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P.L.2015, CHAPTER 185, *approved January 11, 2016*  
Senate Substitute for  
Senate, No. 2770

1 AN ACT concerning trust accounts for persons with certain  
2 disabilities, amending P.L.1997, c.237, and supplementing Title  
3 52 of the Revised Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to  
9 read as follows:

10 13. a. Gross income shall not include earnings on **[**an education  
11 individual retirement**]** a Coverdell education savings account, **[or]**  
12 a qualified State tuition program account, or a qualified ABLE  
13 account until the earnings are distributed from the account, at which  
14 time they shall be includible in the gross income of the distributee  
15 except as provided in this section.

16 b. Gross income shall not include qualified distributions as  
17 defined in paragraph (3) of subsection c. of this section.

18 c. For purposes of this section:

19 (1) **["Education individual retirement account"]** "Coverdell  
20 education savings account" means **[**an education retirement**]** a  
21 Coverdell education savings account as defined pursuant to  
22 paragraph (1) of subsection (b) of section 530 of the federal Internal  
23 Revenue Code of 1986, 26 U.S.C. s.530.

24 (2) "Qualified State tuition program account" means an account  
25 established pursuant to the "New Jersey Better Educational Savings  
26 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) **[**, an  
27 account established pursuant to the "New Jersey Prepaid Higher  
28 Education Expense Program," P.L.2001, c.262 (C.18A:71B-64 et  
29 seq.)**]** or an account established pursuant to any qualified State  
30 tuition program, as defined pursuant to subsection (b) of section  
31 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529  
32 or a tuition credit or certificate purchased pursuant to any such  
33 program.

34 (3) "Qualified distribution" means any of the following:

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 (a) a distribution from a qualified State tuition program account  
2 that is used for qualified higher education expenses as defined  
3 pursuant to paragraph (3) of subsection (e) of section 529 or a  
4 distribution from a qualified ABLE account that is used for  
5 qualified disability expenses as defined pursuant to paragraph (5) of  
6 subsection (e) of section 529A of the federal Internal Revenue Code  
7 of 1986, 26 U.S.C. s.529 or 529A;

8 (b) a rollover from one account to another account as described  
9 in clause (i) of subparagraph (C) of paragraph (3) of subsection (c)  
10 of section 529, clause (i) of subparagraph (C) of paragraph (1) of  
11 subsection (c) of section 529A, or paragraph (5) of subsection (d) of  
12 section 530 of the federal Internal Revenue Code of 1986, 26  
13 U.S.C. s.529,529A, or 530; or

14 (c) a change in designated beneficiaries of an account as  
15 described in clause (ii) of subparagraph (C) of paragraph (3) of  
16 subsection (c) of section 529, clause (ii) of subparagraph (C) of  
17 paragraph (1) of subsection (c) of section 529A, or paragraph (6) of  
18 subsection (d) of section 530 of the federal Internal Revenue Code  
19 of 1986, 26 U.S.C. s.529,529A, or 530; and

20 (d) any other transfer involving a qualified ABLE account  
21 which is a qualified distribution for the purposes of section 529A of  
22 the federal Internal Revenue Code, 26 U.S.C. s.529A.

23 (4) “Qualified ABLE account” means an account established  
24 pursuant to P.L. , c. (C. ) (pending before the Legislature  
25 as this bill) or an account established pursuant to any qualified State  
26 ABLE Program established pursuant to section 529A of the federal  
27 Internal Revenue Code of 1986, 26 U.S.C. s.529A.

28 d. The portion of a distribution from **【an education individual**  
29 **retirement】** a Coverdell education savings account, a qualified  
30 ABLE account, or a qualified State tuition program account that is  
31 attributable to earnings shall be determined in accordance with the  
32 principles of section 72 of the federal Internal Revenue Code of  
33 1986, 26 U.S.C. s.72, as applied for purposes of sections 529,529A,  
34 and 530 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
35 ss.529,529A, and 530.

36 (cf: P.L.2001, c.262, s.21)

37  
38 2. (New section) The Department of the Treasury, in  
39 cooperation with the Department of Human Services, shall  
40 establish, in accordance with section 529A of the federal Internal  
41 Revenue Code of 1986, 26 U.S.C. s.529A, the “New Jersey  
42 Achieving a Better Life Experience (ABLE) Program.” The  
43 departments may contract with a third party provider to administer  
44 and operate the program.

1       3. (New section) The Department of the Treasury shall ensure  
2 that participants can readily deposit and withdraw funds from  
3 ABLE accounts in accordance with 26 U.S.C. s.529A.

4  
5       4. (New section) The Department of Human Services shall be  
6 responsible for program services. The department may contract  
7 with a third party provider to administer any or all program  
8 services, which shall include, but not be limited to:

9       a. Promoting the program to the communities most likely to  
10 benefit from access to ABLE accounts;

11       b. Evaluating, qualifying, and processing applications to the  
12 program in accordance with 26 U.S.C. s.529A; and

13       c. Processing claims from an ABLE account holder to the  
14 Department of Human Services or other institution assigned to  
15 administer the ABLE account in accordance with 26 U.S.C. s.529A.

16  
17       5. (New section) The Department of the Treasury and the  
18 Department of Human Services shall take all actions required so  
19 that the program is treated as a qualified State ABLE Program  
20 under 26 U.S.C. s.529A.

21  
22       6. (New section) Annually, the Department of the Treasury  
23 shall determine a dollar amount of an ABLE account, which shall  
24 not be less than \$25,000, which shall not be considered in  
25 evaluating the financial needs of a designated beneficiary or be  
26 deemed a financial resource or a form of financial aid or assistance  
27 to a designated beneficiary, for purposes of determining the  
28 eligibility of the beneficiary for any scholarship, grant, or monetary  
29 assistance awarded by the State for the purposes of financing the  
30 education expenses of the beneficiary, including higher education  
31 expenses; nor shall the amount of any account as determined by the  
32 Department of the Treasury provided for a designated beneficiary  
33 under P.L. , c. (C. ) (pending before the Legislature as this  
34 bill) reduce the amount of any scholarship grant or monetary  
35 assistance which the beneficiary is entitled to be awarded by the  
36 State for the purposes of financing education expenses.

37  
38       7. (New section) Notwithstanding any other provision of State  
39 law or regulation that requires consideration of one or more  
40 financial circumstances of an individual, for the purpose of  
41 determining eligibility to receive, or the amount of, any assistance  
42 or benefit authorized by such provision to be provided to or for the  
43 benefit of such individual, any amount, including earnings thereon,  
44 in any ABLE account of such individual, and any distribution for  
45 qualified disability expenses shall be disregarded for such purpose  
46 with respect to any period during which such individual maintains,

1 makes contributions to, or receives distributions from such ABLE  
2 account.

3  
4 8. (New section) The Department of Human Services and the  
5 Department of the Treasury shall, pursuant to the “Administrative  
6 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
7 and regulations governing the administration and operation of the  
8 program as may be necessary to effectuate the provisions of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill)  
10 in accordance with 26 U.S.C. s.529A.

11  
12 9. This act shall take effect on the first day of the 10th month  
13 next following the date of enactment.

14  
15  
16 STATEMENT

17  
18 This floor substitute requires the Department of Human Services  
19 and the Department of the Treasury to establish the “New Jersey  
20 Achieving a Better Life Experience (ABLE) Program” pursuant to  
21 the federal ABLE Act, 26 U.S.C. s.529A. Under the program,  
22 individuals with certain disabilities will be permitted to establish  
23 ABLE accounts that may be used to pay certain disability-related  
24 expenses. ABLE accounts will be exempt from state income  
25 taxation and will not be included as an asset or income when  
26 determining the individual’s eligibility for State assistance  
27 programs.

28 The Departments of Human Services and Treasury will be  
29 permitted to contract with a third party provider to administer and  
30 operate the program, including providing program services such as  
31 promoting the program to communities likely to benefit from access  
32 to ABLE accounts, processing applications for ABLE accounts, and  
33 processing claims from ABLE account holders to institutions  
34 assigned to administer their ABLE accounts. The Department of  
35 the Treasury will be required to ensure that participants can readily  
36 deposit and withdraw funds from ABLE accounts. The Departments  
37 of Human Services and Treasury will further be required to take all  
38 actions as may be necessary to ensure the program meets the  
39 requirements under federal law to be treated as a qualified State  
40 ABLE Program.

41

42

43

44

45 Authorizes establishment of Achieving a Better Life Experience  
46 accounts for persons with certain disabilities.

**SENATE, No. 2770**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED FEBRUARY 24, 2015

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator DAWN MARIE ADDIEGO**

**District 8 (Atlantic, Burlington and Camden)**

**SYNOPSIS**

Authorizes establishment of tax-exempt Achieving a Better Life Experience accounts for persons with developmental disabilities

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/10/2015)**

S2770 SWEENEY, ADDIEGO

2

1 AN ACT concerning trust accounts for persons with developmental  
2 disabilities, amending P.L.1997, c.237, and supplementing Title  
3 30 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to  
9 read as follows:

10 13. a. Gross income shall not include earnings on an education  
11 individual retirement account, **[or]** a qualified State tuition program  
12 account, or a qualified ABLE account until the earnings are  
13 distributed from the account, at which time they shall be includible  
14 in the gross income of the distributee except as provided in this  
15 section.

16 b. Gross income shall not include qualified distributions as  
17 defined in paragraph (3) of subsection c. of this section.

18 c. For purposes of this section:

19 (1) "Education individual retirement account" means an  
20 education retirement account as defined pursuant to paragraph (1)  
21 of subsection (b) of section 530 of the federal Internal Revenue  
22 Code of 1986, 26 U.S.C. s.530.

23 (2) (a) "Qualified State tuition program account" means an  
24 account established pursuant to the "New Jersey Better Educational  
25 Savings Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.), an  
26 account established pursuant to the "New Jersey Prepaid Higher  
27 Education Expense Program," P.L.2001, c.262 (C.18A:71B-64 et  
28 seq.) or an account established pursuant to any qualified State  
29 tuition program, as defined pursuant to subsection (b) of section  
30 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529  
31 or a tuition credit or certificate purchased pursuant to any such  
32 program;

33 (b) "Qualified ABLE account" means an account established  
34 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
35 this bill) or an account established pursuant to any qualified State  
36 ABLE program established pursuant to subsection (f) of section 529  
37 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

38 (3) "Qualified distribution" means any of the following:

39 (a) a distribution from a qualified State tuition program account  
40 that is used for qualified higher education expenses as defined  
41 pursuant to paragraph (3) of subsection (e) of section 529 or a  
42 distribution from a qualified ABLE account that is used for  
43 qualified disability expenses as defined pursuant to paragraph (3) of  
44 subsection (f) of section 529 of the federal Internal Revenue Code  
45 of 1986, 26 U.S.C. s.529;

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.



1 (b) a rollover from one account to another account as  
2 described in clause (i) of subparagraph (C) of paragraph (3) of  
3 subsection (c) of section 529, paragraph (4) of subsection (f) of  
4 section 529, or paragraph (5) of subsection (d) of section 530 of the  
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

6 (c) a change in designated beneficiaries of an account as  
7 described in clause (ii) of subparagraph (C) of paragraph (3) of  
8 subsection (c) of section 529, paragraph (4) of subsection (f) of  
9 section 529, or paragraph (6) of subsection (d) of section 530 of the  
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

11 d. The portion of a distribution from an education individual  
12 retirement account, a qualified ABLE account, or a qualified State  
13 tuition program account that is attributable to earnings shall be  
14 determined in accordance with the principles of section 72 of the  
15 federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied  
16 for purposes of sections 529 and 530 of the federal Internal  
17 Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

18 (cf: P.L.2001, c.262, s.21)

19

20 2. (New section) As used in P.L. , c. (C. ) (pending  
21 before the Legislature as this bill):

22 "Account" means an individual ABLE account established in  
23 accordance with P.L. , c. (C. ) (pending before the  
24 Legislature as this bill);

25 "Contributor" means the person or organization contributing to  
26 and maintaining an account and having the right to withdraw funds  
27 from the account before the account is disbursed to or for the  
28 benefit of the designated beneficiary;

29 "Designated beneficiary" means: the individual designated at the  
30 time the account is opened as the individual whose qualified  
31 disability expenses are expected to be paid from the account and the  
32 replacement beneficiary if the change in designated beneficiary  
33 would not result in a distribution that is included in federal gross  
34 income under section 529 of the federal Internal Revenue Code of  
35 1986, 26 U.S.C. s.529;

36 "Division" means the Division of Developmental Disabilities in  
37 the Department of Human Services;

38 "Investment Manager" means the Division of Investment in the  
39 Department of the Treasury or the private entities authorized to do  
40 business in this State that may be designated by the division to  
41 invest the funds of the trust pursuant to the terms of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill);

43 "Member of the family" means a member of the family as  
44 defined in or for purposes of section 529 of the federal Internal  
45 Revenue Code of 1986, 26 U.S.C. s.529;

46 "Nonqualified withdrawal" means a withdrawal from an account  
47 other than: (1) a qualified withdrawal; (2) a withdrawal made as the  
48 result of the death or disability of the designated beneficiary of an

1 account; (3) a withdrawal made on account of a scholarship (or  
2 allowance or payment described in subparagraph (B) or (C) of  
3 paragraph (1) of subsection (d) of section 135 of the federal Internal  
4 Revenue Code of 1986, 26 U.S.C. s.135) received by the designated  
5 beneficiary, but only to the extent of the amount of that scholarship,  
6 allowance or payment; or (4) a rollover or change in designated  
7 beneficiary which would not result in a distribution includible in  
8 federal gross income under section 529 of the federal Internal  
9 Revenue Code of 1986, 26 U.S.C. s.529;

10 "Program" means the "New Jersey Achieving a Better Life  
11 Experience (ABLE) Program" established pursuant to  
12 P.L. , c. (C. ) (pending before the Legislature as this bill);

13 "Qualified disability expenses" means expenses described in  
14 paragraph (3) of subsection (f) of section 529 of the federal Internal  
15 Revenue Code of 1986, 26 U.S.C. s.529, made for the benefit of an  
16 individual with a disability who is a designated beneficiary. A  
17 "qualified disability expense" shall be related to the beneficiary's  
18 disability and shall supplement, but not supplant, impair, or  
19 diminish, any benefits or assistance of any Federal, State, or other  
20 governmental entity for which the beneficiary may otherwise be  
21 eligible or which the beneficiary may be receiving;

22 "Qualified withdrawal" means a withdrawal from an account to  
23 pay the qualified disability expenses of the designated beneficiary  
24 of the account. A qualified withdrawal may be made by an agent of  
25 the beneficiary who has power of attorney or by the beneficiary's  
26 legal guardian;

27 "Trust" means the "New Jersey Achieving a Better Life  
28 Experience Trust (ABLE Trust)" established pursuant to section 3  
29 of P.L. , c. (C. ) (pending before the Legislature as this  
30 bill).

31

32 3. (New section) Pursuant to the ABLE program established  
33 by P.L. , c. (C. ) (pending before the Legislature as this bill),  
34 there is created within the Division of Developmental Disabilities in  
35 the Department of Human Services the New Jersey Achieving a  
36 Better Life Experience (ABLE) Trust. The ABLE program shall  
37 provide a mechanism through which the division, as trustee, holds  
38 accounts established and maintained in the ABLE Trust pursuant to  
39 the provisions of this act to finance the cost of qualified disability  
40 expenses.

41

42 4. (New section) The division shall administer the ABLE  
43 Trust. The division shall have the power to:

44 a. serve as trustee of the trust;

45 b. adopt rules and regulations pursuant to the "Administrative  
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to  
47 carry out the provisions of P.L. , c. (C. ) (pending before the  
48 Legislature as this bill);

- 1 c. prescribe and provide appropriate forms for participation in
- 2 the program;
- 3 d. select an investment manager and any other contractors
- 4 needed to manage and market the program;
- 5 e. monitor the investment manager and any other contractors
- 6 by audits and other reports;
- 7 f. collect reasonable administrative fees in connection with any
- 8 contract or transaction relating to the program;
- 9 g. take all actions required so that the program is treated as a
- 10 qualified State ABLE program under section 529 of the federal
- 11 Internal Revenue Code of 1986, 26 U.S.C. s.529; and
- 12 h. perform any other acts which may be deemed necessary or
- 13 appropriate to carry out the objectives and purposes of
- 14 P.L. , c. (C. ) (pending before the Legislature as this bill).

15

16 5. (New section) Neither the members of the division, nor any

17 officer or employee of the division, shall be liable personally for the

18 debts, liabilities, or obligations of the ABLE program established

19 pursuant to P.L. , c. (C. ) (pending before the Legislature as

20 this bill).

21

22 6. (New section) a. The division shall select an investment

23 manager or managers to invest the funds of the ABLE Trust or the

24 funds in ABLE accounts. In making this selection, any investment

25 manager shall be subject to the "prudent person" standard of care

26 applicable to the Division of Investment in the Department of the

27 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270

28 (C.52:18A-89), and the division shall consider the impact of fees

29 and costs imposed by the manager or managers on yield to

30 contributors.

31 b. The division may select more than one investment manager

32 and investment instrument for the program if it is in the best interest

33 of contributors and will not interfere with the administration of the

34 program.

35 c. The division may provide a contributor with a choice of

36 investment managers or investment instruments or both for the

37 program if both of the following conditions exist:

38 (1) the federal Internal Revenue Service has provided guidance

39 that providing a contributor with a choice of investment managers

40 or instruments under a State ABLE program will not cause the

41 program to fail to qualify for favorable tax treatment under section

42 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

43 and

44 (2) the division concludes that a choice of investment managers

45 or of investment instruments is in the best interest of contributors

46 and will not interfere with the administration of the program.

