

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1105
Appropriations

(Delegate Zucker, *et al.*)

Budget and Taxation

Disabled Individuals - Task Force on the Maryland ABLE Program

This bill establishes the Task Force on the Maryland Achieving a Better Life Experience (ABLE) Program. The Department of Disabilities (DOD), with support from the Department of Legislative Services (DLS), in consultation with the College Savings Plans of Maryland, the Treasurer's Office, and the Comptroller's Office, must provide staff for the task force. The task force must submit a report of its findings and recommendations by December 1, 2015, including legislation to be introduced in the 2016 session of the General Assembly that implements the recommendations of the task force. The bill specifies that it is the intent of the General Assembly that the State establish a Maryland ABLE program. If the task force determines legislation is needed to establish the program, the General Assembly must consider the legislation that is introduced in response to the findings of the task force.

The bill takes effect June 1, 2015, and terminates June 30, 2016.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for DOD, DLS, the College Saving Plans of Maryland, the Treasurer's Office, and the Comptroller's Office are assumed to be minimal and absorbable within existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Maryland ABLE Program” means a program in Maryland allowing disabled individuals or their families to establish savings accounts to pay qualified expenses for disabled individuals authorized under the federal ABLE Act.

The task force must:

- develop a plan for implementing the Maryland ABLE program;
- study issues related to the Maryland ABLE program, including (1) what the structure of the program should be; (2) whether the program should be State-sponsored or privately run; and (3) if State-sponsored, whether the program should be operated by the College Savings Plans of Maryland or another State agency;
- determine the staffing and funding needs of the program;
- identify potential sources of start-up funding prior to the program becoming self-supporting;
- determine the membership of the board that will oversee the program, the duties of the board, and the board’s governance structure;
- determine the State tax benefits or treatment of contributions to and withdrawals from ABLE accounts;
- hold public hearings for public input to inform the deliberations of the task force; and
- recommend legislation to be introduced in the 2016 session of the General Assembly that implements the recommendations of the task force.

Current Law/Background:

Federal ABLE Program

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 was enacted in December 2014. The Act creates a new Section 529A of the Internal Revenue Code that permits a state (or a state agency or instrumentality) to establish and maintain a new type of tax-advantaged savings program, a qualified ABLE program, under which contributions

may be made to an account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account who is a resident of that state and who is disabled.

Under the Act, “qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations consistent with the purposes of the Act. Other provisions of the Act include:

- eligibility is limited to individuals with significant disabilities with an age of the onset of disability prior to age 26 (individuals may be older than age 26, but need documented proof of the onset of disability prior to age 26);
- “significant disabilities” includes individuals entitled to Social Security supplemental income based on blindness or disability or a disability certification accepted by the Secretary of the Treasury that certifies that the individual is blind or has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months;
- contributions are limited to the amount allowed for tax-free gifts (\$14,000 currently) annually per ABLE account, and assets over \$100,000 in an account count toward eligibility for Social Security supplemental income; and
- if a state does not establish and maintain its own qualified ABLE program, it may enter into a contract with another state in order to provide its residents with access to a qualified ABLE program.

The Act also requires the Secretary of the Treasury or his or her designee to issue regulations or other guidance to implement Section 529A no later than June 19, 2015. As of March 15, 2015, the regulations have not been issued. Despite the lack of regulations, a number of state legislatures currently are in the process of enacting enabling legislation to allow individuals to create ABLE accounts during 2015. According to a recent Internal Revenue Service (IRS) notice:

The Treasury Department and the IRS do not want the lack of guidance to discourage states from enacting their enabling legislation and creating their ABLE programs, which could delay the ability of the families of disabled individuals or others to begin to fund ABLE accounts for those disabled individuals. Therefore, the Treasury Department and the IRS are assuring states that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, that they will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the guidance when it is issued. The Treasury Department and the IRS intend to provide transition relief with regard to necessary changes to ensure that the state programs and accounts meet the requirements in the guidance, including providing sufficient time after issuance of the guidance in order for changes to be implemented.

Maryland College Savings Plans

The College Savings Plans of Maryland Board currently operates two plans established in State law: the Maryland Prepaid College Trust and the Maryland College Investment Plan. Chapter 548 of 2008 authorized the board to establish a third plan, the Maryland Broker-Dealer College Investment Plan, but the board has yet to do so. At the end of fiscal 2014, the assets of both operating plans totaled \$4.8 billion across 177,000 accounts.

Tax benefits vary between the plans; however, in any tax year, an individual is eligible for both the subtraction modification for prepaid contributions and the subtraction modification for contributions to the investment plans. For the Maryland Prepaid College Trust, an individual may subtract up to \$2,500 per year, per prepaid contract, from Maryland taxable income for contributions to the plan. For the Maryland College Investment Plan and the Maryland Broker-Dealer College Investment plan, an individual may subtract up to \$2,500 per year, per qualified beneficiary, from Maryland taxable income for total contributions to the plans. For the investment plans, each spouse on a joint tax return is treated separately for this limited purpose. Contributions exceeding \$2,500 may be carried over for 10 successive tax years. Earnings on money invested in college savings plans are not subject to State or federal taxes as long as the funds are used for eligible college expenses.

Special and Supplemental Needs Trusts

Special (or supplemental) needs trusts are intended to hold funds for the benefit of a disabled individual for purposes other than those provided for by Medicaid or other public benefits, without affecting the individual's eligibility for the public benefits. A pooled asset special needs trust is a trust that collectively invests and manages funds of multiple

individuals who are disabled, reducing the costs of trust administration. The assets of a disabled individual used to fund a special needs trust may come from a source such as a personal injury settlement or an inheritance of the individual.

Chapters 561 and 562 of 2011, as amended by Chapter 455 of 2013, established that it is the policy of the State to encourage the use of a special needs trust or supplemental needs trust, including trusts funded by a trust beneficiary or by a third party, by an individual of any age with disabilities to preserve funds to provide for the needs of the individual not met by public benefits and to enhance quality of life.

Additional Information

Prior Introductions: None.

Cross File: SB 761 (Senator Feldman, *et al.*) - Budget and Taxation.

Information Source(s): College Savings Plan of Maryland, Department of Disabilities, Treasurer's Office, Comptroller's Office, Internal Revenue Service, Department of Legislative Services

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