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FISCAL IMPACT REPORT

02/09/21
ORIGINAL DATE 03/02/21

SPONSOR Kernan **LAST UPDATED** 03/06/21 **HB** _____

SHORT TITLE Child Support Changes **SB** 140/aSJC/aSFI

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HSD TANF Federal Funds		(\$122,600.0)	(\$122,600.0)	(\$245,200.0)	Recurring	TANF Federal Funds
HSD Child Support Matching Federal Funds		(\$24,900.0)	(\$24,900.0)	(\$49,800.0)	Recurring	Child Support Matching Federal Fund
HSD Child Support New Collections		\$30,865.2	\$30,865.2	\$61,730.4	Recurring	Other Revenues
ECECD TANF Transfers		(\$64,127.5)	(\$64,127.5)	(\$128,255.0)	Recurring	TANF Federal Funds
CYFD, PED TANF Transfers		(\$1,100.0)	(\$1,100.0)	(\$2,200.0)	Recurring	TANF Federal Funds
Total		(\$181,862.3)	(\$181,862.3)	(\$363,724.6)	Recurring	TANF, Child Support Federal Funds Loss, Child Support Other Revenues Gain

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB190

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Administrative Office of the Courts (AOC)

Early Childhood Education and Care Department (ECECD)
Human Services Department (HSD)
Attorney General’s Office (NMAG)

SUMMARY

Synopsis of SFI Amendment

The Senate floor amendment removes the word “disabled” on page 5, line 14. The amendment clarifies that, if a court finds that a parent has willfully failed to obtain or maintain appropriate employment, the court may impute to that parent an income equal to that parent's earning and employment potential based on the following criteria, the parent's ability to obtain or maintain employment due to providing care for a ~~disabled~~ child of the parties.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendments to Senate Bill 140 are summarized below.

1. Under the test to determine if a parent has willfully failed to obtain or maintain employment, the SJC amendments add an underemployment factor to the analysis as well as the parent’s ability to obtain or maintain employment due to providing care for a disabled child of the parties or a child under six years of age.
2. The SJC amendments add a new definition of “gross income” to the Child Support Guidelines Act, which includes numerous examples what counts as “gross incomes” as well as numerous types of incomes not included. Gross income would include wages, tips, profits, dividends, commissions, etc. while excluding sources of income such as child support awards, alimony payments, means-tested public benefits, and support paid for any older children.
3. The SJC amendments remove all amendments to Section 7 of the Medical Support Act, which consisted of the above definition of “gross income.” The definition of “gross income” is now included in the Child Support Guidelines Act instead of the Medical Support Act.
4. The SJC amendments include the caveat “unless prohibited by federal law” in instances where an insurance or medical provider is otherwise prohibited from denying health care coverage of the minor child on the grounds that the minor child was born out of wedlock or does not reside in the carrier’s service area.
5. The SJC amendment removes language in the bill that would indicate that income for a primary custodial parent actively caring for a child of the parties who is under the age of six or disabled need not be imputed, and that if income is imputed, a reasonable child care expense may be imputed.
6. The SJC also made a number of grammatical changes to language and punctuation.

Synopsis of Original Bill

Senate Bill 140 (SB140) would update several child support provisions to align with federal regulations and national best practices. Specifically, SB140 would implement the following

provisions to align with federal requirements:

- o Clarify when imputation of income is appropriate and how an imputation of income is justified;
- o Require justification for deviation from child support guidelines;
- o Provide that the health care needs of a minor child are a basis for a modification of a child support order;
- o Update definitions of terms including “health insurance” (changed to “health care coverage”) and “insurers” (changed to “carriers”);
- o Revise child support guideline amounts to clearly define a non-custodial parent (NCP) self-support reserve and recommend support amounts (i.e., increased support amounts for NCPs with gross income over \$2,800/month when there are three or more children; and the addition of a minimum support amount when the gross income of the parties is under \$1,000/month); and
- o Specify the requirements of a child support guideline review commission, including its purpose and duties.