47 d. If the division terminates the designation of an investment

48 manager to hold accounts, and accounts must be moved from that

1 investment manager to another investment manager, the division  
2 shall select the investment manager and type of investment  
3 instrument to which the balance of the account is moved, unless the  
4 federal Internal Revenue Service provides guidance that allowing  
5 the contributor to select among several investment managers or  
6 investment instruments that have been selected by the division  
7 would not cause a program to cease to be a qualified State ABLE  
8 program for the purposes of subsection (f) of section 529 of the  
9 federal Internal Revenue Code, 26 U.S.C. s.529.

10 e. If the selection process provided for in this section results in  
11 an investment manager other than the Division of Investment, the  
12 division shall provide for the orderly transfer of accounts and shall  
13 ensure that all the rights of the contributors and designated  
14 beneficiaries participating in the program are protected.

15

16 7. (New section) a. The ABLE program shall be operated as a  
17 trust through the use of accounts for designated beneficiaries. An  
18 account may be opened by any person who desires to save to pay  
19 the qualified disability expenses of an individual by satisfying each  
20 of the following requirements:

21 (1) completing an application in the form prescribed by the  
22 division;

23 (2) paying the one-time application fee established by the  
24 division;

25 (3) making the minimum contribution required by the division  
26 for opening an account;

27 (4) designating the account or accounts to be opened; and

28 (5) in the case of an account to which subsection a. of section 8  
29 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
30 would apply, demonstrating to the satisfaction of the division that  
31 either the contributor, if an individual, or the designated beneficiary  
32 is a New Jersey resident. The requirement of New Jersey residency  
33 for either the contributor or the designated beneficiary would not  
34 apply to an account to which subsection b. of section 8 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill)  
36 would apply unless otherwise determined by the division.

37 b. Contributions to accounts shall be made only in cash, as  
38 defined by the division pursuant to regulations, in accordance with  
39 section 529 of the federal Internal Revenue Code of 1986, 26  
40 U.S.C. s.529.

41 c. Contributors may withdraw all or part of the balance from an  
42 account on sixty days' notice or a shorter period, as may be  
43 authorized by the division pursuant to regulations. The contributor  
44 shall provide written notice of the withdrawal to the trustee and to  
45 the designated beneficiary.

46 d. A contributor may change the designated beneficiary of an  
47 account, provided that the new beneficiary qualifies as a designated  
48 beneficiary for the purposes of P.L. , c. (C. ) (pending before

- 1 the Legislature as this bill), or rollover all or a portion of an account  
2 to another account, provided that the other account that meets the  
3 requirements of this act, if the change or rollover would not result  
4 in a distribution includible in gross income under section 529 of the  
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.529, in  
6 accordance with procedures established by the division.
- 7 e. Each account shall be maintained separately from each other  
8 account under the program.
- 9 f. Separate records and accounting shall be maintained for each  
10 account for each designated beneficiary.
- 11 g. A contributor to or designated beneficiary of any account  
12 shall not direct the investment of any contributions to an account or  
13 the earnings from the account, except as permitted under section  
14 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.
- 15 h. A contributor or a designated beneficiary shall not use an  
16 interest in an account as security for a loan. Any pledge of an  
17 interest in an account is of no force and effect.
- 18 i. The maximum contribution for any designated beneficiary  
19 shall be determined by the division pursuant to regulations, in  
20 accordance with section 529 of the federal Internal Revenue Code  
21 of 1986, 26 U.S.C. s.529.
- 22 j. Statements, reports on distributions, and information returns  
23 relating to accounts shall be prepared, distributed, and filed to the  
24 extent required by section 529 of the federal Internal Revenue Code  
25 of 1986, 26 U.S.C. s.529, or regulations issued thereunder.
- 26 k. The division may charge, impose, and collect reasonable  
27 administrative fees and service charges in connection with any  
28 agreement, contract, or transaction relating to the program. These  
29 fees and charges may be imposed directly on contributors or may be  
30 taken as a percentage of the investment earnings on accounts.
- 31 l. The State or any State agency, municipality, or other  
32 political subdivision may, by contract or collective bargaining  
33 agreement, agree with any employee to remit contributions to  
34 accounts through payroll deductions made by the appropriate officer  
35 or officers of the State, State agency, county, municipality, or  
36 political subdivision. The contributions shall be held and  
37 administered in accordance with P.L. , c. (C. ) (pending  
38 before the Legislature as this bill).
- 39 m. A contributor, if an individual, may designate another person  
40 as a successor contributor in the event of the death of the original  
41 contributor. The person who opens the account, or any successor  
42 contributor, shall be considered the contributor as defined in section  
43 2 of P.L. , c. (C. ) (pending before the Legislature as this  
44 bill).
- 45 n. Any person may make contributions to an account,  
46 consistent with the terms established by the division, after the  
47 account is opened.

1 o. Moneys paid into or out of an ABLE account by or on behalf  
2 of a contributor or designated beneficiary for the purposes of  
3 financing the cost of qualified disability expenses under  
4 P.L. , c. (C. ) (pending before the Legislature as this bill) are  
5 exempt from all claims of creditors of the contributor or the  
6 designated beneficiary.

7 p. Subject to any outstanding payments due for qualified  
8 disability expenses, in the case that the designated beneficiary dies  
9 or ceases to be an individual with a disability, all amounts  
10 remaining in the qualified ABLE account not in excess of the  
11 amount equal to the total medical assistance paid for the designated  
12 beneficiary after the establishment of the account, net of any  
13 premiums paid from the account or paid by or on behalf of the  
14 beneficiary to a Medicaid Buy-In program, shall be distributed to  
15 the State upon the State filing a claim for payment. For the  
16 purposes of this subsection, the State shall be a creditor of the  
17 ABLE account and not a beneficiary. Paragraph (3) of subsection  
18 (c) of 26 U.S.C. s.529 shall not apply to a distribution to the State  
19 pursuant to this subsection.

20

21 8. (New section) a. If the investment manager is the Division  
22 of Investment in the Department of the Treasury, in order to assure  
23 the availability of principal of any amount contributed under  
24 P.L. , c. (C. ) (pending before the Legislature as this bill),  
25 there shall be paid to the division for deposit in the trust, at the time  
26 of distribution, subject to appropriation, such sum, if any, as shall  
27 be certified by the Director of the Division of Developmental  
28 Disabilities in the Department of Human Services as necessary to  
29 provide that amount at the time of distribution. The director shall  
30 make and deliver to the Governor, or the Governor's designee, the  
31 certificate stating the sums, if any, required to make available in the  
32 trust the amount aforesaid, and the sums so certified shall be  
33 appropriated and paid to the division during the then current State  
34 fiscal year.

35 b. If the investment manager is a private entity, the investment  
36 of the principal and interest of any amount contributed under  
37 P.L. , c. (C. ) (pending before the Legislature as this bill)  
38 shall be made in accordance with an investment plan approved by  
39 the State Investment Council in the Division of Investment.

40

41 9. (New section) Annually, the division shall determine a  
42 dollar amount of an ABLE account, which shall not be less than  
43 \$25,000, which shall not be considered in evaluating the financial  
44 needs of a designated beneficiary or be deemed a financial resource  
45 or a form of financial aid or assistance to a designated beneficiary,  
46 for purposes of determining the eligibility of the beneficiary for any  
47 scholarship, grant, or monetary assistance awarded by the State for  
48 the purposes of financing the education expenses of the beneficiary,

1 including higher education expenses; nor shall the amount of any  
2 account as determined by the division provided for a designated  
3 beneficiary under P.L. , c. (C. ) (pending before the  
4 Legislature as this bill) reduce the amount of any scholarship grant  
5 or monetary assistance which the beneficiary is entitled to be  
6 awarded by the State for the purposes of financing education  
7 expenses.

8  
9 10. (New section) Notwithstanding any other provision of State  
10 law that requires consideration of one or more financial  
11 circumstances of an individual, for the purpose of determining  
12 eligibility to receive, or the amount of, any assistance or benefit  
13 authorized by such provision to be provided to or for the benefit of  
14 such individual, any amount, including earnings thereon, in any  
15 ABLE account of such individual, and any distribution for qualified  
16 disability expenses shall be disregarded for such purpose with  
17 respect to any period during which such individual maintains,  
18 makes contributions to, or receives distributions from such ABLE  
19 account.

20  
21 11. (New section) a. Nothing in P.L. , c. (C. ) (pending  
22 before the Legislature as this bill) shall be construed to:

23 (1) guarantee the availability or provision of disability-related  
24 services to a designated beneficiary;

25 (2) establish State residency for a person merely because the  
26 person is a designated beneficiary; or

27 (3) guarantee that amounts saved pursuant to the program will  
28 be sufficient to cover the qualified disability expenses of a  
29 designated beneficiary.

30 b. Nothing in P.L. , c. (C. ) (pending before the  
31 Legislature as this bill) establishes any obligation of this State or  
32 any agency or instrumentality of this State to guarantee for the  
33 benefit of any contributor or designated beneficiary any of the  
34 following:

35 (1) the rate of interest or other return on any account; or

36 (2) the payment of interest or other return on any account.

37 c. Nothing in P.L. , c. (C. ) (pending before the  
38 Legislature as this bill) establishes any obligation or liability of this  
39 State or any agency or instrumentality of this State with respect to  
40 any federal or State tax liability of any contributor or designated  
41 beneficiary in this program.

42 d. Under regulations promulgated by the division, every  
43 contract and application that may be used in connection with a  
44 contribution to an account shall clearly indicate that the account is  
45 not insured by this State nor is the investment return guaranteed by  
46 this State.

47

48 12. This act shall take effect upon enactment of the federal

1 “Achieving a Better Life Experience Act of 2013” and section 1  
2 shall apply to contributions made for taxable years beginning after  
3 the effective date.

4

5

6

STATEMENT

7

8 This bill establishes the New Jersey “Achieving a Better Life  
9 Experience (ABLE)” program in the Division of Developmental  
10 Disabilities in the Department of Human Services (division). The  
11 bill will take effect upon the enactment of the federal “Achieving a  
12 Better Life Experience Act of 2013.”

13

14

Overview of ABLE Accounts

15

16 Under the bill, a person with a developmental disability would be  
17 permitted to establish an ABLE account which could be used for  
18 certain qualifying disability expenses and which would be exempt  
19 from State income taxation. As set forth in subsection (f) of 26  
20 U.S.C. s.529, qualifying disability expenses would include expenses  
21 made for the benefit of a designated beneficiary who is an  
22 individual with a disability, including: education expenses; housing;  
23 transportation; employment support; health, prevention, and  
24 wellness; assistive technology and personal support services; and  
25 miscellaneous expenses such as financial management and  
26 administrative oversight, legal fees, improvements, modifications,  
27 and repairs at a primary residence, and funeral and burial expenses.  
28 A request for a qualified withdrawal may be made by an agent of  
29 the designated beneficiary who has power of attorney or by the  
30 designated beneficiary’s legal guardian.

31

32 The ABLE program would be operated as a trust through the use  
33 of accounts for designated beneficiaries. An account may be  
34 opened by any person and would require: completing an application  
35 in the prescribed form; paying a one-time application fee; making  
36 the minimum initial contribution required by the division;  
37 designating the account or accounts to be opened; and, in certain  
38 cases, demonstrating that either the contributor or the designated  
39 beneficiary is a New Jersey resident.

40

41 Contributions to accounts may be made only in cash.  
42 Contributors may withdraw all or part of the balance from an  
43 account on sixty days' notice or a shorter period, as may be  
44 authorized by the division pursuant to regulations. A contributor  
45 who makes a withdrawal must provide written notice to the trustee  
46 and to the designated beneficiary. A contributor may change the  
47 designated beneficiary of an account, provided the new beneficiary  
48 qualifies as a designated beneficiary under the bill, or rollover all or  
a portion of an account to another account, provided the other  
account meets the requirements set forth in the bill, if the change or



1 rollover would not result in a distribution includible in gross income  
2 under federal law. A contributor, if an individual, would be  
3 permitted to designate another person as a successor contributor in  
4 the event of the death of the original contributor. Any person may  
5 make contributions to an account after the account is opened. The  
6 State or any State agency, municipality, or other political  
7 subdivision would be permitted, by contract or collective bargaining  
8 agreement, to agree with any employee to remit contributions to an  
9 ABLE account through payroll deductions.

10 Each account would be maintained separately, with separate  
11 records and accounting for each account for each designated  
12 beneficiary. A contributor to or designated beneficiary of any  
13 account would not be permitted to direct the investment of any  
14 contributions to an account or the earnings from the account, except  
15 as permitted under federal law. A contributor or a designated  
16 beneficiary would not be permitted to use an interest in an account  
17 as security for a loan. Any pledge of an interest in an account  
18 would be of no force and effect. The maximum contribution for  
19 any designated beneficiary will be determined by the division  
20 pursuant to regulations and in accordance with federal law.

21

#### 22 Effects and Legal Status of ABLE Account

23

24 Moneys paid into or out of an ABLE account by or on behalf of a  
25 contributor or designated beneficiary for the purposes of financing  
26 the cost of qualified disability expenses would be exempt from  
27 State income taxation, certain federal taxes as provided in 26 U.S.C.  
28 s.529, and all claims of creditors of the contributor or the  
29 designated beneficiary. The funds held in and the amounts  
30 distributed from a qualifying ABLE account would not jeopardize a  
31 beneficiary's eligibility for any other State or federal assistance and  
32 would be disregarded for the purposes of determining eligibility to  
33 receive, or the amount of, any assistance or benefit authorized by  
34 State law.

35 In the event that the designated beneficiary dies or ceases to be a  
36 person with a disability, any amounts remaining in the beneficiary's  
37 ABLE account would be distributed to the State upon the State  
38 filing a claim for payment. The State would constitute a creditor of  
39 the account, not a beneficiary, and the amount paid to the State  
40 would be limited to the amount of total medical assistance paid for  
41 the beneficiary through the Medicaid program after the  
42 establishment of the ABLE account.

43 The division would be required to annually determine a dollar  
44 amount of an ABLE account, which would not be less than \$25,000,  
45 which would not be considered when determining a designated  
46 beneficiary's eligibility for, or the amount awarded to a beneficiary  
47 from, any scholarships, grants, or monetary assistance awarded by  
48 the State for the purposes of financing the education expenses of the  
49 beneficiary, including higher education expenses.

1 Nothing in the bill would be construed to: guarantee the  
2 availability or provision of disability-related services to a  
3 designated beneficiary; establish State residency for a person  
4 merely because the person is a designated beneficiary; or guarantee  
5 that amounts saved pursuant to the program will be sufficient to  
6 cover the qualified disability expenses of a designated beneficiary.  
7 Nothing in the bill establishes any obligation for the State or any  
8 agency or instrumentality of the State to guarantee either the rate of  
9 interest or other return on any account or the payment of interest or  
10 other return on any account. Under regulations to be promulgated  
11 by the division, every contract and application that may be used in  
12 connection with a contribution to an ABLE account would clearly  
13 indicate that the account is not insured by the State nor is the  
14 investment return guaranteed by the State.

15 Nothing in the bill establishes any obligation or liability of the  
16 State or any agency or instrumentality of the State with respect to  
17 any federal or State tax liability of any contributor or designated  
18 beneficiary in the ABLE program.

19

#### 20 Administration of ABLE Accounts

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22 Under the ABLE program, the division would establish an ABLE  
23 Trust, which would provide a mechanism through which the  
24 division, as trustee, holds accounts established and maintained in  
25 the ABLE Trust to finance the cost of qualified disability expenses.  
26 The division would have the power to: serve as trustee; prescribe  
27 and provide appropriate forms for participation in the program;  
28 select an investment manager and any other contractors needed to  
29 manage and market the program; monitor the investment manager  
30 and any other contractors by audits and other reports; collect  
31 reasonable administrative fees in connection with any contract or  
32 transaction relating to the program; take all actions required so that  
33 the program is treated as a qualified State ABLE program under  
34 federal law; promulgate rules and regulations as necessary; and  
35 perform any other acts which may be deemed necessary or  
36 appropriate to carry out the objects and purposes of the bill.  
37 Neither the members of the division, nor any officer or employee of  
38 the division, would be liable personally for the debts, liabilities, or  
39 obligations of the ABLE program.

40 The division will select an investment manager or managers to  
41 invest the funds of the trust or the funds in accounts. In making this  
42 selection, any investment manager would be subject to the "prudent  
43 person" standard of care applicable to the Division of Investment in  
44 the Department of the Treasury, and the division must consider the  
45 impact of fees and costs imposed by the manager or managers on  
46 the yield to contributors. The division may select more than one  
47 investment manager and investment instrument for the program if it  
48 is in the best interest of contributors and will not interfere with the  
49 administration of the program, and may provide contributors with a

1 choice of investment managers or investment instruments if the  
2 federal Internal Revenue Service provides guidance that such choice  
3 will not cause the program to fail to qualify for favorable federal  
4 tax treatment and the division concludes that such choice is in the  
5 best interest of contributors and will not interfere with the  
6 administration of the program.

7 If the division terminates the designation of an investment  
8 manager to hold accounts, and accounts must be moved from that  
9 investment manager to another investment manager, the division  
10 would select the investment manager and type of investment  
11 instrument to which the balance of the account is moved, unless the  
12 federal Internal Revenue Service provides guidance that allowing  
13 the contributor to select among several investment managers or  
14 investment instruments that have been selected by the division  
15 would not cause a program to cease to be a qualified State ABLE  
16 program for the purposes of federal law. If the selection process  
17 results in an investment manager other than the Division of  
18 Investment, the Division of Developmental Disabilities would be  
19 required to provide for the orderly transfer of accounts and ensure  
20 that all the rights of the contributors and designated beneficiaries  
21 participating in the program are protected.

22 Statements, reports on distributions, and information returns  
23 relating to accounts would be prepared, distributed, and filed to the  
24 extent required by federal law. The division would be permitted to  
25 charge, impose, and collect reasonable administrative fees and  
26 service charges in connection with any agreement, contract, or  
27 transaction relating to the ABLE program. These fees and charges  
28 may be imposed directly on contributors or may be taken as a  
29 percentage of the investment earnings on accounts.

