Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 431 (Delegate Bromwell, *et al.*)

Health and Government Operations Budget and Taxation

Maryland Achieving a Better Life Experience (ABLE) Program - Establishment

This bill requires the College Savings Plans of Maryland (CSPM) Board, in consultation with the Maryland Department of Disabilities (MDOD) to establish, administer, manage, and promote the Maryland Achieving a Better Life Experience (ABLE) Program. An income tax subtraction modification is created for contributions to an ABLE account that is similar to the subtraction modifications for contributions to existing 529 plans.

The bill takes effect July 1, 2016, and applies to tax years 2016 and beyond.

Fiscal Summary

State Effect: General fund revenues decrease by $202,100 in FY 2018, escalating to $2.0 million by FY 2021, due to subtraction modifications, under the assumptions discussed below. General fund revenues decrease significantly thereafter. General fund expenditures increase by $642,600 in FY 2017 and $194,500 in FY 2018 to provide minimum start-up funding for the program; nonbudgeted revenues and expenditures for the board increase correspondingly. Beginning as early as FY 2018, nonbudgeted revenues and expenditures increase as necessary to cover direct costs for the board and to make any required repayments to the general fund from fees assessed as authorized in the bill (not shown below). General fund expenditures for the Comptroller increase by $102,400 in FY 2017 for one-time programming expenses. The Governor's proposed fiscal 2017 budget includes $642,600 for CSPM to implement the program and $102,400 for the Comptroller's programming expenses, contingent upon enactment of this bill.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	$0	($202,100)	($1,010,600)	($1,515,800)	($2,021,100)
NonBud Rev.	$642,600	$194,500	$202,000	$209,700	$217,800
GF Expenditure	$744,900	$194,500	$0	$0	$0
NonBud Exp.	$642,600	$194,500	$202,000	$209,700	$217,800
Net Effect	($744,900)	($396,600)	($1,010,600)	($1,515,800)	($2,021,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local income tax revenues decrease by $127,700 in FY 2018, escalating to $1.3 million by FY 2021.

Small Business Effect: None.

Analysis

Bill Summary:

ABLE Program Establishment

The CSPM Board (renamed the Maryland 529 Board under the bill), in consultation with MDOD, must establish, administer, manage, and promote the Maryland ABLE Program, subject to specified conditions. The board may collaborate and participate with other states or entities when doing so. It is the goal of the State that the Maryland ABLE Program be fully operational by October 1, 2017.

The purpose of the program is to (1) encourage and assist individuals and families in saving private funds to support individuals with disabilities to maintain health, independence, and quality of life and (2) provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, not supplant, benefits provided through other specified public and private sources.

The membership of the board is expanded to include the Secretary of Disabilities. The program is subject to Section 529A of the Internal Revenue Code. An eligible individual, as defined in federal law, may participate in and benefit from the program.

The board may issue requests for proposals to evaluate and determine the means for the administration, management, promotion, or marketing of the program. The board must consider proposals that meet the following criteria:

- ability to develop and administer an investment program of a nature similar to the objectives of the program;
- ability to administer financial programs with individual account records and reporting; and
- ability to market the program to eligible individuals.

In addition to any other procedures that it considers necessary to carry out the bill, the board must adopt procedures relating to:

- enrollment for participation in the program; and
- start-up costs incurred by the State for the development of the program, with these costs to be reimbursed to the State by the program.

The Legislative Auditor must audit the program in accordance with current law. The board must also obtain an annual audit report from a service provider within six months of the end of the service provider's reporting period.

Program Funding

The program may receive money from appropriations in the State budget; reasonable fees assessed to beneficiaries; grants or other assistance from federal, State, or local government; and any other money from any other public or private source. The board may require an initial enrollment fee to be used for administrative costs of the program and may require additional reasonable fees associated with program expenses.

Financial Obligations of Program

A person (other than the State) may not attach, execute, garnish, or otherwise seize any current or future benefit under an investment account or any asset of the program.

The bill specifies several conditions related to the debts, contracts, and obligations of the program and their relation to the State's obligation for payment. These are consistent with provisions for the other plans managed by the board.

Treatment of Assets and Income in ABLE Accounts

The assets and income of the program are exempt from State and local taxation. Money and assets in the accounts established under the Maryland ABLE Program or an ABLE program in any other state may not be considered for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or State means-tested programs. The money and assets in each ABLE account must be less than federal limits.

In accordance with federal law, on the death of a designated beneficiary, any state may file a claim for the amount of the total medical assistance paid for the designated beneficiary under the state's Medicaid plan after the establishment of an ABLE account.