SB140 would also align New Mexico’s child support statute with the best practices in top-performing states by:

- o Changing the guidelines for the timeframe for assessing fees, costs and expenses from 12 years to 3 years; and
- o Changing the timeframe for assessing retroactive child support arrears from 12 years to 3 years.

SB140 would allow the courts to assess retroactive child support arrears, fees and other expenses for a longer retroactive period when there is a substantial showing that an action to establish paternity could not have been brought before the court any sooner. Additionally, SB140 would align with federal recommendations by defining what a reasonable cost for health care coverage is when determining the medical support order. Finally, SB140, would addresses four separate state child support statutes requiring changes to be in compliance with federal law.

FISCAL IMPLICATIONS

HSD writes failure to pass SB140 will result in the loss of \$147.5 million in federal matching funds to New Mexico due to HSD’s non-compliance with federal child support regulations. The loss in funds would include:

- \$122.6 million in federal funds for the Temporary Assistance for Needy Families (TANF) block grant; and
- \$24.9 million in federal matching funds for the state’s child support program.

Additionally, the bill would revise the retroactive arrears timeframe, also referred to as the “lookback period,” from 12 years to three years. This is a best practice that is commonly used in high-performing states resulting in higher child support collections for children. HSD estimates that it will collect an additional \$30.9 million for New Mexico children (or \$420.33 per year per case) if the lookback period is changed as proposed in the bill (see table below).

**Projected Increase in Child Support Collections
Using Proposed 3-Year Lookback Period**

	Increased Collections with 3-Year Lookback
Per Year per Case	\$420.33
Per Month per Case	\$35.03
Per Year per Child	\$284.00
Per Month per Child	\$23.67
Total for all Children	\$30,865,230.65

** The data above are based on a sample of 4,990 cases with retroactive arrears from two large child support offices. On average, there are 1.48 children per child support case.

ECECD writes there will be a negative fiscal impact on the Early Childhood Education and Care Department (ECECD) if SB140 is not enacted. Currently, ECECD receives the following TANF funding from the Human Services Department (HSD): \$41,527,500 for child care; \$17.6 million for prekindergarten, and \$5 million for home visiting. If SB140 is not enacted, HSD will lose its TANF funding and, hence, the TANF funding it distributes to ECECD.

CYFD also receives \$900 thousand in TANF funds for supportive housing and PED receives \$200 thousand in TANF funds for the GRADS program.

SIGNIFICANT ISSUES

HSD reports New Mexico’s child support statutes are not currently compliant with the Code of Federal Regulations (CFR), which will result in a substantial loss in federal funding if the bill is not passed. Specifically, New Mexico law does not comply with:

- 45 CFR 303.4(b) - Establishment of support obligations
- 45 CFR 303.31 - Securing and enforcing medical support obligations
- 45 CFR 303.8 - Review and adjustment of child support orders
- 45 CFR 302.56 (c)(1) and (c)(3) - Guidelines for setting child support orders.

In summary, these federal regulatory provisions require that:

- Support obligations must be based on the obligor’s ability to pay; and
- Health care needs must constitute a basis for a support order modification, regardless of whether a monetary adjustment is necessary or appropriate.
- The provisions also clarify that health care coverage must be ordered when it is available at a reasonable cost.

The revised child support guidelines contained in the bill reflect recommendations of a Child Support Guideline Review Commission that was convened in 2018 and included members of New Mexico’s judiciary and other experts. In addition to economic market data and data on the cost of rearing a child, the Commission’s analysis compared New Mexico’s guidelines to those of neighboring states for a range of case scenarios, including low-income scenarios. The amounts of New Mexico’s current guidelines are generally lower than those of neighboring states for middle incomes; however, the New Mexico guideline amounts are generally higher than those of neighboring states for low-income scenarios. The bill seeks to correct the guidelines by

increasing amounts for higher-income noncustodial parents while making amounts more affordable for those at the lowest income thresholds, a strategy targeted to increase voluntary compliance.