30 If the investment manager is the Division of Investment in the  
31 Department of the Treasury, the Director of the Division of  
32 Developmental Disabilities would be authorized to certify to the  
33 Governor, or the Governor's designee, the amounts needed to be  
34 made available in the ABLE trust for distribution. This certified  
35 sum would be appropriated and paid to the division during the then-  
36 current State fiscal year. If the investment manager is a private  
37 entity, the investment of the principal and interest of any amount  
38 contributed must be made in accordance with an investment plan  
39 approved by the State Investment Council in the Division of  
40 Investment.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**SENATE, No. 2770**

## **STATE OF NEW JERSEY 216th LEGISLATURE**

DATED: NOVEMBER 23, 2015

### SUMMARY

- Synopsis:** Authorizes establishment of tax-exempt Achieving a Better Life Experience accounts for persons with certain disabilities.
- Type of Impact:** A General Fund expenditure increase and a Property Tax Relief Fund (PTRF) revenue reduction.
- Agencies Affected:** Division of Disability Services in the Department of Human Services.  
Division of Investment in the Department of the Treasury.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>			
<b>(General Fund)</b>	\$500,000	\$500,000	\$500,000
<b>Forgone State Revenue</b>			
<b>(PTRF)</b>	\$0	\$25,000 to \$250,000	\$50,000 to \$500,000

- The Office of Legislative Services (OLS) estimates that the State may spend approximately \$500,000 annually for the first several years of implementation to establish, administer, and market the Achieving a Better Life Experience (ABLE) program established under the bill. Eventually, the program may become financially self-sufficient, funding these costs through revenue from fees charged to participants.
- The OLS estimates that the State would forgo approximately \$50,000 to \$500,000 of income tax revenue annually as a result of the sheltering of investment earnings in ABLE accounts. The actual amount forgone will depend upon several factors, including: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

### BILL DESCRIPTION

Senate Bill No. 2770 (2R) of 2014 establishes the New Jersey "Achieving a Better Life Experience (ABLE)" Program in the Division of Disability Services in the Department of Human

Services (division), in accordance with the federal “Achieving a Better Life Experience Act of 2014,” which became law in December 2014. The bill would allow individuals who are blind or have a disability and whose blindness or disability occurred before the individual’s 26<sup>th</sup> birthday, to establish a savings and investment account, called an ABLE account. Rules governing ABLE accounts would be generally similar to New Jersey Better Education Savings Trust (NJ BEST)/Section 529 accounts, with several notable differences. The advantage of an ABLE account relative to a traditional savings account is that investment earnings in an ABLE account would be exempt from State income taxation and certain federal taxes, provided that distributions are made for qualified disability expenses as defined by the bill, and that assets in the account and qualifying distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal public assistance programs.

In the event that the designated beneficiary dies, any amounts remaining in the beneficiary’s ABLE account, not to exceed the amount of total medical assistance paid for the beneficiary through the Medicaid program after the establishment of the ABLE account, would be distributed to the State upon the State filing a claim for payment. The State would constitute a creditor of the account, not a beneficiary.

Under the ABLE program, the division would establish an ABLE Trust, which would provide a mechanism through which the division, as trustee, would hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division would have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager (which would be the Division of Investment in the Department of the Treasury unless the division selects a different manager) and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts would be prepared, distributed, and filed to the extent required by federal law. The division would be permitted to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

The bill would implement an update in reference designation from an “educational retirement account” to a “coverdell education savings account”. The bill is effective on the 45th day following enactment.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS anticipates that the bill would result in an indeterminate expenditure increase from the General Fund, likely several hundred thousand dollars, in startup costs. In the long term, the bill would result in a reduction in income tax revenue of indeterminate magnitude. The analysis below discusses three different possible fiscal effects of the bill in detail: (1) administrative costs; (2) forgone income tax revenue; and (3) increased public assistance expenditures.

**Administrative Costs**

The OLS expects that implementing the bill would require up-front costs to establish and administer the program and advertise it to eligible individuals and families. The exact amount of up-front costs cannot be estimated without input from the Executive regarding the number of employees to be hired to administer the program and the scale of marketing activities that would be undertaken, but costs are likely to be several hundred thousand dollars per year, which may reasonably be expected to continue for two to three years. By way of comparison, when the NJBEST program was established in Fiscal Year 1998, \$350,000 was appropriated per year for several years for program administration. A similar amount may be appropriate for establishment and administration of the ABLE program, which would be approximately \$500,000 after adjusting for inflation. The program may become financially self-sustaining, as NJ BEST is now, if it grows large enough that fees charged to participants can cover its administrative costs.

Administrative costs may be shared between the Division of Disability Services in the Department of Human Services, where the ABLE Program is located, and the Division of Investment in the Department of the Treasury, which would serve as investment manager or provide assistance in selecting an external investment manager.

**Income Tax Revenue**

The bill would result in the State forgoing income tax revenue for earnings in ABLE accounts, which this analysis assumes would otherwise be held in taxable savings accounts. The specific amount of forgone revenue would depend upon: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

The OLS estimates that the maximum number of accounts being established is 43,800, corresponding to the number of tax returns filed annually in which State tax is owed and an exemption for blindness or disability is claimed. Initially, actual participation in the ABLE program is likely to be much smaller than this number. Even after the program matures, participation may be significantly smaller than this maximum, as some eligible individuals may continue to be unaware of the program, and some may opt not to participate and instead use a different savings vehicle. It is noted that some other savings vehicles, such as qualifying income trusts or special needs trusts, may prove to be more financially advantageous for many individuals. Based on available State taxation data, the OLS estimates that the average marginal tax rate for households with at least one member who is blind or has a disability is three percent.

The OLS has no data to allow an estimate of the average balance in ABLE accounts. However, average balances are likely to be fairly small, because of competition from other savings vehicles that may prove to be more financially advantageous, and because of the limited savings held by most individuals with disabilities. The rate of return on investments in ABLE accounts cannot be determined with certainty in advance, but is likely to track closely with the rate of return in similar programs.

Based on several projections in which all four variables were manipulated, the OLS estimates that a mature ABLE program would result in the State forgoing \$50,000 to \$500,000 of income tax revenue annually. The impact would be less initially, as program participation will likely take time to grow. The OLS assumes no forgone revenue in the first year after enactment, allowing for time needed to select an investment manager, develop necessary rules and regulations, and take other steps necessary to develop the program.

#### Public Assistance Costs

Because assets in an ABLE account and distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal public assistance programs, there is a possibility that the bill would result in an increase in expenditures for public assistance programs such as SSI and Medicaid. However, it is currently possible for individuals to establish special needs trusts in order to shelter assets from Medicaid and other public assistance eligibility tests. Therefore, the OLS does not estimate that these provisions of the bill will have a substantial fiscal impact

*Section: Human Services*

*Analyst: David Drescher  
Senior Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO  
**SENATE, No. 2770**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 9, 2015

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2770.

As amended by the committee, this bill establishes the New Jersey "Achieving a Better Life Experience (ABLE)" Program in the Division of Developmental Disabilities in the Department of Human Services (division), in accordance with the federal "Achieving a Better Life Experience Act of 2014," which became law in December 2014.

Overview of ABLE Accounts

Under the amended bill, a person with a developmental disability would be permitted to establish an ABLE account which could be used for certain qualifying disability expenses and which would be exempt from State income taxation. As set forth in the federal law, paragraph (5) of subsection (e) of 26 U.S.C. s.529A, qualifying disability expenses would include expenses made for the benefit of a designated beneficiary who is an individual with a disability, including: education expenses; housing and transportation expenses; employment training and support expenses; health, prevention, and wellness expenses; assistive technology and personal support service expenses; miscellaneous expenses such as expenses for financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial; and other expenses which are approved by the Secretary of the federal Department of Health and Human Services. A request for a qualified withdrawal may be made by an agent of the designated beneficiary who has power of attorney or by the designated beneficiary's legal guardian.

The ABLE program would be operated as a trust through the use of accounts for designated beneficiaries. Only one account may be opened by a designated beneficiary and would require: completing an application in the prescribed form; making the minimum initial contribution required by the division; and demonstrating that the designated beneficiary is a New Jersey resident. Anyone may contribute to the account.



Contributions to accounts may be made only in cash. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the division pursuant to regulations. A contributor who makes a withdrawal must provide written notice to the trustee and to the designated beneficiary. The designated beneficiary of an account may be changed, provided the new beneficiary qualifies as a designated beneficiary under the bill. Additionally, all or a portion of an account may be rolled over to another account, provided the other account meets the requirements set forth in the bill and the rollover would not result in a distribution includible in gross income under federal law. The State or any State agency, municipality, or other political subdivision would be permitted, by contract or collective bargaining agreement, to agree with any employee to remit contributions to an ABLE account through payroll deductions.

Separate records and accounting are to be maintained for the account of each designated beneficiary. A contributor to an account would not be permitted to direct the investment of any contributions to an account or the earnings from the account, except as permitted under federal law. A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year. A contributor or a designated beneficiary would not be permitted to use an interest in an account as security for a loan. Any pledge of an interest in an account would be of no force and effect. The maximum individual contribution and maximum aggregate contributions for any designated beneficiary will be determined by the division pursuant to regulations adopted in accordance with federal law.

#### Effects and Legal Status of ABLE Account

Moneys paid into or out of an ABLE account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified disability expenses would be exempt from State income taxation, certain federal taxes as provided in 26 U.S.C. s.529A, and all claims of creditors of the contributor or the designated beneficiary. The funds held in, and the amounts distributed from, a qualifying ABLE account would not jeopardize a beneficiary's eligibility for any other State or federal assistance and would be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by State law.

In the event that the designated beneficiary dies or ceases to be a person with a disability, any amounts remaining in the beneficiary's ABLE account would be distributed to the State upon the State filing a claim for payment. The State would constitute a creditor of the account, not a beneficiary, and the amount paid to the State would be limited to the amount of total medical assistance paid for the

beneficiary through the Medicaid program after the establishment of the ABLE account.

The division would be required to annually determine a dollar amount of an ABLE account, which would not be less than \$25,000, which would not be considered when determining a designated beneficiary's eligibility for, or the amount awarded to a beneficiary from, any scholarships, grants, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses.

Nothing in the bill would be construed to: guarantee the availability or provision of disability-related services to a designated beneficiary; establish State residency for a person merely because the person is a designated beneficiary; or guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary. Nothing in the bill establishes any obligation for the State or any agency or instrumentality of the State to guarantee either the rate of interest or other return on any account or the payment of interest or other return on any account. Under regulations to be promulgated by the division, every contract and application that may be used in connection with a contribution to an ABLE account would clearly indicate that the account is not insured by the State, and that the investment return is not guaranteed by the State.

Nothing in the bill establishes any obligation or liability of the State or any agency or instrumentality of the State with respect to any federal or State tax liability of any contributor or designated beneficiary in the ABLE program.

#### Administration of ABLE Accounts

Under the ABLE program, the division would establish an ABLE Trust, which would provide a mechanism through which the division, as trustee, would hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division would have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill. Neither the members of the division, nor any officer or employee of the division, would be liable personally for the debts, liabilities, or obligations of the ABLE program.

The division will select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager would be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury, and the division must consider the impact of fees and costs imposed by the manager or managers on the yield to contributors. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program, and it may provide contributors with a choice of investment managers or investment instruments if the federal Internal Revenue Service provides guidance that such choice will not cause the program to fail to qualify for favorable federal tax treatment and the division concludes that such choice is in the best interest of contributors and will not interfere with the administration of the program.

If the division terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the division would select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division would not cause a program to cease to be a qualified State ABLE program for the purposes of federal law. If the selection process results in an investment manager other than the Division of Investment, the Division of Developmental Disabilities would be required to provide for the orderly transfer of accounts and ensure that all the rights of the contributors and designated beneficiaries participating in the program are protected.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts would be prepared, distributed, and filed to the extent required by federal law. The division would be permitted to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

If the investment manager is the Division of Investment in the Department of the Treasury, the Director of the Division of Developmental Disabilities would be authorized to certify to the Governor, or the Governor's designee, the amounts needed to be made available in the ABLE trust for distribution. This certified sum would be appropriated and paid to the division during the then-current State fiscal year. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed

must be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

The committee amended the bill to be consistent with the recently enacted federal "Achieving a Better Life Experience Act of 2014." In particular, the amendments provide that: 1) only one ABLE account may be opened by a designated beneficiary, instead of permitting multiple accounts to be opened by any person; 2) a one-time fee to open an account is no longer required; 3) the minimum contribution may be no greater than the minimum required for opening an account under the NJBEST program for higher educational costs; 4) except in the case of certain rollovers of accounts or changes in beneficiary, pursuant to federal law, no contribution may be accepted if it would result in aggregate contributions exceeding the federal amount for exclusion of gifts from taxation under 26 U.S.C. s.2503; 5) a contributor may not change the beneficiary; 6) a designated beneficiary may, directly or indirectly, direct the investment of any contributions or earnings, no more than twice a year; 7) the maximum individual contribution and maximum aggregate contributions for a designated beneficiary are to be determined by the division pursuant to federal law; and 8) notices of the establishment of accounts would be filed in accordance with federal law. The amendments also include a technical amendment to update the reference from an "education individual retirement account" to a "Coverdell education savings account," and revise the effective date to the 45th day after enactment of the bill.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 2770**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 9, 2015

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2770 (1R), with committee amendments.

As amended, this bill establishes the New Jersey “Achieving a Better Life Experience (ABLE)” Program in the Division of Developmental Disabilities in the Department of Human Services (division), in accordance with the federal “Achieving a Better Life Experience Act of 2014,” which became law in December 2014.

### Overview of ABLE Accounts

Under the bill, as amended, a person with a developmental disability would be permitted to establish an ABLE account which could be used for certain qualifying disability expenses and which would be exempt from State income taxation. As set forth in the federal law, paragraph (5) of subsection (e) of 26 U.S.C. s.529A, qualifying disability expenses would include expenses made for the benefit of a designated beneficiary who is an individual with a disability, including: education expenses; housing and transportation expenses; employment training and support expenses; health, prevention, and wellness expenses; assistive technology and personal support service expenses; miscellaneous expenses such as expenses for financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial; and other expenses which are approved by the Secretary of the federal Department of Health and Human Services. A request for a qualified withdrawal may be made by an agent of the designated beneficiary who has power of attorney or by the designated beneficiary’s legal guardian.

The ABLE program would be operated as a trust through the use of accounts for designated beneficiaries. Only one account may be opened by a designated beneficiary and would require: completing an application in the prescribed form; making the minimum initial contribution required by the division; and demonstrating that the designated beneficiary is a New Jersey resident. Anyone may contribute to the account.

Contributions to accounts may be made only in cash. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the division pursuant to regulations. A contributor who makes a withdrawal must provide written notice to the trustee and to the designated beneficiary. The designated beneficiary of an account may be changed, provided the new beneficiary qualifies as a designated beneficiary under the bill. Additionally, all or a portion of an account may be rolled over to another account, provided the other account meets the requirements set forth in the bill and the rollover would not result in a distribution includible in gross income under federal law. The State or any State agency, municipality, or other political subdivision would be permitted, by contract or collective bargaining agreement, to agree with any employee to remit contributions to an ABLE account through payroll deductions.

Separate records and accounting are to be maintained for the account of each designated beneficiary. A contributor to an account would not be permitted to direct the investment of any contributions to an account or the earnings from the account, except as permitted under federal law. A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year. A contributor or a designated beneficiary would not be permitted to use an interest in an account as security for a loan. Any pledge of an interest in an account would be of no force and effect. The maximum individual contribution and maximum aggregate contributions for any designated beneficiary will be determined by the division pursuant to regulations adopted in accordance with federal law.

#### Effects and Legal Status of ABLE Account

Moneys paid into or out of an ABLE account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified disability expenses would be exempt from State income taxation, certain federal taxes as provided in 26 U.S.C. s.529A, and all claims of creditors of the contributor or the designated beneficiary. The funds held in, and the amounts distributed from, a qualifying ABLE account would not jeopardize a beneficiary's eligibility for any other State or federal assistance and would be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by State law.

In the event that the designated beneficiary dies or ceases to be a person with a disability, any amounts remaining in the beneficiary's ABLE account would be distributed to the State upon the State filing a claim for payment. The State would constitute a creditor of the account, not a beneficiary, and the amount paid to the State would be limited to the amount of total medical assistance paid for the

beneficiary through the Medicaid program after the establishment of the ABLE account.

The division would be required to annually determine a dollar amount of an ABLE account, which would not be less than \$25,000, which would not be considered when determining a designated beneficiary's eligibility for, or the amount awarded to a beneficiary from, any scholarships, grants, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses.

Nothing in the bill would be construed to: guarantee the availability or provision of disability-related services to a designated beneficiary; establish State residency for a person merely because the person is a designated beneficiary; or guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary. Nothing in the bill establishes any obligation for the State or any agency or instrumentality of the State to guarantee either the rate of interest or other return on any account or the payment of interest or other return on any account. Under regulations to be promulgated by the division, every contract and application that may be used in connection with a contribution to an ABLE account would clearly indicate that the account is not insured by the State, and that the investment return is not guaranteed by the State.

Nothing in the bill establishes any obligation or liability of the State or any agency or instrumentality of the State with respect to any federal or State tax liability of any contributor or designated beneficiary in the ABLE program.

#### Administration of ABLE Accounts

Under the ABLE program, the division would establish an ABLE Trust, which would provide a mechanism through which the division, as trustee, would hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division would have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill. Neither the members of the division, nor any officer or employee of the division, would be liable personally for the debts, liabilities, or obligations of the ABLE program.

The division will select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager would be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury, and the division must consider the impact of fees and costs imposed by the manager or managers on the yield to contributors. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program, and it may provide contributors with a choice of investment managers or investment instruments if the federal Internal Revenue Service provides guidance that such choice will not cause the program to fail to qualify for favorable federal tax treatment and the division concludes that such choice is in the best interest of contributors and will not interfere with the administration of the program.