Subtraction Modification for ABLE Account Contributors

Each *contributor* to an ABLE account may subtract up to $2,500 per year, per designated beneficiary, from Maryland taxable income for contributions to an ABLE account. 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.

Federal law limits *total* contributions to a single ABLE account in a year to the amount allowed for tax-free gifts (currently $14,000). The board must refund to an ABLE account contributor any amount contributed to an ABLE account over this limit. The bill also creates an addition modification for expenses that do not meet program requirements and ABLE account refunds.

Current Law/Background:

College Savings Plans of Maryland

The CSPM Board currently operates two plans: the Maryland Prepaid College Trust and the Maryland College Investment Plan. At the end of fiscal 2015, the assets of both operating plans totaled $5.2 billion across 188,900 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. Generally, an account holder may subtract up to $2,500, per plan/beneficiary, per year. Contributions can be carried forward for successive 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.

ABLE Program

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 was enacted at the federal level 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.

Eligibility is limited to individuals with significant disabilities for whom the onset of the disability occurred prior to age 26. The total amount of contributions in a single year to an ABLE account is limited to the amount allowed for tax-free gifts ($14,000 currently).

Assets over $100,000 in an account count toward eligibility for Social Security supplemental income.

Chapter 382 of 2015 established the Task Force on the Maryland ABLE Program and required the task force to submit a report on its findings to the Governor and the General Assembly by December 1, 2015. The report can be found on MDOD's website. The bill generally encompasses the recommendations of the task force.

Options for Program Implementation

There are four general ways in which the board may implement the bill, keeping in mind the bill's goal that the program be fully implemented by October 1, 2017, *i.e.*, 15 months after the effective date of the bill. The board is unable to provide a cost estimate for the options at this time; however, any costs are eventually recovered through fees assessed as authorized in the bill. The board notes that in its research of comparable states, *total* start-up costs range from $0.5 million to $1.5 million.

- *CSPM Administration:* This option has no ABLE program services contracted to a third party. CSPM staff process transactions, respond to customer service inquiries, administer the program, manage investments, and produce marketing materials. This is the most intensive of the four options and requires a higher staffing level, higher operating costs, and a potentially longer implementation timeline due to the amount of coordination required (*e.g.*, staffing, training, procurement, etc.).

- *CSPM Contracts Administration to Third Party:* This option is similar to the structure of the existing Maryland College Investment Plan program. Contracting for third-party administration of this type requires CSPM to conduct a procurement, evaluate proposals, contract with a program manager, and develop regulations. In addition to these one-time costs, there are ongoing costs for reporting and maintaining the partnership with the third-party financial services entity as well as potential ongoing costs for marketing and administration. CSPM dictates the services required, but there is a consideration as to which services to contract to a third party. This option may be quicker than the first, but procurement adds uncertainty surrounding the implementation timeline.

- *Contract with a Host State:* Currently, no states offer an ABLE program, but several states developing ABLE programs are looking to offer access to states wishing to participate in their programs. This may offer different models, thereby allowing states to shop for the best option. Under this option, Maryland contracts the ABLE program administration to another state, meaning the host state dictates the offerings and services. Costs may vary depending on the decisions made by the home state. For example, Maryland may elect to not contract for marketing and customer service/call center functions. Those functions would then be performed by Maryland, with attendant costs adding to the cost of the ABLE program. The board advises that this option allows a state to implement a program more quickly than self-administration.

- *CSPM Joins a Consortium:* A group of 15 to 17 states are combining resources to develop an ABLE program with common elements. Any state can join as long as the state enters into an interstate agreement; however, there may be little input into the offerings of this option. This option requires the most intergovernmental cooperation as it requires significant development work and coordination among states that are parties to the consortium. However, this option also has the most potential to (1) offer cost reduction through economies of scale and (2) allow a state to implement an ABLE program more quickly than self-administration. As with the host state model, marketing and customer service/call center functions may be provided by the consortium or may remain "in house" functions of the home state.

State Fiscal Effect:

State Revenues

General fund revenues decrease by $202,113 in fiscal 2018, escalating to $2.0 million by fiscal 2021, due to subtraction modifications for contributions to ABLE accounts authorized under the bill. General fund revenues decrease significantly thereafter. This estimate assumes that:

- the program begins accepting deposits in October 2017, consistent with the goal established in the bill;
- 10% of an estimated 42,550 eligible Maryland residents enroll by the end of 2018, and an additional 5% enroll annually thereafter, as discussed below;
- subtraction modifications are taken in the year following the year in which the contributions are made; and
- each account receives contributions of $5,000 annually that are eligible for a subtraction modification.

Under the account growth assumption, approximately 8,500 accounts are opened by the end of 2020 (and take subtraction modifications in fiscal 2021).

