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Senate Bill 1386 (Substitute S-2 as reported)  
Sponsor: Senator Bruce Caswell  
Committee: Appropriations

### **CONTENT**

Senate Bill 1386 (S-2) would amend the Social Welfare Act to codify the Department of Human Services (DHS) policy changes to the 60-month time limit on Family Independence Program (FIP) assistance and define FIP as a temporary program that is not an entitlement. Passage of the bill during the FY 2011-12 legislative session would support the DHS's policy.

Specifically, the bill would amend Section 57a of the Act by adding language to refine the parameters of FIP, which provides cash assistance to eligible individuals and families. The language would state that there is a 60-month time limit on FIP assistance that is funded by Federal Temporary Assistance for Needy Families (TANF) dollars. Exemptions for some groups would apply. The language also states that FIP assistance is temporary and is not an entitlement.

The bill would prohibit the DHS from providing FIP assistance to any group that includes an adult who has received TANF-funded FIP assistance for more than 60 months, whether consecutive or not, after October 1, 1996. (The exemptions to this rule are described in the following paragraph.) This means that statute would define some of the parameters of the TANF "hardship exemption", which is optional under Federal guidelines. Although TANF imposes a 60-month time limit on the receipt of TANF-funded cash assistance, the Federal government allows states to exempt up to 20.0% of TANF-funded cases from this time limit due to hardship. According to TANF rules, the DHS may update the State's TANF State Plan to reflect changes in the hardship exemption. (Please refer to Title IV-A, Sec. 402 of the Social Security Act.) The DHS eliminated this hardship category in FY 2011-12 as part of a new policy. The hardship cases that were eliminated had received Federal assistance anywhere from five to 15 years.

The exemptions to the 60-month time limit include many but not all of the groups defined under the Jobs, Education and Training (JET) work exemptions (MCL 400.57f). The bill refers to cases with an adult head of household so that child-only cases would not be included in the 60-month limit. Other defined exemptions include recipients who are exempt from participating in the JET work program due to a medically documented disability, including a mental or physical condition, recipients who are otherwise unable to participate in JET as determined by the medical review team, recipients aged 65 or older, recipients of Federal Supplemental Security Income (SSI), and recipients of retirement, survivor, or disability insurance based on disability or blindness (and recipients of these forms of insurance who are in non-pay status). Individuals who would not be exempt from the 60-month time limit include the regular FIP caseload, an individual with a short-term mental or physical disability, a parent with a child under the age of 60 days in the home, a mother in postpartum recovery up to 60 days after giving birth to a child who is not in the home, a pregnant woman who is severely restricted from participating in JET during

pregnancy due to medical reasons, and caregivers of disabled children or spouses. According to DHS estimates, there are 310 caregivers who would not qualify for the exemption. Data regarding the other groups are not available at this time, but a request is pending.

Additionally, the bill would define FIP as temporary assistance that is not an entitlement. This definition is intended to reflect Federal law.

MCL 400.57a

## **BACKGROUND**

### 48-Month and 60-Month FIP Time Limits

Funding for FIP primarily comes from the Federal TANF block grant and State General Fund/General Purpose (GF/GP) appropriations, depending on the type of case. Federal TANF funding supports most of the FIP caseload. The TANF caseload primarily consists of single-parent families that are subject to the 48-month time limit. Other federally funded cases include caretakers of spouses receiving SSI assistance, some victims of domestic violence, and seniors over the age of 65. Child-only cases are funded with TANF dollars, as children are not subject to the work requirement, time limit, or other factors until they turn 18. State-funded cases include cases that are eligible for temporary exemptions and include two-parent families, as well as disabled individuals.

The 48-month time limit on FIP assistance was placed into law in 2011 with the passage of Public Acts 131 and 132 of 2011. This time limit was already part of the Social Welfare Act, as it had been introduced in 2007 along with a sunset clause that would have prevented its implementation when it was due to go into effect on October 1, 2011. Public Acts 131 and 132 of 2011 eliminated the sunset clause and defined temporary and permanent exemptions to the work requirement.