If the division terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the division would select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division would not cause a program to cease to be a qualified State ABLE program for the purposes of federal law. If the selection process results in an investment manager other than the Division of Investment, the Division of Developmental Disabilities would be required to provide for the orderly transfer of accounts and ensure that all the rights of the contributors and designated beneficiaries participating in the program are protected.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts would be prepared, distributed, and filed to the extent required by federal law. The division would be permitted to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

If the investment manager is the Division of Investment in the Department of the Treasury, the Director of the Division of Developmental Disabilities would be authorized to certify to the Governor, or the Governor's designee, the amounts needed to be made available in the ABLE trust for distribution. This certified sum would be appropriated and paid to the division during the then-current State fiscal year. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed



must be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

COMMITTEE AMENDMENTS:

The committee amendments make the bill consistent with the recently enacted federal “Achieving a Better Life Experience Act of 2014.” Specifically the amendments provide that: 1) only one ABLE account may be opened by a designated beneficiary, instead of permitting multiple accounts to be opened by any person; 2) a one-time fee to open an account is no longer required; 3) the minimum contribution may be no greater than the minimum required for opening an account under the NJBEST program for higher educational costs; 4) except in the case of certain rollovers of accounts or changes in beneficiary, pursuant to federal law, no contribution may be accepted if it would result in aggregate contributions exceeding the federal amount for exclusion of gifts from taxation under 26 U.S.C. s.2503; 5) a contributor may not change the beneficiary; 6) a designated beneficiary may, directly or indirectly, direct the investment of any contributions or earning, no more than twice a year; 7) the maximum individual contribution and maximum aggregate contributions for a designated beneficiary are to be determined by the division pursuant to federal law; and 8) notices of the establishment of accounts would be filed in accordance with federal law. The committee amendments also include a technical amendment to update the reference from an "education individual retirement account" to a "Coverdell education savings account," and revise the effective date to the 45th day after enactment of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the State may spend approximately \$500,000 annually for the first several years of implementation to establish, administer, and market the Achieving a Better Life Experience (ABLE) program established under the bill. Eventually, the program may become financially self-sufficient, funding these costs through revenue from fees charged to participants.

The OLS estimates that the State would forgo annually approximately \$50,000 to \$500,000 of personal income tax revenue as a result of the exclusion of investment earnings in ABLE accounts. The actual amount forgone will depend upon several factors, including: (1) the number of individuals who establish accounts; (2) the marginal personal income tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

Because assets in an ABLE account and distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal

public assistance programs, there is a possibility that the bill would result in an increase in expenditures for public assistance programs such as SSI and Medicaid. However, it is currently possible for individuals to establish special needs trusts in order to shelter assets from Medicaid and other public assistance eligibility tests. Therefore, the OLS does not estimate that these provisions of the bill will have a substantial fiscal impact.

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SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

**SENATE, No. 2770**

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 9, 2015

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2770 (1R).

As amended, this bill establishes the New Jersey “Achieving a Better Life Experience (ABLE)” Program in the Division of Disability Services in the Department of Human Services (division), in accordance with the federal “Achieving a Better Life Experience Act of 2014,” which became law in December 2014, and regulations proposed by the Internal Revenue Service in June 2015.

Overview of ABLE Accounts

Under the bill, persons with certain disabilities will be permitted to establish ABLE accounts, which may be used for certain qualifying disability expenses. The account will be exempt from State income taxation and will not be considered when determining income eligibility for State assistance programs. As set forth in the federal law, paragraph (5) of subsection (e) of 26 U.S.C. s.529A provides that qualifying disability expenses include expenses made for the benefit of a designated beneficiary, including expenses for: education; housing and transportation; employment training and support; health, prevention, and wellness; assistive technology and personal support service; miscellaneous expenses such as financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial costs; and other expenses which are approved by the Secretary of the federal Department of Health and Human Services. The bill provides that qualifying expenses may include basic living expenses and need not be limited to items for which there is a medical necessity or which solely benefit an individual with a disability. A request for a qualified withdrawal may be made by an agent of the designated beneficiary who has power of attorney or by the designated beneficiary’s legal guardian.

The ABLE program will be operated as a trust through the use of accounts for designated beneficiaries. A designated beneficiary may have no more than one ABLE account at a time. To open an account, the beneficiary will be required to: complete an application in the prescribed form; make the minimum initial contribution required by the division; demonstrate that the designated beneficiary is a New Jersey resident; and provide such certification of initial and continuing eligibility as the division may require. If an eligible individual is unable to establish an account on the individual's own behalf, an account may be established for the individual by an agent with power of attorney or, if no such agent exists, by the individual's parent or guardian. A person opening an account will be required to verify, under penalty of perjury, that the designated beneficiary does not currently have any other ABLE account in this or any other state.

Anyone may contribute to the account. Contributions may be made only in cash. The total contributions to an account in a single taxable year from all sources, other than rollovers and program-to-program transfers, may not exceed the gift tax limit for federal income tax purposes, and the total balance in the account may not exceed the maximum aggregate contribution limit established for the purposes of the New Jersey Better Educational Savings Trust (NJBEST) Program. Excess contributions are to be returned to the contributor on a last-in-first-out basis prior to the designated beneficiary's deadline for filing federal income taxes for the tax year in which the contribution is made. If the contributor is not the beneficiary, the beneficiary is to be provided notice of the returned contribution. If a designated beneficiary attempts to establish a second ABLE account, any contributions to that second account are also to be returned in this manner.

The designated beneficiary of an account may be changed, provided the new beneficiary is an eligible individual for the purposes of the bill. Additionally, all or a portion of an account may be rolled over to the ABLE account of an eligible family member of the beneficiary, provided the contribution is made within 60 days of the withdrawal and no more than one rollover has been made to the account within the prior 12 months. Using a program-to-program transfer, a designated beneficiary may transfer all or a portion of an account to an ABLE account for the beneficiary established under an ABLE program in another state, or to the ABLE account of another eligible individual who is a member of the beneficiary's family, provided the program-to-program transfer does not result in any beneficiary having more than one ABLE account or exceeding the aggregate contribution limit. A beneficiary who establishes an account in New Jersey and subsequently changes residence to another state will be permitted to maintain the New Jersey account, provided it remains the beneficiary's only ABLE account.

The State or any State agency, municipality, or other political subdivision will be permitted, by contract or collective bargaining agreement, to agree with any employee to remit contributions to an ABLE account through payroll deductions.

Separate records and accounting are to be maintained for the account of each designated beneficiary. A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year. A contributor or a designated beneficiary will not be permitted to use an interest in an account as security for a loan. Any pledge of an interest in an account will be of no force and effect. A person with signature authority over the account will be prohibited from having or acquiring any beneficial interest in the account during the beneficiary's lifetime, and will be required to administer the account for the benefit of the beneficiary.

#### Effects and Legal Status of ABLE Account

Moneys paid into or out of an ABLE account by or on behalf of a designated beneficiary for the purposes of financing the cost of qualified disability expenses will be exempt from State income taxation, certain federal taxes as provided in 26 U.S.C. s.529A, and all claims of creditors of the contributor or the designated beneficiary. The funds held in, and the amounts distributed from, a qualifying ABLE account will not jeopardize a beneficiary's eligibility for any other State or federal assistance and will be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by State law. The program will be required to establish safeguards to distinguish between distributions for qualifying disability expenses and other distributions.

In the event that the designated beneficiary dies, any amounts remaining in the beneficiary's ABLE account will be distributed to the State upon the State filing a claim for payment. The State will constitute a creditor of the account, not a beneficiary, and the amount paid to the State will be limited to the amount of total medical assistance paid for the beneficiary through the Medicaid program after the establishment of the ABLE account.

In the event the beneficiary ceases to be an eligible individual, the account will remain an ABLE account and will not be deemed to have been distributed. Beginning in the first taxable year after the beneficiary ceases to be an eligible individual, and in each taxable year thereafter, additional contributions to the account will not be accepted, and withdrawals from the account will not be deemed qualified withdrawals. If the beneficiary again becomes an eligible individual, contributions to the account may again be accepted and qualified withdrawals may again be made from the account.

The division will be required to annually determine a dollar amount of an ABLE account, which will not be less than \$25,000,

which will not be considered when determining a designated beneficiary's eligibility for, or the amount awarded to a beneficiary from, any scholarships, grants, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses.

Nothing in the bill will be construed to: guarantee the availability or provision of disability-related services to a designated beneficiary; establish State residency for a person merely because the person is a designated beneficiary; or guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary. Nothing in the bill establishes any obligation for the State or any agency or instrumentality of the State to guarantee either the rate of interest or other return on any account or the payment of interest or other return on any account. Under regulations to be promulgated by the division, every contract and application that may be used in connection with a contribution to an ABLE account will clearly indicate that the account is not insured by the State, and that the investment return is not guaranteed by the State.

Nothing in the bill establishes any obligation or liability of the State or any agency or instrumentality of the State with respect to any federal or State tax liability of any contributor or designated beneficiary in the ABLE program.

#### Administration of ABLE Accounts

Under the ABLE program, the division will establish an ABLE Trust, which will provide a mechanism through which the division, as trustee, will hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division will have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; contract with Community Development Financial Institutions (CDFIs) to provide some or all of the services necessary to maintain or administer the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill. Neither the members of the division, nor any officer or employee of the division, will be liable personally for the debts, liabilities, or obligations of the ABLE program. The division will additionally be permitted to enter into a contract with another state that does not have a qualifying ABLE program to make ABLE accounts available to residents of that other state.

The division will select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager will be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury, and the division will be required to consider the impact of fees and costs imposed by the manager or managers on the yield to contributors. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of designated beneficiaries and will not interfere with the administration of the program, and it may provide designated beneficiaries with a choice of investment managers or investment instruments if the federal Internal Revenue Service provides guidance that such choice will not cause the program to fail to qualify for favorable federal tax treatment and the division concludes that such choice is in the best interest of designated beneficiaries and will not interfere with the administration of the program.

If the division terminates the designation of an investment manager to hold accounts, and accounts are to be moved from that investment manager to another investment manager, the division will select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division will not cause a program to cease to be a qualified State ABLE program for the purposes of federal law. If the selection process results in an investment manager other than the Division of Investment, the division will be required to provide for the orderly transfer of accounts and ensure that all the rights of the designated beneficiaries participating in the program are protected.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts will be prepared, distributed, and filed to the extent required by federal law. In addition, beneficiaries are to be provided, both annually and upon request, an account statement showing the total account balance, investment in the account, accrued earnings, and distributions from the account. The division will be permitted to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

If the investment manager is the Division of Investment in the Department of the Treasury, the Director of the Division of Disability Services will be authorized to certify to the Governor, or the Governor's designee, the amounts needed to be made available in the ABLE trust for distribution. This certified sum is to be appropriated and paid to the division during the then-current State fiscal year. If the

investment manager is a private entity, the investment of the principal and interest of any amount contributed is to be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

COMMITTEE AMENDMENTS:

The committee amended the bill to be consistent with the proposed regulations published by the Internal Revenue Service in the Federal Register on June 22, 2015. In particular, the amendments: 1) specify that eligible individuals may be required to certify to initial or ongoing eligibility for the program; 2) require verification when establishing an ABLÉ account that the beneficiary currently has no other ABLÉ accounts; 3) permit an agent, parent, or guardian to establish an account for an eligible individual who is unable to do so; 4) expressly prohibit a person with signature authority over an account from obtaining a beneficial interest in the account during the beneficiary's lifetime; 5) remove language permitting contributors, other than a designated beneficiary, to have an ownership interest in and control over ABLÉ accounts; 6) provide that an ABLÉ account is not distributed in the event that a person ceases to be an eligible individual, but that contributions and qualified withdrawals may not be made until the person becomes an eligible individual again; 7) permit beneficiaries who establish an account in New Jersey and subsequently establish residency in another state to continue to maintain the New Jersey account; 8) permit the division to enter into a contract with another state that does not have a qualifying ABLÉ program to make ABLÉ accounts available to that state's residents; 9) specify annual and aggregate contribution limits, and establish procedures for returning excess contributions and contributions to invalid accounts; 10) provide for program-to-program transfers; 11) establish certain requirements for rollovers; 12) permit the division to enter into contracts with CDFIs to provide necessary services under the ABLÉ Program; 13) require the program establish safeguards to distinguish between distributions for qualified disability expenses and other distributions; 14) provide that qualifying disability expenses need not be expenses that are medically necessary or solely benefit persons with disabilities; 15) require account statements be provided to the beneficiary annually and upon request; and 16) establish the ABLÉ Program in the Division of Disability Services, rather than the Division of Developmental Disabilities, to reflect the scope of the federal ABLÉ Act.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the State may spend approximately \$500,000 annually for the first several years of implementation to establish, administer, and market the Achieving a Better Life Experience (ABLE) program established under the bill.



Eventually, the program may become financially self-sufficient, funding these costs through revenue from fees charged to participants.

The OLS estimates that the State would forgo annually approximately \$50,000 to \$500,000 of personal income tax revenue as a result of the exclusion of investment earnings in ABLE accounts. The actual amount forgone will depend upon several factors, including: (1) the number of individuals who establish accounts; (2) the marginal personal income tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

Because assets in an ABLE account and distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal public assistance programs, there is a possibility that the bill would result in an increase in expenditures for public assistance programs such as SSI and Medicaid. However, it is currently possible for individuals to establish special needs trusts in order to shelter assets from Medicaid and other public assistance eligibility tests. Therefore, the OLS does not estimate that these provisions of the bill will have a substantial fiscal impact.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE SUBSTITUTE FOR**  
**SENATE, No. 2770**  
**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

DATED: DECEMBER 22, 2015

**SUMMARY**

**Synopsis:** Authorizes establishment of Achieving a Better Life Experience accounts for persons with certain disabilities.

**Type of Impact:** A General Fund expenditure increase and a Property Tax Relief Fund (PTRF) revenue reduction.

**Agencies Affected:** Departments of the Treasury and Human Services

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>			
<b>(General Fund)</b>	\$500,000	\$500,000	\$500,000
<b>Forgone State Revenue</b>			
<b>(PTRF)</b>	\$0	\$25,000 to \$250,000	\$50,000 to \$500,000

- The Office of Legislative Services (OLS) estimates that the State may spend approximately \$500,000 annually for the first several years of implementation to establish, administer, and market the Achieving a Better Life Experience (ABLE) program established under the bill. Eventually, the program may become financially self-sufficient, funding these costs through revenue from fees charged to participants.
- The OLS estimates that the State would forgo approximately \$50,000 to \$500,000 of income tax revenue annually as a result of the sheltering of investment earnings in ABLE accounts. The actual amount forgone will depend upon several factors, including: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

**BILL DESCRIPTION**

The Senate Substitute for Senate Bill No. 2770 of 2015 requires the Department of Human Services and the Department of the Treasury to establish the “New Jersey Achieving a Better Life Experience (ABLE) Program” pursuant to the federal ABLE Act, 26 U.S.C. s.529A.

Under the program, individuals with certain disabilities will be permitted to establish ABLE accounts that may be used to pay certain disability-related expenses. ABLE accounts will be exempt from State income taxation and will not be counted as an asset or income when determining the individual's eligibility for State assistance programs.

The Departments of Human Services and Treasury will be permitted to contract with a third party provider to administer and operate the program, including providing program services such as promoting the program to communities likely to benefit from access to ABLE accounts, processing applications for ABLE accounts, and processing claims from ABLE account holders to institutions assigned to administer their ABLE accounts. The Department of the Treasury will be required to ensure that participants can readily deposit and withdraw funds from ABLE accounts. The Departments of Human Services and Treasury will further be required to take all actions as may be necessary to ensure the program meets the requirements under federal law to be treated as a qualified State ABLE Program.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS anticipates that the bill would result in an indeterminate expenditure increase from the General Fund, likely several hundred thousand dollars, in startup costs. In the long term, the bill would result in a reduction in income tax revenue of indeterminate magnitude. The analysis below discusses three different possible fiscal effects of the bill in detail: (1) administrative costs; (2) forgone income tax revenue; and (3) increased public assistance expenditures.

#### **Administrative Costs**

The OLS expects that implementing the bill would require up-front costs to establish and administer the program and advertise it to eligible individuals and families. The exact amount of up-front costs cannot be estimated without input from the Executive regarding the number of employees to be hired to administer the program and the scale of marketing activities that would be undertaken, but costs are likely to be several hundred thousand dollars per year, which may reasonably be expected to continue for two to three years. By way of comparison, when the NJBEST program was established in Fiscal Year 1998, \$350,000 was appropriated per year for several years for program administration. A similar amount may be appropriate for the establishment and administration of the ABLE program, which would be approximately \$500,000 after adjusting for inflation. The program may become financially self-sustaining, as NJ BEST is now, if it grows large enough that fees charged to participants can cover its administrative costs.

Administrative costs may be shared between the Department of the Treasury, which is responsible for ensuring that participants can readily deposit and withdrawn funds from ABLE accounts; and the Department of Human Services, which is responsible for program services, such as promoting the program, evaluating applications to participate in the program, and processing claims from ABLE accounts.

### Income Tax Revenue

The bill would result in the State forgoing income tax revenue for earnings in ABLE accounts, which this analysis assumes would otherwise be held in taxable savings accounts. The specific amount of forgone revenue would depend upon: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

The OLS estimates that the maximum number of accounts being established is 43,800, corresponding to the number of tax returns filed annually in which State tax is owed and an exemption for blindness or disability is claimed. Initially, actual participation in the ABLE program is likely to be much smaller than this number. Even after the program matures, participation may be significantly smaller than this maximum, as some eligible individuals may continue to be unaware of the program, and some may opt not to participate and instead use a different savings vehicle. It is noted that some other savings vehicles, such as qualifying income trusts or special needs trusts, may prove to be more financially advantageous for many individuals. Based on available State taxation data, the OLS estimates that the average marginal tax rate for households with at least one member who is blind or has a disability is three percent.