The Department of Legislative Services is unable to estimate the precise number of individuals eligible for the ABLE program at this time, primarily due to the requirement that eligible individuals must have an onset of disability before age 26. The Task Force on the Maryland ABLE Program encountered the same difficulty. However, by using data from the National Disability Institute and applying it to the Maryland population, the task force estimated that the potential pool of ABLE beneficiaries in Maryland is 31,500 to 53,600. For estimation purposes, the midpoint of 42,550 is used. The actual number of eligible individuals may vary from this estimate. In addition, the number of ABLE accounts that will be established is uncertain. The estimate assumes 5% annual increases in participation after the first full year of operations through fiscal 2021; it is unknown when or at what level participation in the program stabilizes. Thus, the fiscal impact may continue to escalate beyond fiscal 2021.

Exhibit 1 shows the estimated impact of the bill on State and local revenues.

Exhibit 1
State and Local Revenue Impacts
Fiscal 2018-2021

	FY 2018	FY 2019	FY 2020	FY 2021
State	($202,100)	($1,010,600)	($1,515,800)	($2,021,100)
Local	(127,700)	(638,300)	(957,400)	(1,276,500)
Total Revenues	**($329,800)**	**($1,648,800)**	**($2,473,200)**	**($3,297,600)**

Note: Numbers may not sum to total due to rounding.
Source: Department of Legislative Services

ABLE Program Establishment

The CSPM Board is a nonbudgeted State entity and receives no operating or capital funds in the State budget. Instead, it is funded though fees assessed on the plans that it manages. There are four general ways in which the board may implement the bill, as discussed above. Regardless of which option the board selects, it requires a minimum of two staff beginning in fiscal 2017 and start-up funding for information technology, legal, and procurement costs in fiscal 2017 to establish the program. It is assumed that general funds are used for these start-up costs in fiscal 2017 and 2018, subject to full repayment beginning as early as fiscal 2018, when plans are established.

Therefore, general fund expenditures increase by $642,560 in fiscal 2017 and $194,528 in fiscal 2018 to fund the minimum start-up costs of the program. The Governor's proposed fiscal 2017 budget includes $642,600 for CSPM to implement the program, contingent upon enactment of this bill.

General fund expenditures increase further to the extent that the board implements the bill in such a way as to require additional general fund support (for example, if the board chooses to directly administer the program). The amount cannot be reliably estimated at this time; however, the board notes that in its research of comparable states, *total* start-up costs range from $0.5 million to $1.5 million.

Nonbudgeted revenues and expenditures for the board increase correspondingly as the board receives start-up funding and expends it to establish the program.

Beginning as early as fiscal 2018, nonbudgeted revenues and expenditures increase as necessary to cover direct costs for the board and make any required repayments to the general fund from fees assessed as authorized in the bill. Accordingly, general fund revenues increase beginning as early as fiscal 2018 from repayments made by the board.

Means-tested Program Eligibility

This estimate does not reflect any change in State revenues or expenditures due to changes in enrollment or eligibility of individuals in means-tested programs, such as Medicaid (a joint federal-State program). The bill likely increases the number of eligible individuals in these programs due to ABLE account assets being excluded from means testing. However, the requirement that, on the death of a designated beneficiary, any state may file a claim for the amount of the total medical assistance paid for the designated beneficiary under the state's Medicaid plan after the establishment of an ABLE account increases future Medicaid revenues. Nevertheless, given the size of the Medicaid budget, the impact is not likely to significantly affect the program.

Other Impacts

MDOD can handle being added to the CSPM Board and consult with CSPM on the ABLE program with existing budgeted resources.

General fund expenditures for the Comptroller increase by $102,384 in fiscal 2017 for one-time programming expenses. The Governor's proposed fiscal 2017 budget includes $102,400 for these expenses, contingent upon enactment of this bill.

The Office of Legislative Audits can audit the program with existing budgeted resources.

Local Revenues: Local income tax revenues decrease by about 3% of the total net State subtraction modification claimed. Accordingly, local revenues decrease by $127,650 in fiscal 2018, escalating to $1.3 million by fiscal 2021 (as shown in Exhibit 1). Local revenues continue to decrease by at least that amount and potentially significantly more thereafter. This estimate does not reflect any change in local revenues or expenditures due to changes in enrollment or eligibility of individuals in local means-tested programs.

Additional Information

Prior Introductions: None.

Cross File: SB 355 (Senator Feldman, *et al.*) - Budget and Taxation.

Information Source(s): College Savings Plans of Maryland, Maryland Department of Disabilities, Comptroller's Office, Office of Legislative Audits, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mel/rhh	Revised - Clarification/Updated Budget Information - March 28, 2016

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