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SENATE BILL 322

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Roman M. Maes III

**FOR THE ECONOMIC AND RURAL DEVELOPMENT AND
TELECOMMUNICATIONS COMMITTEE**

AN ACT

**RELATING TO ASSET BUILDING; ESTABLISHING A PROGRAM THAT
ADMINISTERS INDIVIDUAL DEVELOPMENT ACCOUNTS; ENACTING THE
INDIVIDUAL DEVELOPMENT ACCOUNT ACT; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 12 of this act may be cited as the "Individual
Development Account Act".**

**Section 2. [NEW MATERIAL] 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 use that complies with
the provisions of the Individual Development Account Act, or**

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1 rules adopted pursuant to that act;

2 C. "authorized financial institution" means a
3 financial institution authorized by the division to hold and
4 manage individual development accounts and reserve accounts;

5 D. "director" means the director of the division;

6 E. "division" means the local government division
7 of the department of finance and administration;

8 F. "earned income" means wages from employment or
9 payment in lieu of wages or earnings from self-employment or
10 acquired from the provision of services, goods or property,
11 production of goods, management of property or supervision of
12 services;

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

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

21 I. "individual development account" means an
22 account established and maintained in an authorized financial
23 institution on behalf of an eligible individual participating
24 in an individual development account program pursuant to the
25 provisions of the Individual Development Account Act;

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1 J. "individual development account program" means
2 a program approved by the division to establish and administer
3 individual development accounts and reserve accounts for
4 eligible individuals and to provide financial training
5 required by the division for account owners;

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

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

15 M. "program administrator" means a nonprofit
16 organization or tribe that is determined by the director to be
17 eligible to offer an individual development account program;

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

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

1 Section 3. [NEW MATERIAL] INDIVIDUAL DEVELOPMENT

2 ACCOUNTS. --An individual development account may be
3 established on behalf of an eligible individual as part of an
4 individual development account program if the written
5 instrument creating the account sets forth the following:

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

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

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

15 D. withdrawals from an individual development
16 account may be only for allowable uses, unless approved by the
17 program administrator as set forth in the rules adopted
18 pursuant to the Individual Development Account Act; and

19 E. the financial institution in which an
20 individual development account is held shall not be liable for
21 withdrawals made for uses other than allowable uses.

22 Section 4. [NEW MATERIAL] ELIGIBLE INDIVIDUALS. --To be
23 eligible to participate in an individual development account
24 program and to have an individual development account
25 established on his behalf, a person shall have earned income

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1 and shall be:

2 A. eighteen years of age or older;

3 B. a citizen or legal resident of the United
4 States;

5 C. a resident of New Mexico; and

6 D. a member of a household with earned income that
7 is no more than two hundred percent of the federal poverty
8 guidelines for the size of the household.

9 Section 5. [NEW MATERIAL] RESPONSIBILITIES OF THE
10 DIVISION. --

11 A. By December 31 following the effective date of
12 the Individual Development Account Act, the director shall
13 adopt rules implementing the provisions of that act.

14 B. The director shall make an annual report each
15 November to the governor and to an appropriate interim
16 committee of the legislature.

17 C. The division shall use no more than five
18 percent of the money appropriated to fund the Individual
19 Development Account Act to administer that act.

20 Section 6. [NEW MATERIAL] ADVISORY COMMITTEE. --

21 A. An advisory committee shall be created to
22 provide oversight of the administration of individual
23 development account programs and to suggest possible changes
24 that benefit account owners or improve the effectiveness of
25 the individual development account programs throughout the

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1 state.

2 B. The advisory committee shall meet at least
3 quarterly to review the implementation of the Individual
4 Development Account Act.

5 C. The advisory committee shall consist of the
6 director or his designee and eight members appointed by the
7 director to represent the state geographically.

8 D. Members of the advisory committee who are
9 account owners shall receive per diem and mileage pursuant to
10 the Per Diem and Mileage Act and shall receive no other
11 compensation, perquisite or allowance for their participation
12 on the advisory committee.