The OLS has no data to allow an estimate of the average balance in ABLE accounts. However, average balances are likely to be fairly small, because of competition from other savings vehicles that may prove to be more financially advantageous, and because of the limited savings held by most individuals with disabilities. The rate of return on investments in ABLE accounts cannot be determined with certainty in advance, but is likely to track closely with the rate of return in similar programs.

Based on several projections in which all four variables were manipulated, the OLS estimates that a mature ABLE program would result in the State forgoing \$50,000 to \$500,000 of income tax revenue annually. The impact would be less initially, as program participation will likely take time to grow. The OLS assumes no forgone revenue in the first year after enactment, allowing for time needed to develop necessary rules and regulations, contract with a third party or parties to administer the program, and take other steps necessary to develop the program.

### Public Assistance Costs

Because assets in an ABLE account and distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal public assistance programs, there is a possibility that the bill would result in an increase in expenditures for public assistance programs such as tuition assistance, Supplemental Security Income, and Medicaid. However, it is currently possible for individuals to establish special needs trusts in order to shelter assets from Medicaid and other public assistance eligibility tests. Therefore, the OLS does not estimate that these provisions of the bill will have a substantial fiscal impact

*Section: Human Services*

*Analyst: David Drescher  
Senior Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 3956

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 11, 2014

**Sponsored by:**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Assemblywomen B.DeCroce and Jasey**

**SYNOPSIS**

Authorizes establishment of tax-exempt Achieving a Better Life Experience accounts for persons with developmental disabilities.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/10/2015)**

1 AN ACT concerning trust accounts for persons with developmental  
2 disabilities, amending P.L.1997, c.237, and supplementing Title  
3 30 of the Revised Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to  
9 read as follows:

10 13. a. Gross income shall not include earnings on an education  
11 individual retirement account, **[or]** a qualified State tuition program  
12 account, or a qualified ABLE account until the earnings are  
13 distributed from the account, at which time they shall be includible  
14 in the gross income of the distributee except as provided in this  
15 section.

16 b. Gross income shall not include qualified distributions as  
17 defined in paragraph (3) of subsection c. of this section.

18 c. For purposes of this section:

19 (1) "Education individual retirement account" means an  
20 education retirement account as defined pursuant to paragraph (1)  
21 of subsection (b) of section 530 of the federal Internal Revenue  
22 Code of 1986, 26 U.S.C. s.530.

23 (2) (a) "Qualified State tuition program account" means an  
24 account established pursuant to the "New Jersey Better Educational  
25 Savings Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.), an  
26 account established pursuant to the "New Jersey Prepaid Higher  
27 Education Expense Program," P.L.2001, c.262 (C.18A:71B-64 et  
28 seq.) or an account established pursuant to any qualified State  
29 tuition program, as defined pursuant to subsection (b) of section  
30 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529  
31 or a tuition credit or certificate purchased pursuant to any such  
32 program;

33 (b) "Qualified ABLE account" means an account established  
34 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
35 this bill) or an account established pursuant to any qualified State  
36 ABLE program established pursuant to subsection (f) of section 529  
37 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

38 (3) "Qualified distribution" means any of the following:

39 (a) a distribution from a qualified State tuition program account  
40 that is used for qualified higher education expenses as defined  
41 pursuant to paragraph (3) of subsection (e) of section 529 or a  
42 distribution from a qualified ABLE account that is used for  
43 qualified disability expenses as defined pursuant to paragraph (3) of  
44 subsection (f) of section 529 of the federal Internal Revenue Code  
45 of 1986, 26 U.S.C. s.529;

46 (b) a rollover from one account to another account as described

**EXPLANATION**—Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 in clause (i) of subparagraph (C) of paragraph (3) of subsection (c)  
2 of section 529, paragraph (4) of subsection (f) of section 529, or  
3 paragraph (5) of subsection (d) of section 530 of the federal Internal  
4 Revenue Code of 1986, 26 U.S.C. s.529 or 530;

5 (c) a change in designated beneficiaries of an account as  
6 described in clause (ii) of subparagraph (C) of paragraph (3) of  
7 subsection (c) of section 529, paragraph (4) of subsection (f) of  
8 section 529, or paragraph (6) of subsection (d) of section 530 of the  
9 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

10 d. The portion of a distribution from an education individual  
11 retirement account, a qualified ABLE account, or a qualified State  
12 tuition program account that is attributable to earnings shall be  
13 determined in accordance with the principles of section 72 of the  
14 federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied  
15 for purposes of sections 529 and 530 of the federal Internal  
16 Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

17 (cf: P.L.2001, c.262, s.21)

18

19 2. (New section) As used in this act:

20 "Account" means an individual ABLE account established in  
21 accordance with this act;

22 "Contributor" means the person or organization contributing to  
23 and maintaining an account and having the right to withdraw funds  
24 from the account before the account is disbursed to or for the  
25 benefit of the designated beneficiary;

26 "Designated beneficiary" means: the individual designated at the  
27 time the account is opened as the individual whose qualified  
28 disability expenses are expected to be paid from the account and the  
29 replacement beneficiary if the change in designated beneficiary  
30 would not result in a distribution that is included in federal gross  
31 income under section 529 of the federal Internal Revenue Code of  
32 1986, 26 U.S.C. s.529;

33 "Division" means the Division of Developmental Disabilities in  
34 the Department of Human Services;

35 "Investment Manager" means the Division of Investment in the  
36 Department of the Treasury or the private entities authorized to do  
37 business in this State that may be designated by the division to  
38 invest the funds of the trust pursuant to the terms of this act;

39 "Member of the family" means a member of the family as  
40 defined in or for purposes of section 529 of the federal Internal  
41 Revenue Code of 1986, 26 U.S.C. s.529;

42 "Nonqualified withdrawal" means a withdrawal from an account  
43 other than: (1) a qualified withdrawal; (2) a withdrawal made as the  
44 result of the death or disability of the designated beneficiary of an  
45 account; (3) a withdrawal made on account of a scholarship (or  
46 allowance or payment described in subparagraph (B) or (C) of  
47 paragraph (1) of subsection (d) of section 135 of the federal Internal  
48 Revenue Code of 1986, 26 U.S.C. s.135) received by the designated

1 beneficiary, but only to the extent of the amount of that scholarship,  
2 allowance or payment; or (4) a rollover or change in designated  
3 beneficiary which would not result in a distribution includible in  
4 federal gross income under section 529 of the federal Internal  
5 Revenue Code of 1986, 26 U.S.C. s.529;

6 "Program" means the "New Jersey Achieving a Better Life  
7 Experience (ABLE) Program" established pursuant to this act;

8 "Qualified disability expenses" means expenses described in  
9 paragraph (3) of subsection (f) of section 529 of the federal Internal  
10 Revenue Code of 1986, 26 U.S.C. s.529, made for the benefit of an  
11 individual with a disability who is a designated beneficiary. A  
12 "qualified disability expense" shall be related to the beneficiary's  
13 disability and shall supplement, but not supplant, impair, or  
14 diminish, any benefits or assistance of any Federal, State, or other  
15 governmental entity for which the beneficiary may otherwise be  
16 eligible or which the beneficiary may be receiving;

17 "Qualified withdrawal" means a withdrawal from an account to  
18 pay the qualified disability expenses of the designated beneficiary  
19 of the account. A qualified withdrawal may be made by an agent of  
20 the beneficiary who has power of attorney or by the beneficiary's  
21 legal guardian;

22 "Trust" means the "New Jersey Achieving a Better Life  
23 Experience Trust (ABLE Trust)" established pursuant to section 3  
24 of P.L. , c. (C. ) (pending before the Legislature as this  
25 bill).

26

27 3. (New section) Pursuant to the ABLE program established  
28 by this act, there is created within the Division of Developmental  
29 Disabilities in the Department of Human Services the New Jersey  
30 Achieving a Better Life Experience (ABLE) Trust. The ABLE  
31 program shall provide a mechanism through which the division, as  
32 trustee, holds accounts established and maintained in the ABLE  
33 Trust pursuant to the provisions of this act to finance the cost of  
34 qualified disability expenses.

35

36 4. (New section) The division shall administer the ABLE  
37 Trust. The division shall have the power to:

38 a. serve as trustee of the trust;

39 b. adopt rules and regulations pursuant to the "Administrative  
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to  
41 carry out the provisions of this act;

42 c. prescribe and provide appropriate forms for participation in  
43 the program;

44 d. select an investment manager and any other contractors  
45 needed to manage and market the program;

46 e. monitor the investment manager and any other contractors  
47 by audits and other reports;



1 f. collect reasonable administrative fees in connection with any  
2 contract or transaction relating to the program;

3 g. take all actions required so that the program is treated as a  
4 qualified State ABLE program under section 529 of the federal  
5 Internal Revenue Code of 1986, 26 U.S.C. s.529; and

6 h. perform any other acts which may be deemed necessary or  
7 appropriate to carry out the objectives and purposes of this act.

8

9 5. (New section) Neither the members of the division, nor any  
10 officer or employee of the division, shall be liable personally for the  
11 debts, liabilities, or obligations of the ABLE program established  
12 pursuant to this act.

13

14 6. (New section) a. The division shall select an investment  
15 manager or managers to invest the funds of the ABLE Trust or the  
16 funds in ABLE accounts. In making this selection, any investment  
17 manager shall be subject to the "prudent person" standard of care  
18 applicable to the Division of Investment in the Department of the  
19 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270  
20 (C.52:18A-89), and the division shall consider the impact of fees  
21 and costs imposed by the manager or managers on yield to  
22 contributors.

23 b. The division may select more than one investment manager  
24 and investment instrument for the program if it is in the best interest  
25 of contributors and will not interfere with the administration of the  
26 program.

27 c. The division may provide a contributor with a choice of  
28 investment managers or investment instruments or both for the  
29 program if both of the following conditions exist:

30 (1) the federal Internal Revenue Service has provided guidance  
31 that providing a contributor with a choice of investment managers  
32 or instruments under a State ABLE program will not cause the  
33 program to fail to qualify for favorable tax treatment under section  
34 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;  
35 and

36 (2) the division concludes that a choice of investment managers  
37 or of investment instruments is in the best interest of contributors  
38 and will not interfere with the administration of the program.

39 d. If the division terminates the designation of an investment  
40 manager to hold accounts, and accounts must be moved from that  
41 investment manager to another investment manager, the division  
42 shall select the investment manager and type of investment  
43 instrument to which the balance of the account is moved, unless the  
44 federal Internal Revenue Service provides guidance that allowing  
45 the contributor to select among several investment managers or  
46 investment instruments that have been selected by the division  
47 would not cause a program to cease to be a qualified State ABLE

1 program for the purposes of subsection (f) of section 529 of the  
2 federal Internal Revenue Code, 26 U.S.C. s.529.

3 e. If the selection process provided for in this section results in  
4 an investment manager other than the Division of Investment, the  
5 division shall provide for the orderly transfer of accounts and shall  
6 ensure that all the rights of the contributors and designated  
7 beneficiaries participating in the program are protected.

8

9 7. (New section) a. The ABLE program shall be operated as a  
10 trust through the use of accounts for designated beneficiaries. An  
11 account may be opened by any person who desires to save to pay  
12 the qualified disability expenses of an individual by satisfying each  
13 of the following requirements:

14 (1) completing an application in the form prescribed by the  
15 division;

16 (2) paying the one-time application fee established by the  
17 division;

18 (3) making the minimum contribution required by the division  
19 for opening an account;

20 (4) designating the account or accounts to be opened; and

21 (5) in the case of an account to which subsection a. of section 8  
22 of P.L. , c. (C. ) (pending before the Legislature as this  
23 bill) would apply, demonstrating to the satisfaction of the division  
24 that either the contributor, if an individual, or the designated  
25 beneficiary is a New Jersey resident. The requirement of New  
26 Jersey residency for either the contributor or the designated  
27 beneficiary would not apply to an account to which subsection b. of  
28 section 8 of P.L. , c. (C. ) (pending before the Legislature  
29 as this bill) would apply unless otherwise determined by the  
30 division.

31 b. Contributions to accounts shall be made only in cash, as  
32 defined by the division pursuant to regulations, in accordance with  
33 section 529 of the federal Internal Revenue Code of 1986, 26  
34 U.S.C. s.529.

35 c. Contributors may withdraw all or part of the balance from an  
36 account on sixty days' notice or a shorter period, as may be  
37 authorized by the division pursuant to regulations. The contributor  
38 shall provide written notice of the withdrawal to the trustee and to  
39 the designated beneficiary.

40 d. A contributor may change the designated beneficiary of an  
41 account, provided that the new beneficiary qualifies as a designated  
42 beneficiary for the purposes of this act, or rollover all or a portion  
43 of an account to another account, provided that the other account  
44 that meets the requirements of this act, if the change or rollover  
45 would not result in a distribution includible in gross income under  
46 section 529 of the federal Internal Revenue Code of 1986, 26  
47 U.S.C. s.529, in accordance with procedures established by the  
48 division.

- 1 e. Each account shall be maintained separately from each other  
2 account under the program.
- 3 f. Separate records and accounting shall be maintained for each  
4 account for each designated beneficiary.
- 5 g. A contributor to or designated beneficiary of any account  
6 shall not direct the investment of any contributions to an account or  
7 the earnings from the account, except as permitted under section  
8 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.
- 9 h. A contributor or a designated beneficiary shall not use an  
10 interest in an account as security for a loan. Any pledge of an  
11 interest in an account is of no force and effect.
- 12 i. The maximum contribution for any designated beneficiary  
13 shall be determined by the division pursuant to regulations, in  
14 accordance with section 529 of the federal Internal Revenue Code  
15 of 1986, 26 U.S.C. s.529.
- 16 j. Statements, reports on distributions, and information returns  
17 relating to accounts shall be prepared, distributed, and filed to the  
18 extent required by section 529 of the federal Internal Revenue Code  
19 of 1986, 26 U.S.C. s.529, or regulations issued thereunder.
- 20 k. The division may charge, impose, and collect reasonable  
21 administrative fees and service charges in connection with any  
22 agreement, contract, or transaction relating to the program. These  
23 fees and charges may be imposed directly on contributors or may be  
24 taken as a percentage of the investment earnings on accounts.
- 25 l. The State or any State agency, municipality, or other  
26 political subdivision may, by contract or collective bargaining  
27 agreement, agree with any employee to remit contributions to  
28 accounts through payroll deductions made by the appropriate officer  
29 or officers of the State, State agency, county, municipality, or  
30 political subdivision. The contributions shall be held and  
31 administered in accordance with this act.
- 32 m. A contributor, if an individual, may designate another person  
33 as a successor contributor in the event of the death of the original  
34 contributor. The person who opens the account, or any successor  
35 contributor, shall be considered the contributor as defined in section  
36 2 of P.L. , c. (C. ) (pending before the Legislature as this  
37 bill).
- 38 n. Any person may make contributions to an account,  
39 consistent with the terms established by the division, after the  
40 account is opened.
- 41 o. Moneys paid into or out of an ABLE account by or on behalf  
42 of a contributor or designated beneficiary for the purposes of  
43 financing the cost of qualified disability expenses under this act are  
44 exempt from all claims of creditors of the contributor or the  
45 designated beneficiary.
- 46 p. Subject to any outstanding payments due for qualified  
47 disability expenses, in the case that the designated beneficiary dies  
48 or ceases to be an individual with a disability, all amounts

1 remaining in the qualified ABLE account not in excess of the  
2 amount equal to the total medical assistance paid for the designated  
3 beneficiary after the establishment of the account, net of any  
4 premiums paid from the account or paid by or on behalf of the  
5 beneficiary to a Medicaid Buy-In program, shall be distributed to  
6 the State upon the State filing a claim for payment. For the  
7 purposes of this subsection, the State shall be a creditor of the  
8 ABLE account and not a beneficiary. Paragraph (3) of subsection  
9 (c) of 26 U.S.C. s.529 shall not apply to a distribution to the State  
10 pursuant to this subsection.

11

12 8. (New section) a. If the investment manager is the Division  
13 of Investment in the Department of the Treasury, in order to assure  
14 the availability of principal of any amount contributed under this  
15 act, there shall be paid to the division for deposit in the trust, at the  
16 time of distribution, subject to appropriation, such sum, if any, as  
17 shall be certified by the Director of the Division of Developmental  
18 Disabilities in the Department of Human Services as necessary to  
19 provide that amount at the time of distribution. The director shall  
20 make and deliver to the Governor, or the Governor's designee, the  
21 certificate stating the sums, if any, required to make available in the  
22 trust the amount aforesaid, and the sums so certified shall be  
23 appropriated and paid to the division during the then current State  
24 fiscal year.

25 b. If the investment manager is a private entity, the investment  
26 of the principal and interest of any amount contributed under this  
27 act shall be made in accordance with an investment plan approved  
28 by the State Investment Council in the Division of Investment.

29

30 9. (New section) Annually, the division shall determine a  
31 dollar amount of an ABLE account, which shall not be less than  
32 \$25,000, which shall not be considered in evaluating the financial  
33 needs of a designated beneficiary or be deemed a financial resource  
34 or a form of financial aid or assistance to a designated beneficiary,  
35 for purposes of determining the eligibility of the beneficiary for any  
36 scholarship, grant, or monetary assistance awarded by the State for  
37 the purposes of financing the education expenses of the beneficiary,  
38 including higher education expenses; nor shall the amount of any  
39 account as determined by the division provided for a designated  
40 beneficiary under this act reduce the amount of any scholarship  
41 grant or monetary assistance which the beneficiary is entitled to be  
42 awarded by the State for the purposes of financing education  
43 expenses.

