SB 592

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 592 (Senator Zucker, *et al.*)

Education, Energy, and the Environment Ways and Means

Maryland Achieving a Better Life Experience (ABLE) Program - Materials for Individualized Education Program, Individualized Family Service Plan, and 504 Plan Meetings

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This bill requires the State Treasurer to develop written informational materials about the Maryland Achieving a Better Life Experience (ABLE), which must be distributable electronically or by hand, and provide those materials to the State Board of Education and local boards of education for distribution to parents during individualized education program (IEP), individualized family service plan (IFSP), or 504 plan meetings as specified. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: State general fund revenues decrease, potentially significantly, beginning as early as FY 2025 to the extent the bill results in additional subtraction modifications claimed against the personal income tax for contributions to and distributions from new ABLE accounts. State Treasurer nonbudgeted revenues increase, potentially significantly, from fees associated with new accounts, while nonbudgeted expenditures likewise increase for distributions. The State Treasurer can generate informational materials with existing resources.

Local Effect: Potential significant decrease in revenue to the extent more individuals claiming subtraction modifications for contributions to ABLE accounts decrease taxable income. Local school systems can distribute the informational materials as specified with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The Maryland ABLE informational materials must be provided at the initial evaluation meeting and at least one time each year during an IEP or IFSP team meeting. As with other IEP or IFSP informational materials, if a parent's native language is not English, the information must be provided in the parent's native language. If a child who has an IEP or IFSP developed in another school system moves to a different local school system, the new school system must provide the information again in the first communication regarding the child's IEP or IFSP. Failure to provide information does not constitute grounds for a due process complaint.

The informational materials must also be provided at least one time each year at a student's 504 plan meeting. If a student's 504 plan meeting does not occur at least one time each year, the written informational materials must be provided at each 504 plan meeting. If a parent's native language is not English, the written informational materials must be provided in the parent's native language. Parents may request the written informational materials be provided at any subsequent meeting.

Current Law: The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 established a new § 529A of the Internal Revenue Code that permits a state (or a state agency or instrumentality) to establish and maintain another 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. Chapter 39 of 2016 required the Maryland 529 Board, in consultation with the Maryland Department of Disabilities, to establish, administer, manage, and promote the Maryland ABLE Program. Chapter 113 of 2023 abolished the Maryland 529 Board and transferred administration of the Maryland ABLE Program to the State Treasurer. State programs must adhere to minimum federal guidelines to be considered qualified ABLE programs under federal law. Individuals with disabilities for whom the onset of the disability occurred prior to age 26 are considered "eligible individuals" under Internal Revenue Service (IRS) regulations. Eligible individuals who establish an ABLE account and are the owner of such account are "designated beneficiaries" under IRS regulations.

Chapter 637 of 2023 allowed for an ABLE account to be established by the eligible individual or a person selected by the eligible individual. If the eligible individual is unable to establish an ABLE account, the eligible individual's agent under power of attorney may establish an account. If the eligible individual does not have a power of attorney, in priority order, an ABLE account may be opened for the eligible individual by the individual's (1) conservator or legal guardian; (2) spouse; (3) parent; (4) sibling; (5) grandparent; or (6) representative payee appointed by the Social Security Administration.

The assets and income of ABLE accounts 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.

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. The State Treasurer must refund to an ABLE account contributor any amount contributed to an ABLE account over this limit. There is also an addition modification for expenses that do not meet program requirements and ABLE account refunds.

Individualized Education Programs

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an IFSP or IEP specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland's Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities ages 3 through 21. Local school systems are required to make a free appropriate public education available to students with disabilities from ages 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

At the initial evaluation meeting, the parents of a child with a disability must be provided certain information, including (1) in plain language, a verbal and written explanation of the parents' rights and responsibilities in the process and a program procedural safeguards notice; (2) written information that the parents may use to contact early intervention and special education family support services and staff members within the local school system and a brief description of the services provided by staff members; and (3) written information on the Special Education Ombudsman and toll-free telephone number. If a parent's native language is not English, the information must be provided in the parent's native language. The parents may request this information at any subsequent meeting. If a child who has an IEP developed in another school system moves to a different local school system, the new school system must provide the information in the first communication regarding the child's IEP. Failure to provide information does not constitute grounds for a due process complaint.

