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HOUSE BILL 360

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY  
James G. Taylor

FOR THE WELFARE REFORM OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENACTING THE EDUCATION WORKS  
ACT; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Education Works Act".

Section 2. DEFINITIONS.--As used in the Education Works  
Act:

A. "benefit group" means a pregnant woman or a  
group of people that includes a pregnant woman or at least  
one dependent child living with a parent, legal guardian or  
relative within the fifth degree of consanguinity;

B. "cash assistance" means cash payments disbursed  
from the maintenance of effort funds of the state and not  
from funds from the temporary assistance for needy families  
block grant;

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1           C. "department" means the human services  
2 department;

3           D. "dependent child" means a natural or adopted  
4 child or ward who is seventeen years of age or younger;

5           E. "earned income" means cash or payment in kind  
6 that is received as wages from employment or payment in lieu  
7 of wages; or earnings from self-employment or earnings  
8 acquired from the direct provision of services, goods or  
9 property, production of goods, management of property or  
10 supervision of services;

11           F. "federal act" means the federal Social Security  
12 Act and rules promulgated pursuant to that act;

13           G. "federal poverty guidelines" means the level of  
14 income defining poverty by family size published annually in  
15 the federal register by the United States department of  
16 health and human services;

17           H. "household group" means a group of people that  
18 consists of a benefit group and any other person who resides  
19 in a household regardless of whether they are related or have  
20 a legal support responsibility for a member of the benefit  
21 group, but does not include:

22                   (1) landlords;

23                   (2) tenants; or

24                   (3) members of a registered nonprofit  
25 organization or church who provide shelter to a benefit group  
through a program sponsored by the nonprofit organization or  
church;

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1 I. "landlord" means the owner of an estate in land  
2 or rental property who has leased it to another person called  
3 the tenant;

4 J. "parent" means natural parent, adoptive parent,  
5 stepparent or legal guardian;

6 K. "person" means an individual;

7 L. "recipient" means a person who receives cash  
8 assistance or services pursuant to the Education Works Act;

9 M. "secretary" means the secretary of the  
10 department;

11 N. "services" means child-care assistance and cash  
12 assistance for education- or employment-related  
13 transportation costs and one-time payment per year for  
14 education costs;

15 O. "tenant" means a person who pays rent for the  
16 use and occupancy of real property owned by a landlord; and

17 P. "unearned income" means old age, survivors' and  
18 disability insurance; railroad retirement benefits; veterans'  
19 administration compensation or pension; military retirement;  
20 pensions, annuities and retirement benefits; lodge or  
21 fraternal benefits; shared shelter payments; settlement  
22 payments; individual Indian money; child support;  
23 unemployment compensation benefits; union benefits, either  
24 cash or in-kind resulting from union membership; gifts;  
25 contributions; and real property income.

Section 3. APPLICATION.--

A. Application for cash assistance or services

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1 shall be made to the department's county office in the county  
2 or district in which an applicant resides. The application  
3 shall be in writing or reduced to writing in the manner and  
4 on the form prescribed by the department. The application  
5 shall be made under oath by an applicant having custody of or  
6 residing with a dependent child who is a household group  
7 member and shall contain a statement of the age of the child,  
8 the child's residence, a complete statement of the amount of  
9 property in which the applicant has an interest, a statement  
10 of all income that he and other household group members have  
11 at the time of the filing of the application and other  
12 information required by the department.

13 B. At the time of application for cash assistance  
14 and services, an applicant shall identify household group  
15 members who are to be counted in the benefit group. Once an  
16 application is approved, the recipient shall advise the  
17 department if there are any changes in the membership of the  
18 household group or benefit group.

19 C. An applicant shall report to the department the  
20 names of all of the members of the applicant's household  
21 group or benefit group. A household group may contain more  
22 than one benefit group.

23 D. Not later than forty-five days after an  
24 application is filed, the department shall provide to an  
25 applicant a resource planning session to ascertain his  
immediate needs, assess financial and nonfinancial options,  
make referrals and act on the application.

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1           E. The applicant shall immediately be referred to  
2 the children, youth and families department to apply for  
3 child-care services.

4           F. Whenever the department receives an application  
5 for assistance, a verification and record of the applicant's  
6 circumstances shall promptly be made to ascertain the facts  
7 supporting the application and to obtain other information  
8 required by the department. The verification may include a  
9 visit to the home of the applicant, as long as the department  
10 gives adequate prior notice of the visit to the applicant.

11           G. The department shall meet semi-annually with a  
12 recipient to review the current financial eligibility of a  
13 benefit group and to review and revise his individual  
14 responsibility plan.

15           Section 4. ELIGIBILITY--RESTRICTIONS--REQUIREMENTS.--

16           A. A recipient is eligible if he demonstrates  
17 that:

18                   (1) at the time of application he does not  
19 have a bachelor's degree;

20                   (2) he has been accepted or has been  
21 determined to be eligible to enroll in a two- or four-year  
22 post-secondary degree program;

23                   (3) he has the ability to succeed in the  
24 educational program that he has chosen; and

25                   (4) the degree he will receive will increase  
his ability to engage in full-time paid employment.