44

45 10. (New section) Notwithstanding any other provision of State  
46 law that requires consideration of one or more financial  
47 circumstances of an individual, for the purpose of determining  
48 eligibility to receive, or the amount of, any assistance or benefit

1 authorized by such provision to be provided to or for the benefit of  
2 such individual, any amount, including earnings thereon, in any  
3 ABLE account of such individual, and any distribution for qualified  
4 disability expenses shall be disregarded for such purpose with  
5 respect to any period during which such individual maintains,  
6 makes contributions to, or receives distributions from such ABLE  
7 account.

8  
9 11. (New section) a. Nothing in this act shall be construed to:

10 (1) guarantee the availability or provision of disability-related  
11 services to a designated beneficiary;

12 (2) establish State residency for a person merely because the  
13 person is a designated beneficiary; or

14 (3) guarantee that amounts saved pursuant to the program will  
15 be sufficient to cover the qualified disability expenses of a  
16 designated beneficiary.

17 b. Nothing in this act establishes any obligation of this State or  
18 any agency or instrumentality of this State to guarantee for the  
19 benefit of any contributor or designated beneficiary any of the  
20 following:

21 (1) the rate of interest or other return on any account; or

22 (2) the payment of interest or other return on any account.

23 c. Nothing in this act establishes any obligation or liability of  
24 this State or any agency or instrumentality of this State with respect  
25 to any federal or State tax liability of any contributor or designated  
26 beneficiary in this program.

27 d. Under regulations promulgated by the division, every  
28 contract and application that may be used in connection with a  
29 contribution to an account shall clearly indicate that the account is  
30 not insured by this State nor is the investment return guaranteed by  
31 this State.

32  
33 12. This act shall take effect upon enactment of the federal  
34 “Achieving a Better Life Experience Act of 2013” and section 1  
35 shall apply to contributions made for taxable years beginning after  
36 the effective date.

37  
38  
39 STATEMENT

40  
41 This bill establishes the New Jersey “Achieving a Better Life  
42 Experience (ABLE)” program in the Division of Developmental  
43 Disabilities in the Department of Human Services (division). The  
44 bill will take effect upon the enactment of the federal “Achieving a  
45 Better Life Experience Act of 2013.”

1 Overview of ABLE Accounts

2

3 Under the bill, a person with a developmental disability would be  
4 permitted to establish an ABLE account which could be used for  
5 certain qualifying disability expenses and which would be exempt  
6 from State income taxation. As set forth in subsection (f) of 26  
7 U.S.C. s.529, qualifying disability expenses would include expenses  
8 made for the benefit of a designated beneficiary who is an  
9 individual with a disability, including: education expenses; housing;  
10 transportation; employment support; health, prevention, and  
11 wellness; assistive technology and personal support services; and  
12 miscellaneous expenses such as financial management and  
13 administrative oversight, legal fees, improvements, modifications,  
14 and repairs at a primary residence, and funeral and burial expenses.  
15 A request for a qualified withdrawal may be made by an agent of  
16 the designated beneficiary who has power of attorney or by the  
17 designated beneficiary's legal guardian.

18 The ABLE program would be operated as a trust through the use  
19 of accounts for designated beneficiaries. An account may be  
20 opened by any person and would require: completing an application  
21 in the prescribed form; paying a one-time application fee; making  
22 the minimum initial contribution required by the division;  
23 designating the account or accounts to be opened; and, in certain  
24 cases, demonstrating that either the contributor or the designated  
25 beneficiary is a New Jersey resident.

26 Contributions to accounts may be made only in cash.  
27 Contributors may withdraw all or part of the balance from an  
28 account on sixty days' notice or a shorter period, as may be  
29 authorized by the division pursuant to regulations. A contributor  
30 who makes a withdrawal must provide written notice to the trustee  
31 and to the designated beneficiary. A contributor may change the  
32 designated beneficiary of an account, provided the new beneficiary  
33 qualifies as a designated beneficiary under the bill, or rollover all or  
34 a portion of an account to another account, provided the other  
35 account meets the requirements set forth in the bill, if the change or  
36 rollover would not result in a distribution includible in gross income  
37 under federal law. A contributor, if an individual, would be  
38 permitted to designate another person as a successor contributor in  
39 the event of the death of the original contributor. Any person may  
40 make contributions to an account after the account is opened. The  
41 State or any State agency, municipality, or other political  
42 subdivision would be permitted, by contract or collective bargaining  
43 agreement, to agree with any employee to remit contributions to an  
44 ABLE account through payroll deductions.

45 Each account would be maintained separately, with separate  
46 records and accounting for each account for each designated  
47 beneficiary. A contributor to or designated beneficiary of any  
48 account would not be permitted to direct the investment of any

1 contributions to an account or the earnings from the account, except  
2 as permitted under federal law. A contributor or a designated  
3 beneficiary would not be permitted to use an interest in an account  
4 as security for a loan. Any pledge of an interest in an account  
5 would be of no force and effect. The maximum contribution for  
6 any designated beneficiary will be determined by the division  
7 pursuant to regulations and in accordance with federal law.

8  
9 Effects and Legal Status of ABLE Account

10  
11 Moneys paid into or out of an ABLE account by or on behalf of a  
12 contributor or designated beneficiary for the purposes of financing  
13 the cost of qualified disability expenses would be exempt from  
14 State income taxation, certain federal taxes as provided in 26 U.S.C.  
15 s.529, and all claims of creditors of the contributor or the  
16 designated beneficiary. The funds held in and the amounts  
17 distributed from a qualifying ABLE account would not jeopardize a  
18 beneficiary's eligibility for any other State or federal assistance and  
19 would be disregarded for the purposes of determining eligibility to  
20 receive, or the amount of, any assistance or benefit authorized by  
21 State law.

22 In the event that the designated beneficiary dies or ceases to be a  
23 person with a disability, any amounts remaining in the beneficiary's  
24 ABLE account would be distributed to the State upon the State  
25 filing a claim for payment. The State would constitute a creditor of  
26 the account, not a beneficiary, and the amount paid to the State  
27 would be limited to the amount of total medical assistance paid for  
28 the beneficiary through the Medicaid program after the  
29 establishment of the ABLE account.

30 The division would be required to annually determine a dollar  
31 amount of an ABLE account, which would not be less than \$25,000,  
32 which would not be considered when determining a designated  
33 beneficiary's eligibility for, or the amount awarded to a beneficiary  
34 from, any scholarships, grants, or monetary assistance awarded by  
35 the State for the purposes of financing the education expenses of the  
36 beneficiary, including higher education expenses.

37 Nothing in the bill would be construed to: guarantee the  
38 availability or provision of disability-related services to a  
39 designated beneficiary; establish State residency for a person  
40 merely because the person is a designated beneficiary; or guarantee  
41 that amounts saved pursuant to the program will be sufficient to  
42 cover the qualified disability expenses of a designated beneficiary.  
43 Nothing in the bill establishes any obligation for the State or any  
44 agency or instrumentality of the State to guarantee either the rate of  
45 interest or other return on any account or the payment of interest or  
46 other return on any account. Under regulations to be promulgated  
47 by the division, every contract and application that may be used in  
48 connection with a contribution to an ABLE account would clearly

1 indicate that the account is not insured by the State nor is the  
2 investment return guaranteed by the State.

3 Nothing in the bill establishes any obligation or liability of the  
4 State or any agency or instrumentality of the State with respect to  
5 any federal or State tax liability of any contributor or designated  
6 beneficiary in the ABLE program.

7

8

#### Administration of ABLE Accounts

9

10 Under the ABLE program, the division would establish an ABLE  
11 Trust, which would provide a mechanism through which the  
12 division, as trustee, holds accounts established and maintained in  
13 the ABLE Trust to finance the cost of qualified disability expenses.  
14 The division would have the power to: serve as trustee; prescribe  
15 and provide appropriate forms for participation in the program;  
16 select an investment manager and any other contractors needed to  
17 manage and market the program; monitor the investment manager  
18 and any other contractors by audits and other reports; collect  
19 reasonable administrative fees in connection with any contract or  
20 transaction relating to the program; take all actions required so that  
21 the program is treated as a qualified State ABLE program under  
22 federal law; promulgate rules and regulations as necessary; and  
23 perform any other acts which may be deemed necessary or  
24 appropriate to carry out the objects and purposes of the bill.  
25 Neither the members of the division, nor any officer or employee of  
26 the division, would be liable personally for the debts, liabilities, or  
27 obligations of the ABLE program.

28 The division will select an investment manager or managers to  
29 invest the funds of the trust or the funds in accounts. In making this  
30 selection, any investment manager would be subject to the "prudent  
31 person" standard of care applicable to the Division of Investment in  
32 the Department of the Treasury, and the division must consider the  
33 impact of fees and costs imposed by the manager or managers on  
34 the yield to contributors. The division may select more than one  
35 investment manager and investment instrument for the program if it  
36 is in the best interest of contributors and will not interfere with the  
37 administration of the program, and may provide contributors with a  
38 choice of investment managers or investment instruments if the  
39 federal Internal Revenue Service provides guidance that such choice  
40 will not cause the program to fail to qualify for favorable federal  
41 tax treatment and the division concludes that such choice is in the  
42 best interest of contributors and will not interfere with the  
43 administration of the program.

44 If the division terminates the designation of an investment  
45 manager to hold accounts, and accounts must be moved from that  
46 investment manager to another investment manager, the division  
47 would select the investment manager and type of investment  
48 instrument to which the balance of the account is moved, unless the



1 federal Internal Revenue Service provides guidance that allowing  
2 the contributor to select among several investment managers or  
3 investment instruments that have been selected by the division  
4 would not cause a program to cease to be a qualified State ABLE  
5 program for the purposes of federal law. If the selection process  
6 results in an investment manager other than the Division of  
7 Investment, the Division of Developmental Disabilities would be  
8 required to provide for the orderly transfer of accounts and ensure  
9 that all the rights of the contributors and designated beneficiaries  
10 participating in the program are protected.

11 Statements, reports on distributions, and information returns  
12 relating to accounts would be prepared, distributed, and filed to the  
13 extent required by federal law. The division would be permitted to  
14 charge, impose, and collect reasonable administrative fees and  
15 service charges in connection with any agreement, contract, or  
16 transaction relating to the ABLE program. These fees and charges  
17 may be imposed directly on contributors or may be taken as a  
18 percentage of the investment earnings on accounts.

19 If the investment manager is the Division of Investment in the  
20 Department of the Treasury, the Director of the Division of  
21 Developmental Disabilities would be authorized to certify to the  
22 Governor, or the Governor's designee, the amounts needed to be  
23 made available in the ABLE trust for distribution. This certified  
24 sum would be appropriated and paid to the division during the then-  
25 current State fiscal year. If the investment manager is a private  
26 entity, the investment of the principal and interest of any amount  
27 contributed must be made in accordance with an investment plan  
28 approved by the State Investment Council in the Division of  
29 Investment.

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3956**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 19, 2015

The Assembly Human Services Committee reports favorably and with committee amendments Assembly Bill No. 3956.

As amended by the committee, this bill establishes the New Jersey “Achieving a Better Life Experience (ABLE)” Program in the Division of Developmental Disabilities in the Department of Human Services (division), in accordance with the federal “Achieving a Better Life Experience Act of 2014,” which became law in December 2014.

#### Overview of ABLE Accounts

Under the amended bill, a person with a developmental disability would be permitted to establish an ABLE account which could be used for certain qualifying disability expenses and which would be exempt from State income taxation. As set forth in the federal law, paragraph (5) of subsection (e) of 26 U.S.C. s.529A, qualifying disability expenses would include expenses made for the benefit of a designated beneficiary who is an individual with a disability, including: education expenses; housing and transportation expenses; employment training and support expenses; health, prevention, and wellness expenses; assistive technology and personal support service expenses; miscellaneous expenses such as expenses for financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial; and other expenses which are approved by the Secretary of the federal Department of Health and Human Services. A request for a qualified withdrawal may be made by an agent of the designated beneficiary who has power of attorney or by the designated beneficiary’s legal guardian.

The ABLE program would be operated as a trust through the use of accounts for designated beneficiaries. Only one account may be opened by a designated beneficiary and would require: completing an application in the prescribed form; making the minimum initial contribution required by the division; and demonstrating that the designated beneficiary is a New Jersey resident. Anyone may contribute to the account.

Contributions to accounts may be made only in cash. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the division pursuant to regulations. A contributor who makes a withdrawal must provide written notice to the trustee and to the designated beneficiary. The designated beneficiary of an account may be changed, provided the new beneficiary qualifies as a designated beneficiary under the bill. Additionally, all or a portion of an account may be rolled over to another account, provided the other account meets the requirements set forth in the bill and the rollover would not result in a distribution includible in gross income under federal law. The State or any State agency, municipality, or other political subdivision would be permitted, by contract or collective bargaining agreement, to agree with any employee to remit contributions to an ABLE account through payroll deductions.

Separate records and accounting are to be maintained for the account of each designated beneficiary. A contributor to an account would not be permitted to direct the investment of any contributions to an account or the earnings from the account, except as permitted under federal law. A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year. A contributor or a designated beneficiary would not be permitted to use an interest in an account as security for a loan. Any pledge of an interest in an account would be of no force and effect. The maximum individual contribution and maximum aggregate contributions for any designated beneficiary will be determined by the division pursuant to regulations adopted in accordance with federal law.

#### Effects and Legal Status of ABLE Account

Moneys paid into or out of an ABLE account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified disability expenses would be exempt from State income taxation, certain federal taxes as provided in 26 U.S.C. s.529A, and all claims of creditors of the contributor or the designated beneficiary. The funds held in, and the amounts distributed from, a qualifying ABLE account would not jeopardize a beneficiary's eligibility for any other State or federal assistance and would be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by State law.

In the event that the designated beneficiary dies or ceases to be a person with a disability, any amounts remaining in the beneficiary's ABLE account would be distributed to the State upon the State filing a claim for payment. The State would constitute a creditor of the account, not a beneficiary, and the amount paid to the State would be limited to the amount of total medical assistance paid for the

beneficiary through the Medicaid program after the establishment of the ABLE account.

The division would be required to annually determine a dollar amount of an ABLE account, which would not be less than \$25,000, which would not be considered when determining a designated beneficiary's eligibility for, or the amount awarded to a beneficiary from, any scholarships, grants, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses.

Nothing in the bill would be construed to: guarantee the availability or provision of disability-related services to a designated beneficiary; establish State residency for a person merely because the person is a designated beneficiary; or guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary. Nothing in the bill establishes any obligation for the State or any agency or instrumentality of the State to guarantee either the rate of interest or other return on any account or the payment of interest or other return on any account. Under regulations to be promulgated by the division, every contract and application that may be used in connection with a contribution to an ABLE account would clearly indicate that the account is not insured by the State, and that the investment return is not guaranteed by the State.

Nothing in the bill establishes any obligation or liability of the State or any agency or instrumentality of the State with respect to any federal or State tax liability of any contributor or designated beneficiary in the ABLE program.

#### Administration of ABLE Accounts

Under the ABLE program, the division would establish an ABLE Trust, which would provide a mechanism through which the division, as trustee, would hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division would have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill. Neither the members of the division, nor any officer or employee of the division, would be liable personally for the debts, liabilities, or obligations of the ABLE program.

The division will select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager would be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury, and the division must consider the impact of fees and costs imposed by the manager or managers on the yield to contributors. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program, and it may provide contributors with a choice of investment managers or investment instruments if the federal Internal Revenue Service provides guidance that such choice will not cause the program to fail to qualify for favorable federal tax treatment and the division concludes that such choice is in the best interest of contributors and will not interfere with the administration of the program.

If the division terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the division would select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division would not cause a program to cease to be a qualified State ABLE program for the purposes of federal law. If the selection process results in an investment manager other than the Division of Investment, the Division of Developmental Disabilities would be required to provide for the orderly transfer of accounts and ensure that all the rights of the contributors and designated beneficiaries participating in the program are protected.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts would be prepared, distributed, and filed to the extent required by federal law. The division would be permitted to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

If the investment manager is the Division of Investment in the Department of the Treasury, the Director of the Division of Developmental Disabilities would be authorized to certify to the Governor, or the Governor's designee, the amounts needed to be made available in the ABLE trust for distribution. This certified sum would be appropriated and paid to the division during the then-current State fiscal year. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed

must be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

The committee amended the bill to be consistent with the recently enacted federal "Achieving a Better Life Experience Act of 2014." In particular, the amendments provide that: 1) only one ABLE account may be opened by a designated beneficiary, instead of permitting multiple accounts to be opened by any person; 2) a one-time fee to open an account is no longer required; 3) the minimum contribution may be no greater than the minimum required for opening an account under the NJBEST program for higher educational costs; 4) except in the case of certain rollovers of accounts or changes in beneficiary, pursuant to federal law, no contribution may be accepted if it would result in aggregate contributions exceeding the federal amount for exclusion of gifts from taxation under 26 U.S.C. s.2503; 5) a contributor may not change the beneficiary; 6) a designated beneficiary may, directly or indirectly, direct the investment of any contributions or earnings, no more than twice a year; 7) the maximum individual contribution and maximum aggregate contributions for a designated beneficiary are to be determined by the division pursuant to federal law; and 8) notices of the establishment of accounts would be filed in accordance with federal law. The amendments also include a technical amendment to update the reference from an "education individual retirement account" to a "Coverdell education savings account," and revise the effective date to the 45th day after enactment of the bill.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 3956**

# STATE OF NEW JERSEY

DATED: JUNE 15, 2015

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3956 (1R).

This bill establishes the New Jersey Achieving a Better Life Experience (ABLE) Program in the Division of Developmental Disabilities in the Department of Human Services (division), in accordance with the federal “Achieving a Better Life Experience Act of 2014,” which became law in December 2014.

