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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR Martinez, K/O'Neill **LAST UPDATED** 02/25/15 **HB** 467

SHORT TITLE ABLE Act Individual Development Accounts **SB** _____

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate See Fiscal Implications	Indeterminate See Fiscal Implications	Indeterminate See Fiscal Implications		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 448

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
 NM State Investment Council (SIC)
 Attorney General's Office (AGO)
 Commission for the Blind

SUMMARY

“Achieving a better life experience” (ABLE) accounts would be tax-advantaged savings accounts for individuals with disabilities and their families allowable from passage of the federal ABLE Act of 2014. Income earned by the accounts would not be taxed. Account assets could be withdrawn tax free, as long as they are used for eligible services such as housing, transportation, assistive technology, and home health aides.

An ABLE program would be established in “the office” (presumably the State Investment Office of the New Mexico State Investment Council) and the program would be administered by the office. ABLE accounts would be similar to 529 college savings plans; as such, an ABLE program trust fund would be created and would be invested by the office or by a contracted financial organization.

Administrative fees required to operate and administer the program could be charged and the office would be permitted to enter a management contract with one or more financial organizations. An ABLE program administration fund would be created consisted of all administrative fees and other money credited to the fund, earnings from investment of the fund, and could be used for the costs of administering the fund.

The office would be permitted to provide ABLE Act services to qualifying members of contracting states.

The office is directed to promulgate rules as necessary to carry out the purposes of the ABLE Act.

The provisions of the Act are to be applied in taxable years starting January 1, 2015.

FISCAL IMPLICATIONS

SIC projects indeterminate but significant fiscal implications in establishing a savings and investment program of this nature, especially given the scope, complex administrative requirements, and unknown potential number of participants, including potential eligible people from other contracting states. [However, there are limits to the number of eligible people. Only people who became disabled before age 26 would be eligible. For the most part, according to Forbes.com, ABLE would be limited to people with developmental disabilities, mental illness, and severe childhood conditions such as cerebral palsy. Fewer older adults would be eligible since their disability usually results from late-in-life diseases such as dementia, heart failure, and severe arthritis.]

SIC notes the bill allows for fees to be assessed and services outsourced to a degree; however, even assuming 100 percent outsourcing, the SIC projects additional monitoring, accounting, audit and administrative support would be necessary to properly monitor, oversee and guide the program.

SIC points out it manages more than \$700 million in non-permanent fund state dollars for 17 government clients and agencies. However, these clients must choose their own investment policies, develop their own long-term investment targets and follow rigid contribution/distribution rules and guidelines to passively participate in SIC's low-cost, high-quality investment pools. Client services and investment reporting provided by SIC today dovetail with its existing mission of prudent investment of the permanent funds, and come nowhere close to the servicing, monitoring and regulatory requirements dictated in this legislation. In addition, SIC argues that essentially serving as a bank for a qualifying subset of specific New Mexico residents does not complement the core goals and mission of the SIC, which is to grow and protect the state's permanent endowment funds for future generations through prudent and professional investment management.

Though similar to NM Pensions ERB and PERA insofar as all three investment agencies act as fiduciaries in seeking to optimize returns for beneficiaries, the SIC is not equipped with staff assigned to specifically address client needs as the primary function of employment. ERB and PERA both employ client services and account representatives to appropriately serve pensioners.

Regarding fiscal impacts to ABLE account holders: Similar 529 college savings plans, ABLE account holders or their designees would have to be cognizant of investment risks associated with available investment plans; aware of fees and other potential administrative costs; and familiar with limits regarding allowable expenses associated with these accounts. In fact, SIC noted that while there are multi-state savings program providers for college expenses (529 savings plans), the rules, restrictions, fees and performance of such programs have an extremely varied track record, with many drawing a high level of criticism.

In New Mexico, during the financial crisis of 2008/2009, participants in the 529 program experienced losses exceeding 40-percent of their assets in the Core Bonds allocation, purportedly the most conservative strategy available to investors. The manager at the time, Oppenheimer, was largely replaced by the state board overseeing the outsourced investment management of the funds, but only after multiple lawsuits and a settlement payment by the manager to participants, amounting to approximately \$0.30/dollar. Potential hazards such as this, as well as associated legal costs and liabilities to the state do not appear to be contemplated in the bill.

PERFORMANCE IMPLICATIONS

SIC notes also the performance impact is indeterminate given the likelihood that the investment office would outsource a significant portion of the administrative and investment functions outlined in this bill to one or more private managers or entities. SIC argues shifting focus in any manner from its current task of managing \$20 billion in state investments would be a risk for the state.