13 E. The division shall provide adequate staff
14 support and administrative services for the advisory
15 committee.

16 Section 7. [NEW MATERIAL] ADMINISTRATION OF INDIVIDUAL
17 DEVELOPMENT ACCOUNT PROGRAMS. --

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

23 B. An individual development account program shall
24 be certified and monitored by the director for compliance with
25 applicable law, the Individual Development Account Act and

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1 rules adopted pursuant to that act.

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

9 D. An individual development account program shall
10 provide financial education and other necessary training
11 pertinent to allowable uses by account owners, develop
12 partnerships with financial institutions, develop matching
13 funds and manage the operations of an individual development
14 account that is established within the program.

15 E. The division shall adopt rules necessary to
16 implement the Individual Development Account Act.

17 F. An eligible individual may open an individual
18 development account upon verification by the program
19 administrator that the individual maintains no other
20 individual development account.

21 G. More than one eligible individual per household
22 may hold an individual development account.

23 H. An account owner shall complete a financial
24 education program prior to the withdrawal of money from his
25 individual development account.

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1 Section 8. [NEW MATERIAL] ALLOWABLE USES-- WITHDRAWALS
2 FROM INDIVIDUAL DEVELOPMENT ACCOUNTS-- FORFEITURE OF MATCHING
3 FUNDS FROM RESERVE ACCOUNT-- LOSS OF ELIGIBLE INDIVIDUAL
4 STATUS. --

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

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

11 (2) costs to acquire or construct a principal
12 residence that is the first principal residence acquired or
13 constructed by the account owner as defined in rules adopted
14 pursuant to the Individual Development Account Act;

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

17 (4) capitalization or costs to start or
18 expand a business, including capital, plant, equipment,
19 operational and inventory expenses, attorney and accountant
20 fees and other costs normally associated with starting or
21 expanding a business;

22 (5) acquisition of a vehicle necessary to
23 obtain or maintain employment by an account owner or the
24 spouse of an account owner; and

25 (6) in the case of a deceased account owner,

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

10 B. If an account owner withdraws money from his
11 individual development account for a use other than an
12 allowable use, he forfeits a proportionate amount of matching
13 funds from the reserve account, as set forth in the agreement
14 between the program administrator and the account owner,
15 unless an amount equal to the withdrawn money is redeposited
16 to his individual development account within ninety days
17 following the withdrawal.

18 C. The program administrator may approve a
19 withdrawal by an account owner from his individual development
20 account to be used for a purpose other than an allowable use
21 only for serious emergencies as specified in the rules adopted
22 by the director.

23 D. At the request of the account owner and with
24 the written approval of the program administrator, amounts may
25 be withdrawn from the account owner's individual development

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1 account and deposited in another individual development
2 account established for an eligible individual who is the
3 account owner's spouse or dependent.

4 Section 9. [NEW MATERIAL] CERTIFICATION OF INDIVIDUAL
5 DEVELOPMENT ACCOUNT PROGRAMS. --

6 A. Annually the division shall solicit a request
7 for proposals from nonprofit organizations or tribes
8 interested in establishing an individual development account
9 program.

10 B. The director shall determine if an interested
11 nonprofit organization or tribe is eligible to be a program
12 administrator.

13 C. Eligible program administrators shall develop
14 individual development account programs that are subject to
15 review and certification by the director.

16 D. The director shall certify an individual
17 development account program submitted by a program
18 administrator before the program establishes individual
19 development accounts or reserve accounts or provides services
20 required by the Individual Development Account Act to eligible
21 individuals.

22 E. An individual development account and a reserve
23 account may be established only in an authorized financial
24 institution.

25 F. The director shall monitor all individual

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1 development account programs to ensure that individual
2 development accounts and reserve accounts are being operated
3 according to federal law, the provisions of the Individual
4 Development Account Act and rules adopted pursuant to that
5 act.