### Overview of ABLE Accounts

Under the bill, a person with a developmental disability would be permitted to establish an ABLE account which could be used for certain qualifying disability expenses and which would be exempt from State income taxation. As set forth in the federal law, paragraph (5) of subsection (e) of 26 U.S.C. s.529A, qualifying disability expenses would include expenses made for the benefit of a designated beneficiary who is an individual with a disability, including: education expenses; housing and transportation expenses; employment training and support expenses; health, prevention, and wellness expenses; assistive technology and personal support service expenses; miscellaneous expenses such as expenses for financial management and administrative services, legal fees, oversight and monitoring, and funeral and burial; and other expenses which are approved by the Secretary of the federal Department of Health and Human Services. A request for a qualified withdrawal may be made by an agent of the designated beneficiary who has power of attorney or by the designated beneficiary’s legal guardian.

The ABLE program would be operated as a trust through the use of accounts for designated beneficiaries. Only one account may be opened by a designated beneficiary and would require: completing an application in the prescribed form; making the minimum initial contribution required by the division capped at the minimum required amount for opening an NJBEST program account; and demonstrating that the designated beneficiary is a New Jersey resident. Anyone may contribute to the account.

Contributions to accounts may be made only in cash. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the division pursuant to regulations. A contributor who makes a withdrawal must provide written notice to the trustee and to the designated beneficiary. The designated beneficiary of an account may be changed, provided the new beneficiary qualifies as a designated beneficiary under the bill. Additionally, all or a portion of an account may be rolled over to another account, provided the other account meets the requirements set forth in the bill and the rollover would not result in a distribution includible in gross income under federal law. The State or any State agency, municipality, or other political subdivision would be permitted, by contract or collective bargaining agreement, to agree with any employee to remit contributions to an ABLE account through payroll deductions.

Separate records and accounting are to be maintained for the account of each designated beneficiary. A contributor to an account would not be permitted to direct the investment of any contributions to an account or the earnings from the account, except as permitted under federal law. A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year. A contributor or a designated beneficiary would not be permitted to use an interest in an account as security for a loan. Any pledge of an interest in an account would be of no force and effect. The maximum individual contribution and maximum aggregate contributions for any designated beneficiary will be determined by the division pursuant to regulations adopted in accordance with federal law.

#### Effects and Legal Status of ABLE Account

Moneys paid into or out of an ABLE account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified disability expenses would be exempt from State income taxation, certain federal taxes as provided in 26 U.S.C. s.529A, and all claims of creditors of the contributor or the designated beneficiary. The funds held in, and the amounts distributed from, a qualifying ABLE account would not jeopardize a beneficiary's eligibility for any other State or federal assistance and would be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by State law.

In the event that the designated beneficiary dies or ceases to be a person with a disability, any amounts remaining in the beneficiary's ABLE account would be distributed to the State upon the State filing a claim for payment. The State would constitute a creditor of the account, not a beneficiary, and the amount paid to the State would be limited to the amount of total medical assistance paid for the



beneficiary through the Medicaid program after the establishment of the ABLE account.

The division would be required to annually determine a dollar amount of an ABLE account, which would not be less than \$25,000, which would not be considered when determining a designated beneficiary's eligibility for, or the amount awarded to a beneficiary from, any scholarships, grants, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses.

Nothing in the bill would be construed to: guarantee the availability or provision of disability-related services to a designated beneficiary; establish State residency for a person merely because the person is a designated beneficiary; or guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary. Nothing in the bill establishes any obligation for the State or any agency or instrumentality of the State to guarantee either the rate of interest or other return on any account or the payment of interest or other return on any account. Under regulations to be promulgated by the division, every contract and application that may be used in connection with a contribution to an ABLE account would clearly indicate that the account is not insured by the State, and that the investment return is not guaranteed by the State.

Nothing in the bill establishes any obligation or liability of the State or any agency or instrumentality of the State with respect to any federal or State tax liability of any contributor or designated beneficiary in the ABLE program.

#### Administration of ABLE Accounts

Under the ABLE program, the division would establish an ABLE Trust, which would provide a mechanism through which the division, as trustee, would hold accounts established and maintained in the ABLE Trust to finance the cost of qualified disability expenses. The division would have the power to: serve as trustee; prescribe and provide appropriate forms for participation in the program; select an investment manager and any other contractors needed to manage and market the program; monitor the investment manager and any other contractors by audits and other reports; collect reasonable administrative fees in connection with any contract or transaction relating to the program; take all actions required so that the program is treated as a qualified State ABLE program under federal law; promulgate rules and regulations as necessary; and perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of the bill. Neither the members of the division, nor any officer or employee of the division, would be liable personally for the debts, liabilities, or obligations of the ABLE program.

The division will select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager would be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury, and the division must consider the impact of fees and costs imposed by the manager or managers on the yield to contributors. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program, and it may provide contributors with a choice of investment managers or investment instruments if the federal Internal Revenue Service provides guidance that such choice will not cause the program to fail to qualify for favorable federal tax treatment and the division concludes that such choice is in the best interest of contributors and will not interfere with the administration of the program.

If the division terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the division would select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division would not cause a program to cease to be a qualified State ABLE program for the purposes of federal law. If the selection process results in an investment manager other than the Division of Investment, the Division of Developmental Disabilities would be required to provide for the orderly transfer of accounts and ensure that all the rights of the contributors and designated beneficiaries participating in the program are protected.

Statements, reports on distributions, notices of the establishment of accounts, and information returns relating to accounts would be prepared, distributed, and filed to the extent required by federal law. The division would be permitted to charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the ABLE program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

If the investment manager is the Division of Investment in the Department of the Treasury, the Director of the Division of Developmental Disabilities would be authorized to certify to the Governor, or the Governor's designee, the amounts needed to be made available in the ABLE trust for distribution. This certified sum would be appropriated and paid to the division during the then-current State fiscal year. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed

must be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

The bill is scheduled to take effect on the 45th day after the date of enactment with the gross income tax exclusion applying to contributions for taxable years beginning on or after the date of enactment.

**FISCAL IMPACT:**

The bill is likely to result in an indeterminate expenditure increase primarily owing to administrative expenses associated with implementation and a long-term indeterminate gross income tax revenue loss associated with the ABLE account exclusion

During the initial stages of implementation the bill is likely to cost approximately \$500,000 to \$1 million annually. That cost is comprised of up to \$500,000 in administrative costs and up to \$500,000 of gross income tax revenue losses. Post-implementation, it is possible that the program will become administratively self-funded through participant fees, thereby reducing administrative costs.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY SUBSTITUTE FOR**  
**ASSEMBLY, No. 3956**  
**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

DATED: DECEMBER 22, 2015

**SUMMARY**

- Synopsis:** Authorizes establishment of Achieving a Better Life Experience accounts for persons with certain disabilities.
- Type of Impact:** A General Fund expenditure increase and a Property Tax Relief Fund (PTRF) revenue reduction.
- Agencies Affected:** Departments of the Treasury and Human Services.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost (General Fund)</b>	\$500,000	\$500,000	\$500,000
<b>Forgone State Revenue (PTRF)</b>	\$0	\$25,000 to \$250,000	\$50,000 to \$500,000

- The Office of Legislative Services (OLS) estimates that the State may spend approximately \$500,000 annually for the first several years of implementation to establish, administer, and market the Achieving a Better Life Experience (ABLE) program established under the bill. Eventually, the program may become financially self-sufficient, funding these costs through revenue from fees charged to participants.
- The OLS estimates that the State would forgo approximately \$50,000 to \$500,000 of income tax revenue annually as a result of the sheltering of investment earnings in ABLE accounts. The actual amount forgone will depend upon several factors, including: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

## **BILL DESCRIPTION**

The Assembly Substitute for Assembly Bill No. 3956 of 2014 requires the Department of Human Services and the Department of the Treasury to establish the “New Jersey Achieving a Better Life Experience (ABLE) Program” pursuant to the federal ABLE Act, 26 U.S.C. s.529A. Under the program, individuals with certain disabilities will be permitted to establish ABLE accounts that may be used to pay certain disability-related expenses. ABLE accounts will be exempt from State income taxation and will not be counted as an asset or income when determining the individual’s eligibility for State assistance programs.

The Departments of Human Services and Treasury will be permitted to contract with a third party provider to administer and operate the program, including providing program services, such as promoting the program to communities likely to benefit from access to ABLE accounts, processing applications for ABLE accounts, and processing claims from ABLE account holders to institutions assigned to administer their ABLE accounts. The Department of the Treasury will be required to ensure that participants can readily deposit and withdraw funds from ABLE accounts. The Departments of Human Services and Treasury will further be required to take all actions as may be necessary to ensure the program meets the requirements under federal law to be treated as a qualified State ABLE Program.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS anticipates that the bill would result in an indeterminate expenditure increase from the General Fund, likely several hundred thousand dollars, in startup costs. In the long term, the bill would result in a reduction in income tax revenue of indeterminate magnitude. The analysis below discusses three different possible fiscal effects of the bill in detail: (1) administrative costs; (2) forgone income tax revenue; and (3) increased public assistance expenditures.

#### **Administrative Costs**

The OLS expects that implementing the bill would require up-front costs to establish and administer the program and advertise it to eligible individuals and families. The exact amount of up-front costs cannot be estimated without input from the Executive regarding the number of employees to be hired to administer the program and the scale of marketing activities that would be undertaken, but costs are likely to be several hundred thousand dollars per year, which may reasonably be expected to continue for two to three years. By way of comparison, when the NJBEST program was established in Fiscal Year 1998, \$350,000 was appropriated per year for several years for program administration. A similar amount may be appropriate for the establishment and administration of the ABLE program, which would be approximately \$500,000 after adjusting for inflation. The program may become financially self-sustaining, as NJ BEST is now, if it grows large enough that fees charged to participants can cover its administrative costs.

Administrative costs may be shared between the Department of the Treasury, which is responsible for ensuring that participants can readily deposit and withdrawn funds from ABLE accounts; and the Department of Human Services, which is responsible for program services, such as promoting the program, evaluating applications to participate in the program, and processing claims from ABLE accounts.

#### Income Tax Revenue

The bill would result in the State forgoing income tax revenue for earnings in ABLE accounts, which this analysis assumes would otherwise be held in taxable savings accounts. The specific amount of forgone revenue would depend upon: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

The OLS estimates that the maximum number of accounts being established is 43,800, corresponding to the number of tax returns filed annually in which State tax is owed and an exemption for blindness or disability is claimed. Initially, actual participation in the ABLE program is likely to be much smaller than this number. Even after the program matures, participation may be significantly smaller than this maximum, as some eligible individuals may continue to be unaware of the program, and some may opt not to participate and instead use a different savings vehicle. It is noted that some other savings vehicles, such as qualifying income trusts or special needs trusts, may prove to be more financially advantageous for many individuals. Based on available State taxation data, the OLS estimates that the average marginal tax rate for households with at least one member who is blind or has a disability is three percent.

The OLS has no data to allow an estimate of the average balance in ABLE accounts. However, average balances are likely to be fairly small, because of competition from other savings vehicles that may prove to be more financially advantageous, and because of the limited savings held by most individuals with disabilities. The rate of return on investments in ABLE accounts cannot be determined with certainty in advance, but is likely to track closely with the rate of return in similar programs.

Based on several projections in which all four variables were manipulated, the OLS estimates that a mature ABLE program would result in the State forgoing \$50,000 to \$500,000 of income tax revenue annually. The impact would be less initially, as program participation will likely take time to grow. The OLS assumes no forgone revenue in the first year after enactment, allowing for time needed to develop necessary rules and regulations, contract with a third party or parties to administer the program, and take other steps necessary to develop the program.

#### Public Assistance Costs

Because assets in an ABLE account and distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal public assistance programs, there is a possibility that the bill would result in an increase in expenditures for public assistance programs such as tuition assistance, Supplemental Security Income, and Medicaid. However, it is currently possible for individuals to establish special needs trusts in order to shelter assets from Medicaid and other public assistance eligibility tests. Therefore, the OLS does not estimate that these provisions of the bill will have a substantial fiscal impact.

FE to AS for A3956

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*Section: Human Services*

*Analyst: David Drescher  
Senior Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY SUBSTITUTE FOR**  
**ASSEMBLY, No. 3956**  
**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

DATED: DECEMBER 22, 2015

**SUMMARY**

- Synopsis:** Authorizes establishment of Achieving a Better Life Experience accounts for persons with certain disabilities.
- Type of Impact:** A General Fund expenditure increase and a Property Tax Relief Fund (PTRF) revenue reduction.
- Agencies Affected:** Departments of the Treasury and Human Services.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost (General Fund)</b>	\$500,000	\$500,000	\$500,000
<b>Forgone State Revenue (PTRF)</b>	\$0	\$25,000 to \$250,000	\$50,000 to \$500,000

- The Office of Legislative Services (OLS) estimates that the State may spend approximately \$500,000 annually for the first several years of implementation to establish, administer, and market the Achieving a Better Life Experience (ABLE) program established under the bill. Eventually, the program may become financially self-sufficient, funding these costs through revenue from fees charged to participants.
- The OLS estimates that the State would forgo approximately \$50,000 to \$500,000 of income tax revenue annually as a result of the sheltering of investment earnings in ABLE accounts. The actual amount forgone will depend upon several factors, including: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.



## **BILL DESCRIPTION**

The Assembly Substitute for Assembly Bill No. 3956 of 2014 requires the Department of Human Services and the Department of the Treasury to establish the “New Jersey Achieving a Better Life Experience (ABLE) Program” pursuant to the federal ABLE Act, 26 U.S.C. s.529A. Under the program, individuals with certain disabilities will be permitted to establish ABLE accounts that may be used to pay certain disability-related expenses. ABLE accounts will be exempt from State income taxation and will not be counted as an asset or income when determining the individual’s eligibility for State assistance programs.

The Departments of Human Services and Treasury will be permitted to contract with a third party provider to administer and operate the program, including providing program services, such as promoting the program to communities likely to benefit from access to ABLE accounts, processing applications for ABLE accounts, and processing claims from ABLE account holders to institutions assigned to administer their ABLE accounts. The Department of the Treasury will be required to ensure that participants can readily deposit and withdraw funds from ABLE accounts. The Departments of Human Services and Treasury will further be required to take all actions as may be necessary to ensure the program meets the requirements under federal law to be treated as a qualified State ABLE Program.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS anticipates that the bill would result in an indeterminate expenditure increase from the General Fund, likely several hundred thousand dollars, in startup costs. In the long term, the bill would result in a reduction in income tax revenue of indeterminate magnitude. The analysis below discusses three different possible fiscal effects of the bill in detail: (1) administrative costs; (2) forgone income tax revenue; and (3) increased public assistance expenditures.

#### **Administrative Costs**

The OLS expects that implementing the bill would require up-front costs to establish and administer the program and advertise it to eligible individuals and families. The exact amount of up-front costs cannot be estimated without input from the Executive regarding the number of employees to be hired to administer the program and the scale of marketing activities that would be undertaken, but costs are likely to be several hundred thousand dollars per year, which may reasonably be expected to continue for two to three years. By way of comparison, when the NJBEST program was established in Fiscal Year 1998, \$350,000 was appropriated per year for several years for program administration. A similar amount may be appropriate for the establishment and administration of the ABLE program, which would be approximately \$500,000 after adjusting for inflation. The program may become financially self-sustaining, as NJ BEST is now, if it grows large enough that fees charged to participants can cover its administrative costs.

Administrative costs may be shared between the Department of the Treasury, which is responsible for ensuring that participants can readily deposit and withdrawn funds from ABLE accounts; and the Department of Human Services, which is responsible for program services, such as promoting the program, evaluating applications to participate in the program, and processing claims from ABLE accounts.

#### Income Tax Revenue

The bill would result in the State forgoing income tax revenue for earnings in ABLE accounts, which this analysis assumes would otherwise be held in taxable savings accounts. The specific amount of forgone revenue would depend upon: (1) the number of individuals who establish accounts; (2) the marginal tax rate that these individuals would pay on investment earnings in the absence of the bill; (3) the balance held in established accounts; and (4) the rate of investment earnings on savings in ABLE accounts.

The OLS estimates that the maximum number of accounts being established is 43,800, corresponding to the number of tax returns filed annually in which State tax is owed and an exemption for blindness or disability is claimed. Initially, actual participation in the ABLE program is likely to be much smaller than this number. Even after the program matures, participation may be significantly smaller than this maximum, as some eligible individuals may continue to be unaware of the program, and some may opt not to participate and instead use a different savings vehicle. It is noted that some other savings vehicles, such as qualifying income trusts or special needs trusts, may prove to be more financially advantageous for many individuals. Based on available State taxation data, the OLS estimates that the average marginal tax rate for households with at least one member who is blind or has a disability is three percent.

The OLS has no data to allow an estimate of the average balance in ABLE accounts. However, average balances are likely to be fairly small, because of competition from other savings vehicles that may prove to be more financially advantageous, and because of the limited savings held by most individuals with disabilities. The rate of return on investments in ABLE accounts cannot be determined with certainty in advance, but is likely to track closely with the rate of return in similar programs.

Based on several projections in which all four variables were manipulated, the OLS estimates that a mature ABLE program would result in the State forgoing \$50,000 to \$500,000 of income tax revenue annually. The impact would be less initially, as program participation will likely take time to grow. The OLS assumes no forgone revenue in the first year after enactment, allowing for time needed to develop necessary rules and regulations, contract with a third party or parties to administer the program, and take other steps necessary to develop the program.

#### Public Assistance Costs

Because assets in an ABLE account and distributions from the account would be disregarded for the purpose of determining eligibility to receive, or the amount of, means-tested State or federal public assistance programs, there is a possibility that the bill would result in an increase in expenditures for public assistance programs such as tuition assistance, Supplemental Security Income, and Medicaid. However, it is currently possible for individuals to establish special needs trusts in order to shelter assets from Medicaid and other public assistance eligibility tests. Therefore, the OLS does not estimate that these provisions of the bill will have a substantial fiscal impact.