          B. A recipient shall not receive any cash

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1 assistance or services funded by the temporary assistance for  
2 needy families block grant.

3 C. A recipient shall apply for all financial aid  
4 available.

5 D. In the two years of the program, a recipient  
6 shall engage in at least twenty hours per week of class time,  
7 studying, work, work-study or volunteering. The department  
8 shall assume that a recipient spends one and one-half hours  
9 studying for every hour of class time.

10 E. If a recipient does not attend summer school  
11 full time, he shall engage in work for at least twenty hours  
12 per week. A recipient may continue to attend school during  
13 the summer session.

14 F. A recipient may participate in a program for no  
15 more than two years unless he demonstrates good cause;  
16 including a verifiable need to take care of a family member  
17 with special needs, a physical or mental health problem,  
18 illness, accident, death or a serious personal or family  
19 problem that necessitates reduced participation or time off  
20 from education, training or work.

21 G. A recipient may only earn one degree through  
22 the Education Works Act program.

23 H. For the purposes of this section, "work" means  
24 work-study, training-related practicums, internships, paid  
25 employment, volunteering or any other activity approved by  
the department.

Section 5. FINANCIAL STANDARD OF NEED.--

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1           A. The secretary shall adopt a financial standard  
2 of need based upon the availability of state funds.

3           B. The cash benefit level for a benefit group not  
4 living in government-subsidized housing or receiving  
5 government-subsidized housing payments shall be increased by  
6 an amount equal to that received by participants pursuant to  
7 the New Mexico Works Act.

8           C. The following income sources are exempt from  
9 the gross income test, the net income test and the cash  
10 payment calculation:

- 11                   (1) medicaid;
- 12                   (2) food stamps;
- 13                   (3) government-subsidized foster care and  
14 adoption payments;
- 15                   (4) supplemental security income;
- 16                   (5) government-subsidized housing or housing  
17 payments;
- 18                   (6) federally excluded income;
- 19                   (7) educational payments made directly to an  
20 educational institution;
- 21                   (8) government-subsidized child care;
- 22                   (9) earned and unearned income that belongs  
23 to a person eighteen years of age or younger who is not the  
24 head of household;
- 25                   (10) unearned income that belongs to the  
household group but not to the benefit group; and
- (11) other income sources as determined by

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1 the department.

2 D. Earned income over one hundred thirty percent  
3 of the federal poverty guidelines that belongs to the  
4 household group but not to the benefit group is countable  
5 income. The department shall count the entire household  
6 group to determine family size when applying the federal  
7 poverty guidelines.

8 E. The department shall count the entire household  
9 group to determine family size when applying the financial  
10 standard of need. For a benefit group to be eligible to  
11 participate:

12 (1) gross countable earned income that  
13 belongs to the household group but not to the benefit group  
14 must not exceed one hundred eighty-five percent of the  
15 financial standard of need; and

16 (2) net countable earned income that belongs  
17 to the household group must not equal or exceed the financial  
18 standard after applying the disregards set out in Paragraphs  
19 (1) through (4) of Subsection F of this section.

20 F. Subject to the availability of state funds, the  
21 department shall determine the cash payment of the benefit  
22 group by applying the following disregards to the benefit  
23 group's earned gross income:

24 (1) one hundred fifty dollars (\$150) of  
25 monthly earned income and one-half of the remainder, or for a  
two-parent family, two hundred fifty dollars (\$250) of  
monthly earned income and one-half of the remainder for each



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1 parent;

2 (2) monthly payments made for child care at  
3 a maximum of two hundred dollars (\$200) for a child under two  
4 years of age and at a maximum of one hundred seventy-five  
5 dollars (\$175) for a child two years of age or older;

6 (3) costs of self-employment income; and

7 (4) business expenses.

8 G. The department may recover overpayments of cash  
9 assistance on a monthly basis not to exceed fifteen percent  
10 of the financial standard of need applicable to the benefit  
11 group.

12 H. Cash assistance received pursuant to the  
13 Education Works Act shall be treated in the same manner as  
14 cash assistance received pursuant to the New Mexico Works Act  
15 for the purposes of a federal, state, tribal or municipal  
16 assistance program.

17 Section 6. RESOURCES.--

18 A. Liquid and nonliquid resources owned by the  
19 household group but not the benefit group shall not be  
20 counted in the eligibility determination.

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

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

25 (2) one thousand five hundred dollars  
(\$1,500) in liquid resources;

(3) the value of the principal residence of

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1 the recipient;

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

4 (5) the value of work-related equipment up  
5 to one thousand dollars (\$1,000);

6 (6) in areas without public transportation,  
7 the value of one motor vehicle for each recipient enrolled in  
8 a bachelor's degree program; and

9 (7) in areas with public transportation, the  
10 value of one motor vehicle.

