</b>	02/07/07	<b>HB</b>	
	FEDERAL PUBLIC BENEFIT LAW						
<b>SHORT TITLE</b>	COMPLIANCE					<b>SB</b>	408
						<b>ANALYST</b>	Weber/Sallee

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 408

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

### BILL SUMMARY

#### Synopsis of Bill

Senate Bill 408 amends the New Mexico Works (NMW) Act to address changes in federal law and as an evaluation of the existing statute in New Mexico. The Education Works (EW) Act is also being amended to align certain definitions, processes and to mirror similar changes proposed in the NMW Act.

Grammatical and clarification edits were also made throughout the Act.

Primary changes to the act include:

#### Definitions added:

- “Applicant” as this term is used in the act and the definition is specific to cash assistance
- “Vocational Education” added to comply with new federal definition

- “Cash Assistance” the definition has been amended in the EW Act to clarify that the program is funded with state general funds. The specific reference to EW as state designated MOE funds has been removed

#### Application process

- Added clarifying language for HSD to assist the applicant in the eligibility process, screen for other programs the benefit group may qualify for, and for a more rapid assessment process to address participation barriers.

#### Work Activities

- Authorizes HSD to require a participant to participate in domestic violence or mental health services as part of the participant’s individual responsibility plan.
- SB 408 makes minor changes to the allowable work activities under the act.
- Repeals the requirement for participants to engage in work activities once HSD determines they are ready for work or once the participant has received cash assistance for two years, and instead requires HSD to require a participant to engage in a work activity.
- Eliminates 12-week time limit on temporary work activities and authorizes HSD to require participants to engage in activities best suited to address work barriers.
- Replaces “post-secondary education” with “vocational education” The new requirement disallows obtaining a bachelor’s degree and is limited to certificate or associate vocational programs directly related to employment.

#### Exemptions

- Nine “conditions” exempted in current statute, including “good cause.” No changes to the exemptions are proposed in HB 408.
- SB408 authorizes HSD to establish participation requirements that require the participant to engage in a limited activity as a condition of maintaining the work participation exemption. The activities may address a specific barrier such as domestic violence, substance abuse, mental health or education.
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#### Financial Eligibility

- Replaces the “excess hour earned income disregard” with an employment retention and advancement program no later than July 2008. Based on the availability of state and federal funding, requires the program to encourage participants to leave the New Mexico Works program, maintain employment for 30 or more hours per week, and leave the employment retention and advancement program due to increased earnings. Basic eligibility requires recent NMW participation, gross income less than 150% federal poverty guidelines, and currently in paid employment of 30 hours per week or more.
- Child Support Disregard: Allows state to increase pass-through of child support payments to families from \$50 to \$100 for one child and \$200 for two or more children per Child Support Enforcement Division (CSED) case no later than January 1, 2009.
- Authorizes HSD to fund cash assistance and other services using appropriated general funds, exclude the funds from federal maintenance of effort reporting, and report other appropriated general funds as maintenance of effort to the federal government.
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Wage Subsidy Program

- Strikes “pilot” language previously in the Act.
- Allows individuals to be eligible for food stamp benefits, if income-eligible, while in subsidized employment.
- Extends participation in program from six months to a maximum of 12 months.

Temporary TANF program

- Allows the Secretary of the HSD to create, for a maximum of four months in accordance with federal regulations, a temporary TANF program that waives certain eligibility requirements in an emergency or crisis such as Hurricane Katrina or similar disaster situation within NM.

Education Works Act

- SB 408 changes propose to align statutory eligibility requirements with the NMW Act for administrative purposes and uniform eligibility standards. The EW Program has been a separate Maintenance of Effort (MOE) program, which did not previously impact participation rates. However, the new DRA-related HHS interim final rule requirements mean the state will no longer be able to count general fund (GF) dollars as MOE because if GF dollars are counted as MOE, EW participants must be included in the NM work participation rates, and none of the participants will meet those rates since post-secondary education does not meet allowable work activities under the new federal regulations under DRA.

**FISCAL IMPLICATIONS**

SB 408 does not provide an appropriation. HSD indicates the provisions of the bill are essential to allow the department to meet new federal reporting and work participation requirements and avoid potential federal penalties of up to 5 percent or \$3,917,935 of federal TANF block grant funds. However the federal regulatory changes have a significant fiscal impact. The NMW program is a federal TANF block grant with a state general fund and/or local fund MOE requirement. SB 408 in Section 27-2B-7 NMSA 1978 of the Act allows for legislative appropriation of the federal TANF funds and allows HSD to designate MOE funds.

SB 408 changes are essential in order for HSD to meet federal reporting and work participation requirements, avoid federal audit findings, and avoid costly penalties. The TANF block grant will face sanctions up to 5% (\$3,917,935) of the TANF adjusted State Financial Assistance Grant (SFAG), which is the TANF block grant minus the amount transferred for the child care development Fund (CCDF) up to 30%, for failure to meet the “all families” work participation rate. The TANF block grant will face sanctions up to a proportionate share of the 5% penalty (\$329,000) of the TANF adjusted SFAG for failure to meet the two-parent work participation rate. These penalties will also require an increase in the rate of MOE spending to 80% (\$2,183,220) rather than 75% of state funding in the Aid to Families with Dependent Children (AFDC) program in 1994. Penalties increase by 2% each year that performance measures are not met and are capped at 21% adjusted SFAG.

HSD indicates the bill will require changes to the automated eligibility system for implementation of certain provisions, in addition to other changes already required by the federal government. However, these information technology changes for financial eligibility, including replacement of the excess hours worked disregard and increased child support, would not go fully into effect until FY09.