FE to AS for A3956

4

*Section: Human Services*

*Analyst: David Drescher  
Senior Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

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## Governor Christie Takes Action On Pending Legislation

Monday, January 11, 2016 Tags: [Bill Action](#)



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Trenton, NJ – Governor Chris Christie today took action on legislation, including a bill aimed at helping inmates who were victims of domestic violence and a second bill designed to help non-violent drug offenders reclaim their lives by streamlining the process for expungement of their criminal records.

The Governor suggested minor changes to strengthen Senate Bill No. 995, which seeks to help domestic violence victims who have been convicted of crimes against their abusers by establishing a community reentry program to assist victim-offenders assimilate into society upon release from custody and prevent further victimization.

Governor Christie conditionally vetoed the bill, proposing that the program be established solely in the Department of Corrections.

“The goal of this bill is commendable and I sincerely support its objective,” Governor Christie said. “Domestic violence is tragic, and victims deserve support and counseling. However, the bill conflates the statutory and regulatory responsibilities of the Department of Corrections and the State Parole Board, combining the agencies’ separate residential program functions. Accordingly, I suggest minor amendments, in accordance with the intent of the legislation to establish this program within the Department of Corrections, consistent with its existing reintegration programming and tailored to the specific needs of this limited inmate population.”

The bill as written also called for an automatic early release program for this specific subset of inmates upon successful completion of the reentry program, an element of the bill that Governor Christie does not support.

“I cannot support the creation of early release programs because they would begin to chisel away at the long-standing function of the State Parole Board,” Governor Christie said. “For decades, the State Parole Board has faithfully fulfilled its charge to carefully review and consider the underlying facts and circumstances of each applicant for parole. While I continue to encourage the Legislature to explore reforms that will create efficiencies in State government, I remain grounded in my belief that the review of parole applications is best accomplished through the reasoned, compassionate, experienced and individualized judgment of the State Parole Board and not through an automatic process based upon one factor.”

Governor Christie similarly took action to strengthen the Assembly Committee Substitute for Assembly Bills Nos. 206, 471, 1663, 2879, 3060 and 3108, and urged quick approval from the Legislature.

The bill proposes to allow those who have successfully completed the Drug Court program to expunge the related criminal charges, and it further aims to make the expungement process more efficient.

Seeking to balance the needs of non-violent ex-offenders with public safety, Governor Christie conditionally vetoed the bill, retaining the current waiting period for expungements for indictable offenses, currently 10 years, or five years if a court determines that expungement is in the public’s interest.

“While I support breaking down barriers to employment and education for non-violent ex-offenders, I cannot endorse a bill that compromises public safety,” Governor Christie said. “As written, this bill would cut in half the presumptive waiting period to expunge indictable offenses, often felonies, from ten years to five years, and eliminate an important safeguard which allows a judge to consider whether granting an expungement is in the public’s interest. The current public interest exception to the presumptive waiting period is an effective and efficient way to help ex-offenders combat the collateral consequences of their offense, while also ensuring that public safety is not compromised.”

Governor Christie further suggested retaining the five-year waiting period for disorderly persons offenses, while adopting the bill's provision to lower this waiting period to three years, if a court determines that expungement is in the public interest.

The Governor also took the following action on other pending legislation:

#### **BILL SIGNINGS:**

**S-475/A-3223 (Madden, Sweeney/Mosquera, Webber, Moriarty, Mukherji, Garcia, Munoz, Lampitt)** - Requires certain information regarding Down syndrome be provided to certain parents and families

**S-650 (Doherty, Beach/DiMaio, Andrzejczak, Peterson, DeAngelo)** - Designates State Route 173 between Clinton and Phillipsburg as "173rd Airborne Brigade Highway"

**S-835/A-1972 (Bateman/Garcia, Danielson)** - Enhances penalties for false incrimination and making fictitious reports

**S-939/A-2913 (Bateman, A.R. Bucco/Caride, Dancer, A.M. Bucco)** - Designates Black Swallowtail butterfly as State Butterfly

**S-1940/A-2893 (Oroho, Van Drew/Burzichelli, Space)** - Exempts board of education and local government payments to entities under BPU jurisdiction from certain certification requirements

**S-2145/A-631 (Van Drew, Madden/Moriarty, Burzichelli, Tucker, DeAngelo, Danielson, Mukherji)** - Authorizes hiring preference for veterans in non-civil service jurisdictions

**S-2301/A-3522 (Greenstein, Stack/Stender, Mukherji, Lagana, Diegman)** - Regulates pharmacy benefits managers and requires certain disclosures concerning multiple source generic drug pricing

**S-2432/A-4720 (Madden/Moriarty, Mosquera)** - Requires notification of member or retiree of State-administered retirement system under certain circumstances when member or retiree requests change in beneficiary for group life insurance

**S-2453/A-3805 (Weinberg, Allen/Burzichelli, Singleton)** - Requires earlier mandatory polling hours for school elections; requires discretionary additional polling hours be consistent with current primary and general elections

**S-2523/A-3917 (Gill, Greenstein, Benson/DeAngelo, Johnson)** - Permits municipalities and municipal parking authorities to create Senior Citizen Priority Parking Program

**SCS for S-2586, 2587, A-3217, and 3218 (Stack, Cunningham, Mukherji, Pintor Marin, Garcia)** - Requires certain sanitary and protective procedures for used mattresses

**SCS for S-2668/A-4270 (Beach, Madden/Lampitt, Vainieri Huttie, Benson, Spencer, Wimberly, Mosquera)** - Establishes "MVP Emergency Alert System" for missing persons with mental, intellectual, or developmental disabilities

**SS for S-2770/AS for A-3956 (Sweeney, Addiego/Lampitt, Greenwald, Vainieri Huttie, Benson, Mazzeo)** - Authorizes establishment of Achieving a Better Life Experience accounts for persons with certain disabilities

**S-2940/A-4531 (Singer, Sweeney/Spencer, Benson, Casagrande, Muoio)** - Creates new criminal offenses concerning endangering another person; repeals N.J.S.2C:12-2 and N.J.S.2C:24-7

**S-2961/A-4188 (Codey, Vitale/Garcia, Lagana, Taliaferro, Vainieri Huttie, Danielsens, Holley, Benson, Jimenez)** - Clarifies that Alzheimer's disease and related disorders may be listed as secondary cause of death on death certificate when appropriate

**S-2978/A-4194 (Van Drew, Oroho/Burzichelli, Spencer, Rumana, Webber, Benson)** - Authorizes mobile electronic waste destruction units to operate without DEP permit

**S-3004/A-4685 (Cunningham, Van Drew/Andrzejczak, Johnson, Muoio, Wimberly)** - Permits municipality with UEZ to participate in Downtown Business Improvements Zone Loan Fund

**S-3076/A-4621 (Weinberg, Bateman/Johnson, Caride)** - Increases maximum legal fee to represent victims from \$1,000 to \$3,000

**S-3110/A-4617 (Scutari/Johnson, Webber)** - Permits certain health clubs to offer swimming lessons and otherwise remain exempt from first aid personnel and lifeguarding requirements

**S-3117/A-4781 (Gordon, Bateman, Sweeney, T. Kean/Vainieri Huttie, Eustace, Gusciora, Lampitt, Angelini, Moriarty)** - Prohibits Division of Developmental Disabilities from compelling transfers of individuals with developmental disabilities from out-of-State to in-State facilities unless certain exceptions apply

**S-3220/A-4790 (Sweeney, O'Toole, Vitale/Greenwald, Conaway, Vainieri Huttie, Handlin, Garcia)** - Establishes a process to integrate certain health data and other data from publicly supported programs for population health research

**S-3232/A-4834 (Sarfo, Oroho/Lagana, Burzichelli, Schaer, DeAngelo, Phoebus)** - Allows businesses due to receive grant under Business Employment Incentive Program to receive tax credit instead of grant

**S-3270/A-4705 (Gill, Bateman/Schaer, Coughlin, Lagana, S. Kean, Ciattarelli)** - "Certificates of Insurance Act;" governs use of certificates of insurance; provides DOBI with enforcement authority

**SJR-81/AJR-122 (Barnes/Vainieri Huttle, Schaer, Lampitt)** - Condemns Boycott, Divestment, and Sanctions movement against Israel

**A-308/S-2203 (Russo, Rumana/O'Toole, Smith)** - Prohibits escrow agent evaluation services from charging escrow agents fees

**A-1098/S-671 (Vainieri Huttle, Eustace, Diegnan, Giblin/Pou, Sarlo, Weinberg)** - Requires DHS and DMVA to conduct or contract for follow-up studies of former residents transitioning to community from their facilities

**A-1355/S-2963 (Stender, Lampitt, Holley, Moriarty/T. Kean, Vitale)** - Requires DOH to provide information about crib safety on its Internet website

**A-1783/S-2020 (McKeon, Rible, Sumter, Moriarty/Vitale, Cunningham)** - "Art Therapist Licensing Act"

**A-2023/S-2675 (Greenwald, Benson/Cruz-Perez)** - Revises definition of "responsible charge" as it pertains to licensed professional engineers and licensed architects

**A-2229 (Wisniewski, Diegnan)** - Concerns contracts for asphalt work under the "Local Public Contracts Law"

**A-2301/S-1481 (Andrzejczak/Van Drew)** - Designates certain interchanges of Garden State Parkway in honor of Melvin M. Loftus and Christopher Meyer

**A-3052/S-1090 (Mazzeo, Pinkin, Mukheriji, Wimberly/A.R. Bucco, Whelan)** - Concerns property taxes due and owing on real property damaged or destroyed during, or as the result of, a natural disaster when a state of emergency is declared by the Governor

**A-3246/S-3069 (Dancer, Burzichelli, Vainieri Huttle/Oroho, Sarlo)** - Requires timeframe of standardbred mare residing in New Jersey breeding farm be inclusive of foaling instead of between foal's conception and birth

**A-3293/S-2146 (Mazzeo, Andrzejczak, Pinkin, Webber, Simon, Mukherji/Van Drew, Doherty)** - Allows military personnel and veterans to present certain identifying documents in lieu of municipal beach tags to gain admission to certain beaches

**A-3331/S-3111 (Benson, Rodriguez-Gregg, Coughlin/Gill, Beach)** - Requires health benefits coverage for synchronization of prescribed medications under certain circumstances

**A-3390/S-2309 (Coughlin, Pinkin, Webber, Diegnan/Vitale)** - Permits transmittal of certain land use documents via email

**A-3395/S-2294 (Wisniewski/Sacco)** - Allows insurer to obtain certificates of ownership or salvage certificates of title for motor vehicles under certain circumstances

**A-3499/S-2256 (Andrzejczak, Mazzeo, Johnson, Pinkin, DeAngelo/Van Drew)** - Requires DMVA to encourage and facilitate returning service members' registration with VA

**A-3507/S-2677 (Eustace, Webber, Munoz, Schepisi, Rumana/Gordon, Sarlo)** - Amends law concerning county and municipal stream cleaning activities

**A-3749/S-2568 (Lampitt, Mazzeo, Andrzejczak, Mukheriji, Pinkin/Beach, Allen)** - Establishes program to provide assistance to qualified veterans in in-patient and out-patient treatment programs to travel to medical counseling in State

**A-3849/SCS for S-2466 (DeAngelo, Eustace, Mazzeo, Pintor Marin, Benson/Turner, Singer)** - Requires BPU to provide links to pricing information to customers from electric and gas public utilities, and third-party electric power and gas suppliers

**A-3950/S-2832 (Prieto, Jimenez, Quijano/Greenstein, Turner)** - Permits correctional facilities to utilize body imaging scanning equipment

**A-4079/S-2819 (Eustace, Andrzejczak, Taliaferro, Benson, Dancer/Van Drew, Beach)** - Directs Department of Agriculture to publish on its website "New Jersey Gleaning Week" and "Farmers Against Hunger Day" page

**A-4094/S-2884 (Conaway, Singleton, Wimberly, Lampitt, Benson/Whelan, Madden)** - Permits administration of epinephrine auto-injector device by persons who complete approved educational program

**A-4438/S-3202 (Mukherji, Burzichelli/Scutari, Madden)** - Raises maximum workers' compensation fees for evaluating physicians

**A-4518/S-3010 (Schaer, Eustace, Benson, Pintor Marin/Sarlo)** - Modifies and clarifies provisions of certain economic incentive programs

**AJR-57/SJR-42 (Space/Oroho)** - Designates April of each year as "Sarcoidosis Awareness Month"

**AJR-93/SJR-73 (Eustace, Andrzejczak, Taliaferro, Benson/Van Drew, Beach)** - Designates third week of September as "New Jersey Gleaning Week"

**AJR-94/SJR-74 (Eustace, Andrzejczak, Taliaferro, Benson/Van Drew, Beach)** - Designates Wednesday of third week of September as "Farmers Against Hunger Day"

**AJR-100/SJR-70 (Andrzejczak, Tucker, DeAngelo, Mazzeo/Van Drew, Whelan)** - Designates first week in August of each year as "Coast Guard Week" and honors Cape May as U.S. Coast Guard's enlisted accession point and recruit training center

#### BILLS VETOED:

**S-264/A-1347 (Greenstein, Cunningham/Stender, Egan, O'Donnell, Wimberly)** – **ABSOLUTE** - "Thomas P. Canzanella Twenty First Century First Responders Protection Act"; concerns workers compensation for public safety workers

**S-374/A-3403 (Scutari, Beck/Rible, DeAngelo, Mukherji)** - **ABSOLUTE** - Concerns attorney fees for workers' compensation awards

**SCS for S-779, 1952/ACS for A-2474 (Weinberg, Sarlo, Lesniak/Johnson, Garcia, Vainieri Huttie, Lagana, Mukherji, Moriarty)** - **ABSOLUTE** - "Garden State Film and Digital Media Jobs Act" expands existing film and digital media production tax credit programs

**S-995/A-1677 (Weinberg, Allen/Johnson, Vainieri Huttie, Lampitt, Mosquera)** – **CONDITIONAL** - Establishes in DOC, supervised community reintegration program for certain victims of domestic abuse

**S-1346/A-3837 (Rice/Coughlin, Garcia, Rodriguez-Gregg, Pintor Marin, Jasey)** - **CONDITIONAL** - Concerns the recording of mortgages

**S-2260/A-688 (Scutari, Cardinale/Schaer)** - **CONDITIONAL** - Modifies certain fees charged by, and requirements imposed on, check casher licensees

**S-2524/A-4067 (Gill, Allen/Lagana, Singleton, Moriarty)** - **CONDITIONAL** - The "Municipal Volunteer Property Tax Reduction Act"; permits certain municipal property owners to perform volunteer services in return for property tax vouchers

**S-2577/ACS for A-4139 (Stack, Schaer/Mazzeo, Andrzejczak, Mukherji, Quijano)** - **CONDITIONAL** - Establishes temporary mortgage relief programs for certain owners of real property impacted by "Superstorm Sandy"

**S-2867/A-4248 (Ruiz, Pou/Jasey, Sumter, Vainieri Huttie, Green, Holley, Wimberly)** - **ABSOLUTE** - Permits municipal land banking in conjunction with online property database development

**S-3024/A-4463 (Scutari/Giblin, Diegnan, Jimenez, Caputo, Vainieri Huttie)** – **CONDITIONAL** - Revises laws concerning real estate licensees

**S-3282/A-4850 (Rice, Cunningham/Wimberly, Mainor, Johnson)** - **CONDITIONAL** - Expands Police Training Commission membership to include representative from Northern New Jersey and South Jersey Chapters of National Organization of Black Law Enforcement Executives

**ACS for A-206, 471, 1663, 2879, 3060, and 3108/S-2663 (Green, Spencer, Gusciora, Johnson, McKeon, Giblin, Wimberly, Mainor, Quijano/Turner, Lesniak, Pou)** - **CONDITIONAL** - Shortens waiting periods for expungement of criminal and other records and information; makes various changes to other expungement procedures and requirements

**A-3257/S-2125 (Andrzejczak, Mazzeo, Burzichelli/Van Drew)** - **CONDITIONAL** - Provides that determination by county agriculture development board or State Agriculture Development Committee as to what qualifies as farm-based recreational activity in pinelands protection area is binding on Pinelands Commission

**A-4103/S-2840 (Mazzeo, Andrzejczak, Giblin/Allen, Whelan)** - **ABSOLUTE** - Creates workforce training program for former casino workers

**A-4233/S-2435 (Jasey, McKeon, Vainieri Huttie, Mukherji, Lampitt/Codey, Vitale)** - **ABSOLUTE** - Provides Medicaid coverage for advance care planning

**A-4275/S2831 (Prieto, Eustace, Lagana, Greewald, Quijano, Danielsen, Mukherji/Sweeney, Turner, Sarlo)** – **CONDITIONAL** - "New Jersey Secure Choice Savings Program Act"; establishes retirement savings program for certain workers

**A-4326/S-2942 (Schaer, Lagana, Eustace, Prieto/Gordon, Barnes)** - **ABSOLUTE** - Reforms annual State revenue estimating and reporting, and executive State budget presentation and revenue certification processes

**A-4386/S-3042 (Coughlin, Pinkin/Vitale, Singer)** - **CONDITIONAL** - Permits candidates for school board to circulate petitions jointly and be bracketed together on ballot; permits short nonpolitical designation of principles on petitions and ballots; provides for study of impact of changes

**A-4638/S-3118 (Vainieri Huttie, Singleton, Holley, Mosquera, Tucker, Benson/Sweeney, Madden)** - **ABSOLUTE** - Requires DCPP to implement policies and procedures to ensure caseworker safety; "Leah's Law"

**A-4703/S-3172 (Spencer, Tucker, Pintor Marin, Egan, Muoio, Gusciora/Rice, Smith)** - **ABSOLUTE** - Increases tax credit cap by \$165 million for certain qualified residential projects under Economic Redevelopment and Growth Grant program and restricts increase to certain projects

###

**Press Contact:**

Brian Murray  
609-777-2600



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Office of the Governor  
PO Box 001  
Trenton, NJ 08625  
609-292-6000