Generally, SB140 would increase support amounts for more than three children, except for those at the lowest incomes, and would increase support amounts for all children where combined monthly incomes exceed \$2,800 of the current guidelines.

PERFORMANCE IMPLICATIONS

The statutory revisions in SB140 will assure HSD's compliance with federal regulations and ensure New Mexico will continue to receive \$147.5 million in federal matching funds for New Mexico's TANF block grant and child support enforcement program. If the bill is passed, an additional \$30.9 million in collections is projected by reducing the lookback period to 3 years. HSD reports there has been a significant decline in child support collections as a result of the longer 12-year lookback period currently allowed in state law.

ADMINISTRATIVE IMPLICATIONS

SB140 would require some IT system changes to the Child Support Enforcement System (CSES) that have been funded multiple years by the Legislature.

DUPLICATION

SB140 duplicates House Bill 190, Child Support Enforcement Changes.

TECHNICAL ISSUES

AOC indicates the proposed definition of "gross income" on page 3 (addressing proposed amendment to NMSA 1978, §40-4-11.1 Child Support Guidelines) does not match the proposed amendments to the definition of "gross income" for purposes of the Mandatory Medical Support Act (NMSA 1978, §40-4C- *et seq.*) on page 73, and the Uniform Interstate Family Support Act (NMSA 1978, §40-6A-*et seq.*) on page 89.

AOC notes page 3 deletes language in the current statute stating that income does not need to be imputed to a custodial parent caring for a child of the parties that is under the age of six or disabled. The bill also deletes the imputation of a reasonable child care expense for these parents (i.e., page 3, lines 3 through 6.) However, on page 91, this language that is deleted on page 3 is then set forth as part of the proposed definition of "income" for the proposed Subparagraph J (page 91, lines 10 through 13).

AOC suggests the following amendments:

1. Page 73, line 1: "*E. 'gross income' shall be defined as set forth in NMSA 1978, §40-4-11.1.*" Propose deleting everything else through line 15 on page 75.
2. Page 89, line 6: "*H. 'gross income' shall be defined as set forth in NMSA 1978, §40-4-11.1.*" Propose deleting everything else through line 20 on page 90.
3. Page 91: Propose deleting all proposed amendments to paragraph J, thus leaving the subparagraph as it currently exists.

OTHER SUBSTANTIVE ISSUES

HSD reports New Mexico's child support statutes are not compliant with federal law. Federal child support regulations were updated in 2016; however, the last substantive updates to New Mexico law were made in 1994, resulting in state laws that do not align with required federal rules.

HSD notes New Mexico district court judges were partners in compiling the recommendations that formed this legislation. The bill does not modify or remove the courts' authority to consider all factors in the case when establishing or enforcing a child support order. SB140 also does not modify or address child support enforcement tools for non-payment, such as license suspensions, tax intercepts and bank account liens.

ECECD reports its programs rely on the TANF funding it receives from HSD for child care services (\$41,527,500), prekindergarten (\$17 million) and home visiting (\$5 million). Without these funds, all three of these programs would be significantly impacted in a negative manner. Many of the families and children that ECECD serves rely on TANF provided from HSD to meet their monthly financial needs. Without TANF funding, HSD might be unable to provide monthly cash assistance to many of the New Mexican families that would otherwise qualify and thereby support their families and children. As is well acknowledged among experts, children are less likely to succeed in school and have positive outcomes when they face financial instability at home.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

HSD reports the consequences of not enacting SB140 and failing to come into compliance with federal requirements, will be the loss of \$147.5 million in federal funding for TANF and child support, and the loss of the opportunity to collect \$30.9 million in child support for New Mexico children. ECECD could potentially lose up to \$64.1 million in TANF funding received from HSD (\$41,527,500 for child care, \$17.6 million for prekindergarten, and \$5 million for home visiting).

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