Section 504 Plans

Under Section 504 of the federal Rehabilitation Act of 1973, an organization that receives federal money, including public and many private schools, may not discriminate against a person on the basis of a disability. Section 504 requires schools to make a "reasonable accommodation" for students with disabilities to allow them to participate in school and school-related activities. Section 504 plans can be created to help students with disabilities receive accommodations that are not covered by their IEP. Students with disabilities who do not need an IEP may still receive accommodations through a Section 504 plan.

For example, a student who has diabetes may have a Section 504 plan that includes a schedule for getting medication. A student who uses a wheelchair may have a Section 504 plan that provides for special transportation during field trips.

State Fiscal Effect: The bill likely results in new ABLE accounts being created beginning as early as fiscal 2025. Accordingly, State Treasurer nonbudgeted revenues for ABLE accounts increase, potentially significantly, from fees associated with the new accounts. Likewise, nonbudgeted expenditures increase for distributions. Any such increase in ABLE accounts has additional impacts, as discussed below.

Income Tax Subtraction Modifications: The Comptroller's Office advises that, for tax year 2022, 1,340 tax filers claimed about $4.2 million in income subtraction modifications for contributions to ABLE accounts. Based on data from tax years 2017 through 2021, on average, 4.4% of the value of income tax subtraction modifications is foregone in State revenues. Assuming State tax revenues continue to decrease by about 4.4% of the total amount of subtraction modifications claimed and each tax filer continues to subtract an average of $3,134 in contributions, for every 1,000 additional filers claiming the subtraction modification, State revenues decrease by approximately $137,500. Given the bill's July 1, 2024 effective date and assuming information is disseminated beginning in the final six months of 2024, new accounts may be opened in 2024 and subtraction modifications claimed when 2024 taxes are filed in 2025; therefore, any revenue impacts of the bill could begin as early as fiscal 2025.

An additional 300 tax filers claimed about $550,000 in subtraction modifications for distributions from ABLE accounts. However, the total impact of the bill on distributions from ABLE accounts is difficult to quantify given the potential for distributions to occur many years after any initial contributions.

Means-tested Programs: New ABLE accounts created as a result of the bill would have their assets excluded from means testing for State programs such as Medicaid and, therefore, could increase the number of eligible individuals in those programs. However, given the size of the Medicaid budget, the impact is not likely to significantly affect the program. Any such impact has not been accounted for in this analysis.

Local Revenues: Although an exact estimate of the total impact of new ABLE subtraction modifications on local governments is not feasible, local revenues decrease beginning as early as fiscal 2025 to the extent additional individuals claim an income subtraction modification as a result of the bill. For tax year 2022, 1,340 tax filers claimed about $4.2 million in income subtraction modifications for contributions to ABLE accounts. Based on data from tax years 2017 through 2021, on average, 2.8% of the value of income tax subtraction modifications is foregone in local tax revenues. Therefore, assuming local tax revenues continue to decrease by about 2.8% of the total amount of subtraction modifications claimed and each tax filer continues to subtract an average of $3,134 in contributions, for every 1,000 additional filers claiming the subtraction modification, local revenues decrease by approximately $88,500.

An additional 300 tax filers claimed about $550,000 in subtraction modifications for distributions from ABLE accounts. However, the total impact of the bill on distributions from ABLE accounts is difficult to quantify given the potential for distributions to occur many years after any initial contributions.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 336 (Delegate Forbes, *et al.*) **-** Ways and Means.

Information Source(s): Maryland State Treasurer’s Office; Comptroller’s Office; Baltimore City Public Schools; Baltimore County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2024
km/clb Third Reader - March 21, 2024
Revised - Amendment(s) - March 21, 2024

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