Beginning in FY09, the employment retention and advancement program may have administrative and cash assistance cost, dependent on how HSD structures the program. Most, if not all, of these costs would be offset by reductions in cash assistance and the New Mexico works caseload due to the repeal of the excess hours worked disregard – which allows participants to stay on cash assistance despite higher earnings. Eliminating the excess hours worked disregard would result in savings to cash assistance by reducing the caseload. These savings would offset costs of the employment retention and advancement program bonus paid to individuals who leave New Mexico works and maintain employment for more than 30 hours per week. The amount of the bonus would be dependent on rules established by HSD and subject to the availability of state and federal funds. Providing employment services to individuals in the employment retention and advancement program would have some cost to HSD contractors. However, these costs would be offset by a reduced New Mexico Works caseload due to the elimination of the excess hours worked disregard.

## **SIGNIFICANT ISSUES**

Human Services adds.

The NMW Act was legislatively created after the federal government enacted the Personal Responsibility Work Opportunity and Responsibility Act of 1996 (PRWORA) that replaced the AFDC program with the TANF program. The TANF block grant provides cash assistance and work opportunity and supports to needy families. The Deficit Reduction Act (DRA) of 2005 imposes new requirements on states and stricter requirements on work program compliance and measures. The federal block grant is \$110,578.1 (NM also receives a supplemental grant of \$6,531.0) and has a state general or local fund requirement of \$34,921.5 which is 80% of state spending in the AFDC program in 1994 (the amount of state spending is reduced to 75% at \$32,738.3 if the state meets federal work participation rates). The NMW cash assistance program served an average of 15,366 households (approximately 63% of program recipients are children).

The EW Act was legislatively created as a program to promote post-secondary education for low income families otherwise qualifying for NMW cash assistance. The program is funded with state general funds with a \$2,000.0 budget. In FY 2006 the program assisted an average of 413 families per month.

New federal requirements under the DRA and related HHS interim final rules impose strict requirements on states and limit states ability to define certain work activities. This has a significant impact on HSD's ability to meet federal work participation requirements of 50% for all families and 90% for two-parent households. Under federal requirements many of those the NMW Act exempts from work participation must be included in the work participation calculation, which works against HSD's ability to meet federal work participation rates.

HSD utilized a series of work groups and questionnaires to interested parties to solicit input on possible changes for the NMW program such as department staff, contract staff, educational institutions, advocates and other state government departments. Input was also utilized from the LFC audit report of the NMW program conducted the summer of 2006 along with dialogue with a representative from the national Counsel of State Legislatures. Materials on proposed changes were provided to the Welfare Reform Oversight Committee in November 2006.

The amendments made to the NMW and EW Acts focus on addressing participation barriers, increase work participation and to focus activities in the Act toward those that are countable work activities in accordance with new federal regulations. The changes to how work activities are counted have a significant impact on the administrative delivery of the program.

The changes in DRA also impact how work participation rates are measured. A significant change is that the caseload reduction credit that has been previously applied to participation rate enabled HSD to meet the federal standards. Recent changes now use a different benchmark for this credit which is minimal, requiring HSD to meet participation rate with little or no allowable credit.

The federal requirements for who is work eligible has a significant impact as only two of the exemptions allowed in the NMW Act are allowed in the federal standard for measuring participation rates. These include the caring for a child under the age of 12 months and caring for an incapacitated household member. While no work exemption changes are recommended in the bill, HSD will need to monitor the effect this may have.

Failure to meet the participation requirements subjects the state to costly penalties in the TANF program of up to 5% (\$3,917,935) of the TANF adjusted State Financial Assistance Grant (SFAG) for failure to meet the “all families” work participation rate. The TANF block grant will face sanctions up to a proportionate share of the 5% penalty (\$329,000) of the TANF adjusted SFAG for failure to meet the two-parent work participation rate. The penalty will also require an increase in the rate of MOE spending to 80% (\$2,183,220 more) for failing to meet new federal performance measures. Penalties increase by 2% each year that performance measures are not met and are capped at 21% adjusted SFAG.

Revisions to the Act in SB 408 include the development of an employment retention and advancement program that will replace the existing excess hour income deduction allowed during a participant’s first 2 years of receiving NMW cash assistance. The LFC audit conducted in the summer of 2006 identified this deduction as confusing and recommended replacement with an employment retention bonus program to encourage participants to retain employment, encourage employment advancement, and provide a transitional incentive to leaving NMW for employment.

The child support disregard increase from \$50 per month to \$100 for one child or \$200 for two or more children of child support collected by the CSED may not occur until FFY 2009 (October 1, 2008) when federal regulations allow for a different federal cost. This change will assist families in retaining a larger share of child support from the non-custodial parent while on cash assistance.

## PERFORMANCE IMPLICATIONS

HSD has federal and state performance measures related to the administration of the NMW Act.

### Federal

- 50% participation rate for “all-families”
- 90% participation rate for “two-parent” families

### HSD Performance Measures for Improving Family Support

- Increase percent of TANF all-family recipients meeting federal work participation requirements
- Increase percent of TANF two-parent recipients meeting federal work participation requirements
- Increase percent of TANF recipients who receive a job
- Increase percentage of TANF recipients who retain a job three or more months
- Increase percentage of TANF cases with court-ordered child support receiving collections

## ADMINISTRATIVE IMPLICATIONS

The administration of cash assistance is through the Income Support Division, HSD. The amendments to this act will have an administrative impact for caseworker staff and changes to the automated eligibility system (ISD2). HSD will need to promulgate new regulations and provide training to staff on policy and procedural changes. Due to the significant impact of potential TANF block grant penalties, a primary focus will be in the work participation rates.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB 408

Related to HB 2

MW/CS/sb