11 Section 7. INELIGIBILITY.--The following are ineligible  
12 to be members of a benefit group:

13 A. an inmate or patient of a nonmedical  
14 institution;

15 B. a person who, in the two years preceding  
16 application, assigned or transferred real property unless he:

17 (1) received or receives a reasonable  
18 return;

19 (2) attempted to or attempts to receive a  
20 reasonable return; or

21 (3) attempted to or attempts to regain title  
22 to the real property;

23 C. a minor child who has been absent or is  
24 expected to be absent from the home for forty-five days;

25 D. a person who does not provide a social security  
number or who refuses to apply for one;

E. a person who is not a resident of New Mexico;

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1 F. a person who fraudulently misrepresented  
2 residency to receive assistance in two or more states  
3 simultaneously except that such person shall be ineligible  
4 for only ten years;

5 G. a person who is a fleeing felon or a probation  
6 and parole violator;

7 H. a person concurrently receiving supplemental  
8 security income, tribal temporary assistance for needy  
9 families, bureau of Indian affairs general assistance or  
10 adoption subsidies; and

11 I. a parent who does not assist the department in  
12 establishing paternity or obtaining child support or who does  
13 not assign support rights to New Mexico, unless he  
14 demonstrates good cause.

15 Section 8. FAIR HEARING--REVIEW AND APPEAL.--

16 A. A recipient may request a hearing if:

17 (1) an application is not acted on within a  
18 reasonable time after the filing of the application;

19 (2) an application is denied in whole or in  
20 part; or

21 (3) the cash assistance or services are  
22 modified, terminated or not provided.

23 B. The department shall notify the recipient of  
24 his rights under this section.

25 C. The department shall by rule establish  
procedures for the filing of a request for a hearing and the  
time limits within which a request may be filed; provided,

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1 however, that the department may grant reasonable extensions  
2 of the time limits. If the request is filed in a timely  
3 manner, cash assistance and services shall be provided until  
4 the appeal is resolved. If the request is not filed within  
5 the specified time for appeal or within whatever extension  
6 the department may grant, the department action is final.  
7 Upon receipt of a timely request, the department shall give  
8 the recipient reasonable notice of an opportunity for a fair  
9 hearing in accordance with the rules of the department.

10 D. The hearing shall be conducted by a hearing  
11 officer designated by the director of the income support  
12 division of the department. The powers of the hearing  
13 officer shall include administering oaths or affirmations to  
14 witnesses called to testify, taking testimony, examining  
15 witnesses, admitting or excluding evidence and reopening a  
16 hearing to receive additional evidence. The technical rules  
17 of evidence and the rules of civil procedure shall not apply.  
18 The hearing shall be conducted so that the contentions or  
19 defenses of each party to the hearing are amply and fairly  
20 presented. Each party may be represented by counsel or other  
21 representative and may conduct cross-examination. Oral or  
22 documentary evidence may be received, but the hearing officer  
23 may exclude irrelevant, immaterial or unduly repetitious  
24 evidence.

25 E. The director of the income support division  
shall review the record of the proceedings and shall make his  
final decision on the record. The recipient or his

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1 representative shall be notified in writing of the director's  
2 final decision and the reasons for the decision. The written  
3 notice shall inform the recipient of his right to judicial  
4 review pursuant to Section 39-3-1.1 NMSA 1978. The  
5 department shall be responsible for ensuring that the  
6 decision is enforced.

7 F. A recipient may appeal the final decision of  
8 the director of the income support division to district court  
9 pursuant to Section 39-3-1.1 NMSA 1978.

10 G. The department shall not authorize or allow  
11 expenditures in excess of the amounts previously appropriated  
12 by the legislature.

13 Section 9. SATISFACTORY PARTICIPATION.--

14 A. To maintain satisfactory participation, a  
15 recipient shall meet the standards of the school that he  
16 attends, including class attendance.

17 B. If a recipient falls below the standard of the  
18 school in one semester, then he will be placed on  
19 probationary status for one semester to improve his grades.  
20 If a recipient's overall grade point average falls below 2.0,  
21 the department shall place him on a maximum of two  
22 probationary semesters to bring up the overall grade point  
23 average.

24 C. A recipient shall:  
25 (1) report to the department anything that  
might affect his ability to participate in the Education  
Works Act program;

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1 (2) provide the department with a copy of  
2 financial aid award letters; and

3 (3) provide the department with copies of  
4 his grades as they become available.

5 D. If a recipient does not comply with Subsection  
6 C of this section, the department may require the recipient  
7 to apply for public assistance pursuant to the New Mexico  
8 Works Act. This decision shall be made in writing and the  
9 recipient shall have the opportunity to appeal it.

10 Section 10. APPROPRIATION.--Two million dollars  
11 (\$2,000,000) is appropriated from the general fund to the  
12 human services department for expenditure in fiscal year 2001  
13 and subsequent fiscal years to carry out the purposes of the  
14 Education Works Act. Any unexpended or unencumbered balance  
15 remaining at the end of a fiscal year shall not revert to the  
16 general fund.

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