Regarding the 60-month time limit, the DHS updated the TANF State Plan to reflect the changes to the hardship exemption. Legislation was not enacted to address the changes.

### FIP Lawsuit

The Center for Civil Justice filed a lawsuit on behalf of three FIP recipients against DHS Director Maura Corrigan in the U.S. District Court in Detroit on September 30, 2011, seeking a temporary restraining order and preliminary injunction to prevent the changes from going into effect. United States District Judge Paul Borman granted the injunction on October 4, 2011. That injunction was vacated.

The DHS policy changes also were challenged in the Genesee County Circuit Court. The circuit court and Michigan Court of Appeals have issued several rulings. The circuit court ruled that the plaintiffs were entitled to 48 months of benefits and that the 60-month time limit policy violated MCL 400.57p(1) and 400.57r(1), as well as MCL 400.6(1). The DHS appealed the ruling and, in a June 26, 2012, published opinion, the Court of Appeals found that the DHS Director did have the authority to promulgate the 60-month eligibility limit, but had violated the Administrative Procedures Act (*Smith v Department of Human Services Director*, 297 Mich App 148).

The Michigan Supreme Court has agreed to hear oral arguments on the case. The Court will address "(1) whether the defendant properly implemented the 60-month limitation on Family Independence Program cash assistance benefits without rulemaking under the Administrative Procedures Act (MCL 24.201 et seq.), and (2) whether the defendant had the authority to implement the 60-month limitation on Family Independence Program cash

assistance benefits and whether this limitation conflicts with any provisions of the Social Welfare Act (MCL 400.1 et seq.)."

### Recipients and Reapplications

Due to the injunction, recipients who were removed from assistance due to the policy changes were able to reapply. As a result of the injunction and reapplication process, the caseload changes are estimated below. Some of the data are point in time; these data also include EFIP cases in addition to regular FIP.

#### **Estimated caseload changes due to the 60-month time limit:**

- Total universe of cases closed due to 60-month time limit before 6-11-12: 14,977.
- Total number of cases that reapplied: 9,206.
- Total number of reapplications that were approved: 5,667.
- Total number of reapplications that were denied: 3,539.

The total cost of payments for the clients who reapplied for benefits and were approved, dating back to the third week in March, was \$19.4 million for 5,667 cases. An additional \$9.5 million in benefits were paid out to an average of 3,648 cases that would have lost eligibility under time limits had the court injunction not been in place.

The estimated savings due to the 48-month time limit is \$6,368,600 due to the 2,185 cases that lost eligibility under the 48-month time limit.

### **FISCAL IMPACT**

Passage of the bill could prevent additional costs due to increased caseloads. The bill would not have a fiscal impact on local units of government.

If the Michigan Supreme Court rules in favor of the DHS, the State could save approximately \$2.8 million GF/GP per month due to a reduction in the current caseload. Since the third week of March 2012, the costs from the FIP lawsuit have totaled approximately \$28.9 million GF/GP. Of this total, approximately \$19.4 million has covered payouts to 5,667 cases that are still active under the 60-month time limit. Additionally, the bill would include an exemption for incapacitated adult seniors over the age of 65, SSI recipients and recipients of retirement, survivor, or disability insurance based on disability or blindness who were subject to the 60-month counter, and would have lost eligibility otherwise. This exemption could cost as much as \$900,000 Gross in FY 2012-13, based on an average monthly payment of \$510 per case. A request for updated statistics on these exemptions is pending.

If the Court rules in the Plaintiffs' favor, these 5,667 cases would continue to receive FIP assistance for an undetermined length of time. The average monthly payment for these cases could cost as much as \$2.8 million Gross and up to \$33.6 million Gross per year. It is possible that the caseload also could increase by an undetermined percentage if potential clients who had been deterred from applying for assistance due to the time limit decided to apply for FIP assistance as a result of such a ruling.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.