6 Section 10. [NEW MATERIAL] TERMINATION OF INDIVIDUAL
7 DEVELOPMENT ACCOUNT PROGRAMS. --

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

10 (1) division determines that the program is
11 not being operated pursuant to the provisions of the
12 Individual Development Account Act or rules adopted pursuant
13 to that act;

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

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

18 B. If the director is unable to identify and
19 certify a program administrator to assume the authority to
20 continue to operate a terminated individual development
21 account program, money in a reserve account shall be deposited
22 into the individual development accounts of the account owners
23 for whom the proportionate share of the reserve account was
24 established as of the first day of termination of the program.

25 Section 11. [NEW MATERIAL] REPORTING. -- A program

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1 administrator operating an individual development account
2 program pursuant to the Individual Development Account Act
3 shall report at least annually to the director, as set forth
4 in the rules of the division. Individual account owners shall
5 not be identified in the report. The report shall include:

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

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

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

13 D. the amounts withdrawn from individual
14 development accounts for either allowable uses or for uses
15 other than allowable uses and the amounts withdrawn from
16 reserve accounts;

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

19 F. other information requested by the director to
20 monitor the costs and outcomes of the individual development
21 account program.

22 Section 12. [NEW MATERIAL] ACCOUNT FUNDS DISREGARDED FOR
23 PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS. -- Money deposited
24 into an individual development account and interest and
25 matching funds deposited in a reserve account for the benefit

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1 of the account owners shall be disregarded for the purposes of
2 eligibility for benefits pursuant to the New Mexico Works Act,
3 medicaid and food stamps. Money withdrawn from an individual
4 development account for a purpose other than an allowable use
5 shall be counted as earned income for purposes of the New
6 Mexico Works Act, medicaid and the food stamp program unless
7 replaced within the ninety-day allowable time period.

8 Section 13. Section 27-2B-7 NMSA 1978 (being Laws 1998,
9 Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as
10 amended by Laws 2001, Chapter 295, Section 4 and by Laws 2001,
11 Chapter 326, Section 4) is amended to read:

12 "27-2B-7. FINANCIAL STANDARD OF NEED. --

13 A. The secretary shall adopt a financial standard
14 of need based upon the availability of federal and state funds
15 and based upon appropriations by the legislature of the
16 available federal temporary assistance for needy families
17 grant made pursuant to the federal act in the following
18 categories:

- 19 (1) cash assistance;
- 20 (2) child care services;
- 21 (3) other services; and
- 22 (4) administrative costs.

23 The legislature shall determine the actual percentage of each
24 category to be used annually of the federal temporary
25 assistance for needy families grant made pursuant to the

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1 federal act.

2 B. The following income sources are exempt from
3 the gross income test, the net income test and the cash
4 payment calculation:

5 (1) medicaid;

6 (2) food stamps;

7 (3) government-subsidized foster care
8 payments if the child for whom the payment is received is also
9 excluded from the benefit group;

10 (4) supplemental security income;

11 (5) government-subsidized housing or housing
12 payments;

13 (6) federally excluded income;

14 (7) educational payments made directly to an
15 educational institution;

16 (8) government-subsidized child care;

17 (9) earned income that belongs to a person
18 seventeen years of age or younger who is not the head of
19 household;

20 (10) fifty dollars (\$50.00) of collected
21 child support passed through to the participant by the
22 department's child support enforcement program; [and]

23 (11) earned income deposited in an individual
24 development account by a member of the benefit group or money
25 received as matching funds for allowable uses by the owner of

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1 the individual development account pursuant to the Individual
2 Development Account Act; and

3 [~~(11)~~] (12) other income sources as
4 determined by the department.

5 C. The total countable gross earned and
6 unearned income of the benefit group cannot exceed eighty-five
7 percent of the federal poverty guidelines for the size of the
8 benefit group.

