



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 155 of the 131st G.A.

**Date:** May 19, 2015

**Status:** As Reported by House Community and Family Advancement

**Sponsor:** Reps. Dever and Conditt

**Local Impact Statement Procedure Required:** No

**Contents:** To require the Treasurer of State to create a program offering federally tax-advantaged savings accounts used to pay for a person's qualified disability expenses and to disregard the value of and income from that account in determining whether that person is eligible for state or local means-tested public assistance

### State Fiscal Highlights

- The bill requires the Treasurer of State to implement and administer the Achieve Better Living Experience (ABLE) program in Ohio. The requirements would increase the Treasurer's administrative costs. Any increase in such costs would be paid from a newly created fund, the Ohio ABLE Savings Expense Fund, in the state treasury. The bill allows the Treasurer to impose a nonrefundable application fee.
- The Expense Fund would consist of money received from program managers, governmental or private grants, appropriations for the program, and nonrefundable application fees collected by the Treasurer.
- The bill also creates the Ohio ABLE Savings Program Trust Fund, in the custody of the Treasurer to accept deposits from contributors rather than have deposits sent directly to a program manager.
- The bill creates a nine-member board, the ABLE Account Program Advisory Board, to review the work of the Treasurer in regard to the program, and all expenses and reimbursements allowed for the Board will be paid from the Expense Fund described above.

### Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

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## Detailed Fiscal Analysis

### Qualified ABLE program

The bill requires the Office of the Treasurer of State to implement and administer the Achieve Better Living Experience (ABLE) program in the state. The bill specifies the terms and conditions of the program. Under the program, a designated beneficiary, or a trustee or guardian of a designated beneficiary who lacks the capacity to enter into an agreement, may apply and open an ABLE account to provide funding for the benefit of an eligible individual.<sup>1</sup> The bill allows the Treasurer, the Department of Medicaid, departments of Job and Family Services, Health, Mental Health and Addiction Services, Developmental Disabilities, Aging, and Opportunities for Ohioans with Disabilities Agency to exchange information related to eligible individuals for the purpose of administering or enforcing the program.

### ABLE accounts

The bill also specifies eligibility requirements to open an ABLE account, which are similar to the requirements under federal law.<sup>2</sup> The bill includes information needed to apply and specifies limitations related to the ABLE account. Annual contributions to an ABLE account are limited to the maximum amount that could be excluded from federal gift tax, which is \$14,000 in 2015. The bill provides that a maximum account value for an ABLE account, to be the maximum amount that may be necessary to pay for the qualified higher education expenses of a beneficiary as established by the Ohio Tuition Trust Authority. The maximum value is \$414,000 as of January 1, 2015.

### Treasurer of State

The bill specifies the Office of the Treasurer's responsibilities and administrative duties related to the program. Under the bill, the Treasurer is required to modify the program as necessary to qualify for the federal income tax benefits or treatment provided under federal law or rules. The bill requires the Treasurer to seek rulings and other guidance from the U.S. Secretary of the Treasury and the Internal Revenue Service related to the program. The bill requires the Treasurer to notify the U.S. Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program as required by the U.S. Secretary or under federal law. The bill also requires the Treasurer to establish the procedures related to funds held in accounts under the program.

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<sup>1</sup> The account is modeled after the qualified tuition programs authorized under Section 529 of the Internal Revenue Code.

<sup>2</sup> Under federal law, an individual is an "eligible individual" under the program if the individual is eligible for Social Security benefits based on blindness or disability and the blindness or disability occurred before the individual turned age 26.

The bill requires the Treasurer to solicit proposals from financial organizations to act as depositories and managers of the program. Under the bill, the Treasurer is allowed to enter into a contract or series of contracts with one or more financial organizations to act as a manager and depository for the program and the bill specifies the minimum terms of such contracts. The bill allows program managers to charge an annual fee to an account owner for the maintenance of an account. Program managers may also charge other fees, payable to the state to cover the program's operating expenses. The Treasurer is required to take custody of accounts held by the program manager and seek to promptly transfer such accounts to another program manager and into investment instruments as similar to the original instruments as possible, if the Treasurer terminates or does not renew a management contract.

