

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 3956

STATE OF NEW JERSEY

DATED: JUNE 15, 2015

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3956 (1R).

This bill establishes the New Jersey Achieving a Better Life Experience (ABLE) Program in the Division of Developmental Disabilities in the Department of Human Services (division), in accordance with the federal "Achieving a Better Life Experience Act of 2014," which became law in December 2014.

Overview of ABLE Accounts

Under the bill, a person with a developmental disability would be permitted to establish an ABLE account which could be used for certain qualifying disability expenses and which would be exempt from State income taxation. As set forth in the federal law, paragraph (5) of subsection (e) of 26 U.S.C. s.529A, qualifying disability expenses would include expenses made for the benefit of a designated beneficiary who is an individual with a disability, including: education expenses; housing and transportation expenses; employment training and support expenses; health, prevention, and wellness expenses; assistive technology and personal support service expenses; miscellaneous expenses such as expenses for financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial; and other expenses which are approved by the Secretary of the federal Department of Health and Human Services. A request for a qualified withdrawal may be made by an agent of the designated beneficiary who has power of attorney or by the designated beneficiary's legal guardian.

The ABLE program would be operated as a trust through the use of accounts for designated beneficiaries. Only one account may be opened by a designated beneficiary and would require: completing an application in the prescribed form; making the minimum initial contribution required by the division capped at the minimum required amount for opening an NJBEST program account; and demonstrating that the designated beneficiary is a New Jersey resident. Anyone may contribute to the account.

Contributions to accounts may be made only in cash. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the division pursuant to regulations. A contributor who makes a withdrawal must provide written notice to the trustee and to the designated beneficiary. The designated beneficiary of an account may be changed, provided the new beneficiary qualifies as a designated beneficiary under the bill. Additionally, all or a portion of an account may be rolled over to another account, provided the other account meets the requirements set forth in the bill and the rollover would not result in a distribution includible in gross income under federal law. The State or any State agency, municipality, or other political subdivision would be permitted, by contract or collective bargaining agreement, to agree with any employee to remit contributions to an ABLE account through payroll deductions.

Separate records and accounting are to be maintained for the account of each designated beneficiary. A contributor to an account would not be permitted to direct the investment of any contributions to an account or the earnings from the account, except as permitted under federal law. A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year. A contributor or a designated beneficiary would not be permitted to use an interest in an account as security for a loan. Any pledge of an interest in an account would be of no force and effect. The maximum individual contribution and maximum aggregate contributions for any designated beneficiary will be determined by the division pursuant to regulations adopted in accordance with federal law.

Effects and Legal Status of ABLE Account

Moneys paid into or out of an ABLE account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified disability expenses would be exempt from State income taxation, certain federal taxes as provided in 26 U.S.C. s.529A, and all claims of creditors of the contributor or the designated beneficiary. The funds held in, and the amounts distributed from, a qualifying ABLE account would not jeopardize a beneficiary's eligibility for any other State or federal assistance and would be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by State law.

In the event that the designated beneficiary dies or ceases to be a person with a disability, any amounts remaining in the beneficiary's ABLE account would be distributed to the State upon the State filing a claim for payment. The State would constitute a creditor of the account, not a beneficiary, and the amount paid to the State would be limited to the amount of total medical assistance paid for the beneficiary through the Medicaid program after the establishment of the ABLE account.

The division would be required to annually determine a dollar amount of an ABLE account, which would not be less than \$25,000, which would not be considered when determining a designated beneficiary's eligibility for, or the amount awarded to a beneficiary from, any scholarships, grants, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses.

Nothing in the bill would be construed to: guarantee the availability or provision of disability-related services to a designated beneficiary; establish State residency for a person merely because the person is a designated beneficiary; or guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary. Nothing in the bill establishes any obligation for the State or any agency or instrumentality of the State to guarantee either the rate of interest or other return on any account or the payment of interest or other return on any account. Under regulations to be promulgated by the division, every contract and application that may be used in connection with a contribution to an ABLE account would clearly indicate that the account is not insured by the State, and that the investment return is not guaranteed by the State.

Nothing in the bill establishes any obligation or liability of the State or any agency or instrumentality of the State with respect to any federal or State tax liability of any contributor or designated beneficiary in the ABLE program.

Administration of ABLE Accounts

Under the ABLE program, the division would establish an ABLE Trust, which would provide a mechanism through which the division, as trustee, would hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division would have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill. Neither the members of the division, nor any officer or employee of the division, would be liable personally for the debts, liabilities, or obligations of the ABLE program.

The division will select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager would be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury, and the division must consider the impact of fees and costs imposed by the manager or managers on the yield to contributors. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program, and it may provide contributors with a choice of investment managers or investment instruments if the federal Internal Revenue Service provides guidance that such choice will not cause the program to fail to qualify for favorable federal tax treatment and the division concludes that such choice is in the best interest of contributors and will not interfere with the administration of the program.

If the division terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the division would select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division would not cause a program to cease to be a qualified State ABLE program for the purposes of federal law. If the selection process results in an investment manager other than the Division of Investment, the Division of Developmental Disabilities would be required to provide for the orderly transfer of accounts and ensure that all the rights of the contributors and designated beneficiaries participating in the program are protected.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts would be prepared, distributed, and filed to the extent required by federal law. The division would be permitted

to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

If the investment manager is the Division of Investment in the Department of the Treasury, the Director of the Division of Developmental Disabilities would be authorized to certify to the Governor, or the Governor's designee, the amounts needed to be made available in the ABLE trust for distribution. This certified sum would be appropriated and paid to the division during the then-current State fiscal year. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed must be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

The bill is scheduled to take effect on the 45th day after the date of enactment with the gross income tax exclusion applying to contributions for taxable years beginning on or after the date of enactment.

FISCAL IMPACT:

The bill is likely to result in an indeterminate expenditure increase primarily owing to administrative expenses associated with implementation and a long-term indeterminate gross income tax revenue loss associated with the ABLE account exclusion

During the initial stages of implementation the bill is likely to cost approximately \$500,000 to \$1 million annually. That cost is comprised of up to \$500,000 in administrative costs and up to \$500,000 of gross income tax revenue losses. Post-implementation, it is possible that the program will become administratively self-funded through participant fees, thereby reducing administrative costs.