9 D. For a benefit group to be eligible to
10 participate:

11 (1) gross countable income that belongs to
12 the benefit group must not exceed eighty-five percent of the
13 federal poverty guidelines for the size of the benefit group;
14 and

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

19 E. Subject to the availability of state and
20 federal funds, the department shall determine the cash payment
21 of the benefit group by applying the following disregards to
22 the benefit group's earned gross income and then subtracting
23 that amount from the benefit group's financial standard of
24 need:

25 (1) for the first two years of receiving cash

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1 assistance or services, if a participant works over the work
2 requirement rate set by the department pursuant to the New
3 Mexico Works Act, one hundred percent of the income earned by
4 the participant beyond that rate;

5 (2) for the first two years of receiving cash
6 assistance or services, for a two-parent benefit group in
7 which one parent works over thirty-five hours per week and the
8 other works over twenty-four hours per week, one hundred
9 percent of income earned by each participant beyond the work
10 requirement rate set by the department;

11 (3) one hundred twenty-five dollars (\$125) of
12 monthly earned income and one-half of the remainder, or for a
13 two-parent family, two hundred twenty-five dollars (\$225) of
14 monthly earned income and one-half of the remainder for each
15 parent;

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

20 (5) costs of self-employment income; and

21 (6) business expenses.

22 F. The department may recover overpayments of cash
23 assistance on a monthly basis not to exceed fifteen percent of
24 the financial standard of need applicable to the benefit
25 group. "

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1 Section 14. Section 27-2B-10 NMSA 1978 (being Laws 1998,
2 Chapter 8, Section 10 and Laws 1998, Chapter 9, Section 10) is
3 amended to read:

4 "27-2B-10. INDIVIDUAL DEVELOPMENT ACCOUNTS. -- ~~[A.]~~ A
5 participant may establish an individual development account
6 pursuant to the Individual Development Account Act.

7 ~~[B.] A participant or a person on the participant's~~
8 ~~behalf may contribute to an individual development account;~~
9 ~~provided the participant first establishes a savings account~~
10 ~~not to exceed one thousand five hundred dollars (\$1,500).~~

11 ~~C. An individual development account shall be~~
12 ~~organized as a trust. The department shall by rule establish~~
13 ~~the form, substance and procedure by which the trust shall be~~
14 ~~established.~~

15 ~~D. Individual development accounts shall be used~~
16 ~~only for:~~

- 17 ~~(1) post-secondary education for dependents;~~
18 ~~(2) purchase of a principal residence for a~~
19 ~~first-time homebuyer; or~~
20 ~~(3) business capitalization.~~

21 ~~E. Upon establishing an individual development~~
22 ~~account, the participant shall declare the purposes for the~~
23 ~~account.~~

24 ~~F. If the declared purpose of an individual~~
25 ~~development account is for the purchase of a principal~~

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1 ~~residence for a first-time homebuyer, the amount used for that~~
2 ~~purpose shall be limited to one thousand five hundred dollars~~
3 ~~(\$1,500).~~

4 ~~G. Money in an individual development account~~
5 ~~shall only be disbursed to an educational institution, to a~~
6 ~~person due money for a principal residence or to a business~~
7 ~~capitalization account.~~

8 ~~H. A participant shall contribute only earned~~
9 ~~income to an individual development account.]"~~

10 Section 15. APPROPRIATION. -- Two hundred fifty thousand
11 dollars (\$250,000) is appropriated from the general fund to
12 the local government division of the department of finance and
13 administration for expenditure in fiscal year 2003 to
14 administer and implement the Individual Development Account
15 Act. The local government division shall use no more than
16 five percent of this appropriation to administer the
17 Individual Development Account Act. Any unexpended or
18 unencumbered balance remaining at the end of fiscal year 2003
19 shall revert to the general fund.

20 Section 16. EFFECTIVE DATE. -- The effective date of the
21 provisions of this act is July 1, 2002.