The bill requires the Treasurer to impose and collect administrative fees and service charges in connection with any agreement or transaction related to the program, and to adopt necessary rules to implement and administer the program. The bill allows the Treasurer to enter into agreements with other states to either allow Ohio residents to participate in an ABLE account plan operated by another state or to allow residents of other states to participate in the program. The bill also allows the Treasurer to impose a nonrefundable application fee related to the ABLE account.

#### **ABLE Account Program Advisory Board**

The bill creates a nine-member board, the ABLE Account Program Advisory Board, and specifies the duties, terms, and eligibility requirements for members of the Board. The bill requires the Director of Developmental Disabilities or the Director's designee to call the first Board meeting within 60 days after the bill's effective date. Each member of the Board is to be reimbursed for the actual and necessary travel expenses incurred in the performance of the member's official duties, on request to the Treasurer. The bill requires the Treasurer to provide the Board with the resources necessary to conduct its business. The Board may accept uncompensated assistance from individuals, research organizations, and other state agencies.

The Board is to prepare, on or before the 31st day of December of each year, in consultation with the Treasurer, a report of the Board's activities and recommendations and deliver that report to the Governor, Speaker of the House of Representatives, and President of the Senate. The Board may also prepare additional reports on its activities and offer recommendations related to the program.

#### **Ohio ABLE Savings Program Trust Fund and Ohio ABLE Savings Expense Fund**

The bill creates a new fund, the Ohio ABLE Savings Program Trust Fund (Trust Fund), in the custody of the Treasurer to be used if the Treasurer elects to accept deposits from contributors rather than have deposits sent directly to a program manager. The bill specifies that moneys in the Trust Fund must be disbursed upon an order of the Treasurer.

The bill also creates in the state treasury the Ohio ABLE Savings Expense Fund (Expense Fund). The Expense Fund would consist of all interest earned from moneys in the Trust Fund described above, money received from program managers, governmental or private grants, or appropriations for the program. The bill specifies that all expenses incurred by the Treasurer in developing and administering the ABLE account program and all expenses and reimbursements allowed for the ABLE Account Program Advisory Board must be payable from the Expense Fund.

### **Exclusion from means testing**

The bill specifies that any amount in an ABLE account, including earnings on the account, contributions to an ABLE account, and distribution from an ABLE account for qualified disability expenses are exempted from being considered for the purposes of determining an individual's eligibility for a means-tested public assistance program funded only with state, local, or state and local funds and the amount of assistance or benefits the individual is eligible to receive under the program.

### **Fiscal effect**

The bill would increase the Treasurer of State administrative costs to implement and administer the ABLE program. Any increase in such costs would be paid from the Ohio ABLE Savings Expense Fund. The bill allows the Treasurer to impose a nonrefundable application fee. Any fees collected by the Treasurer would be deposited into the Fund as well.

### **Indirect fiscal effect**

Under current rules, withdrawals (including earnings) from a qualified ABLE account that are used for any qualified purposes would not be included in federal and Ohio income, and as such would be exempt from both federal and Ohio income taxes. Therefore, the bill potentially reduces Ohio personal income tax revenue. The potential revenue loss would depend on the number of ABLE accounts opened by Ohio residents and the total values of such accounts. Generally, though moneys disbursed from an ABLE account for qualified disability expenses are exempted from federal income tax, withdrawals used for unqualified disbursements or purposes may be subject to income tax and a penalty. In addition, the provisions related to the exclusion from means testing may increase local political subdivisions costs. Any such increase would depend on the number of eligible individuals, who would exclude moneys in an ABLE account, including earnings on the account, contributions to, and distribution from an ABLE account for determining such individuals' eligibility for a means-tested public assistance program funded only with local or state and local funds and the amount of assistance or benefits the individuals are eligible to receive under the program.