SIGNIFICANT ISSUES

Disabled people and their families depend on a variety of public benefits for income, health care and food and housing assistance; however, eligibility for these public benefits (SSI, SNAP, Medicaid) requires meeting a means or resource test that limits eligibility and requires individuals to report more than \$2,000 in cash savings, retirement funds and other items of significant value. Disability advocates argue that to remain eligible for these public benefits, an individual must remain poor. The ABLE Act is intended to recognize the extra and significant costs of living with a disability, to include costs related to raising a child with significant disabilities or a working age adult with disabilities for accessible housing and transportation, personal assistance services, assistive technology and health care not covered by insurance, Medicaid or Medicare.

Through the ABLE Act, eligible individuals and families would be allowed to establish ABLE savings accounts that would not affect their eligibility for SSI, Medicaid and other public benefits. Disabled individuals or designated beneficiaries could pay for disability-related expenses that would “supplement, but not supplant,” benefits provided through private insurance, Medicaid, SSI, the beneficiary’s employment and other sources.

The total annual contributions by all participating individuals, including family and friends, would be \$14,000, adjusted annually for inflation. Total contributions limits would be subject to the individual state and its limit for education-related 529 savings accounts. Many states have set this limit at more than \$300,000 thousand per plan. However, for individuals with disabilities who are recipients of SSI and Medicaid, the ABLE Act sets some further limitations. The first \$100,000 thousand in ABLE accounts would be exempted from the SSI \$2,000 individual

resource limit. If and when an ABLE account exceeds \$100,000, the beneficiary would be suspended from eligibility for SSI benefits and no longer receive that monthly income. However, the beneficiary would continue to be eligible for Medicaid. States would be able to recoup some expenses through Medicaid upon the death of the beneficiary

ALTERNATIVES

As established by the federal government, each state will need to decide whether to offer a qualified ABLE program to its residents, and if so, whether the program will be state-run, run by another entity such as a financial services firm, or whether to contract with another state. The federal government is expected to release regulations and other guidance by June 2015.

The bill as written currently requires the SIC to establish and administer ABLE accounts for eligible New Mexicans; however, 1) it is unclear what the potential performance and financial burden might be for the SIC at this time, 2) federal regulations and guidance are still forthcoming, and 3) there may be other options or more qualified entities for administering ABLE accounts (including the potential availability of other state qualified ABLE plans for use by New Mexicans).

It might be prudent to wait for federal guidance, observe how other states implement ABLE accounts, or scale back the specific requirements in this bill to allow for more flexibility and planning for the creation of these ABLE accounts.

SIC pointed out the state could issue an RFP seeking private entities to compete for and implement an ABLE Act to test its viability; specifically, an RFP might reveal whether there is sufficient demand for such a program, and whether banking fees could economically sustain its implementation as well as pay for the associated costs required to regulate such bank accounts, presumably by the NM Financial Institutions Divisions of RLD. If there is in fact already a provider of such services, as well as an existing demand which can remain viable at an attractive price point, there will not be a need for a government-run intermediary.

TECHNICAL ISSUES

The Commission for the Blind requested the following be noted:

The Social Security Administration published new rules for visual disorders in the Federal Register (71 FR 67037) on November 20, 2006. These rules became effective on February 20, 2007. Under this rule, persons who have best corrected vision that is worse than 20/100 are now determined eligible based on statutory blindness. This was done to reflect the fact that the Snellen methodology eye charts used by ophthalmologists went from 20/100 to 20/200, with no gradations in between. However, ophthalmologists are increasingly using newer eye charts that can measure vision between 20/100 and 20/200. As a result, if a patient went to one of these ophthalmologists and receives an acuity measurement of 20/150, he or she would be declared ineligible, whereas if the same person went to a different doctor using the old chart would be measured with an acuity of 20/200 and would be declared eligible.

Recommended language:

C. "blind" means a person has central visual acuity of twenty/two hundred or less in the better eye with the use of a correcting lens; provided that an eye that is accompanied by a limitation in

the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees shall be considered as having a central visual acuity of twenty/two hundred or less; and provided further that a person is also considered to be blind if the person is blind as defined under a state plan approved pursuant to Title 10 or Title 16 of the federal Social Security Act in effect for October 1972 and received aid under such plan, on the basis of blindness, for December 1973, so long as the person has been continuously blind. Blindness also means eligibility pursuant to the rules published by the Social Security Administration for visual disorders in the Federal Register (71 FR 67037), published on November 20, 2006, which became effective on February 20, 2007.

CEB/je