

HOUSE BILL REPORT

ESHB 2323

As Passed House:
February 10, 2016

Title: An act relating to the creation of the Washington achieving a better life experience program.

Brief Description: Creating the Washington achieving a better life experience program.

Sponsors: House Committee on Early Learning & Human Services (originally sponsored by Representatives Kilduff, Walsh, Stanford, Kagi, Robinson, McBride, Bergquist, Jinkins and Pollet).

Brief History:

Committee Activity:

Early Learning & Human Services: 1/13/16, 1/19/16 [DPS];
Appropriations: 2/1/16 [DPS(ELHS)].

Floor Activity:

Passed House: 2/10/16, 83-13.

Brief Summary of Engrossed Substitute Bill

- Creates an Achieving a Better Life Experience governing board that must design and implement an Achieving a Better Life Experience savings and investment program for eligible individuals with disabilities by July 1, 2017.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kagi, Chair; Senn, Vice Chair; Walsh, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Hawkins, Kilduff, McCaslin, Ortiz-Self, Sawyer and Walkinshaw.

Minority Report: Do not pass. Signed by 1 member: Representative Scott.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill by Committee on Early Learning & Human Services be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick and Taylor.

Minority Report: Without recommendation. Signed by 1 member: Representative Condotta.

Staff: Meghan Morris (786-7119).

Background:

Achieving a Better Life Experience Act.

Congress passed the Achieving a Better Life Experience (ABLE) Act in December 2014. The law amended the Internal Revenue Code to exempt from taxation qualified ABLE savings programs established by states. Individuals can contribute to these savings accounts for eligible people with disabilities that originated before age 26.

Individuals are able to invest up to \$14,000 per year in ABLE accounts. Withdrawals from these accounts will not be taxed so long as the money is spent on qualified expenses such as housing, education, transportation, health care, and rehabilitation.

An individual generally cannot have more than \$2,000 in savings or other assets to be eligible for means-tested federal programs such as Medicaid or Supplemental Security Income (SSI). However, investments up to \$100,000 in ABLE accounts will be disregarded as assets for purposes of Medicaid or SSI eligibility.

The United States Treasury Department and the Internal Revenue Service released proposed regulations regarding qualified ABLE programs in June 2015 and received comments on those regulations, but the final regulations have not yet been issued.

Developmental Disabilities Endowment Trust.

The Washington Developmental Disabilities Endowment Trust (Endowment Trust) was established by the Legislature in 1999. This Endowment Trust is governed by a seven-member governing board; six of the members of this board are appointed by the Governor. The Department of Commerce (COM) provides support to the governing board when specified funds are appropriated.

The Endowment Trust is available to individuals under age 65 with a qualifying developmental disability originating before age 18. An individual must be eligible for services provided by the Developmental Disabilities Administration to be eligible for the Endowment Trust.

Achieving a Better Life Workgroup.

Last year, the Legislature enacted Second Substitute House Bill 2063 which required the Washington Office of the State Treasurer to convene a workgroup with recommendations regarding implementation of the ABLE Act in Washington. This report was published in November 2015. The report makes the following recommendations:

- Washington should create and run its own ABLE program instead of contracting with another state or collaborating with other states.
- The Washington ABLE program should be overseen by a seven-member governing board with certain membership and authority.
- The ABLE board should be co-located with the Endowment Trust and hosted by the COM.
- The State Investment Board should handle investments for the ABLE program.

The report also estimates that 35,000 to 50,000 individuals in Washington would be eligible ABLE participants with sufficient resources to make use of the ABLE program.

Summary of Engrossed Substitute Bill:

A governing board is authorized to design and implement the ABLE program by July 1, 2017 in the best interest of eligible individuals. The ABLE program must allow for the creation of savings or investment accounts for eligible individuals with disabilities. The governing board consists of seven members including:

- the State Treasurer or his or her designee;
- the program director for the committee on advanced tuition payment;
- the Director of the Office of Financial Management or his or her designee; and
- four members with financial, legal, or disability program experience, appointed by the Governor.

The ABLE governing board may:

- allow its members to participate in meetings remotely;
- appoint advisory committees to support the design or administration of the ABLE program;
- execute interagency agreements authorizing other state agencies to perform administrative functions necessary to carry out the ABLE program; and
- establish a reasonable fee structure for ABLE account holders.

Individuals are eligible for the Washington ABLE program if eligible pursuant to federal law, which currently provides that individuals are eligible with certain disabilities that originated before age 26.

Any moneys placed in ABLE accounts may not be counted as assets for purposes of state or local means tested programs or for determining levels of state means tested program eligibility.

To the extent funds are appropriated for this purpose, the COM shall provide staff and administrative support to the governing board. If practicable, the governing board shall be co-located with the Endowment Trust.

The governing board is required to submit a semi-annual report to the Legislature regarding progress toward program implementation and include recommendations regarding legislative changes necessary to implement the program.

The ABLE Account (Account) is created and would retain its own interest. The Account must consist of payments received from contributors to individual ABLE program accounts. The assets of the Account may be spent without appropriation for the purpose of making payments to individual Account holders.

The State Investment Board has the power to invest, reinvest, manage, contract, sell, or exchange investment money in the Account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Early Learning & Human Services):

(In support) The federal ABLE law is one of the most bipartisan laws that has passed in congressional history. The United States House of Representatives passed the ABLE bill by a 404-17 vote with over 300 co-sponsors. The establishment of ABLE accounts allows individuals the opportunity to hope for tomorrow. These accounts are open to people from any income level but also allow people to avoid spending down to poverty for purposes of federal means tested program eligibility. Thirty-four states have passed legislation related to ABLE accounts. This bill allows individuals with disabilities to make use of tax-advantaged accounts. Families want to save money so they can help family members reach their dreams of reaching a life of self-sufficiency. An ABLE program can be a vital part of allowing individuals to reach their dreams. Attorneys will charge \$2,000 to \$2,500 to set up a special needs trust and the ABLE program will make investment opportunities open to all. This bill will allow individuals to save and provide more employment options for individuals with disabilities. The Developmental Disability Council supports this legislation. Currently, Supplemental Security Income recipients are only able to save \$2,000. This program allows people the chance to save beyond that amount. This bill allows people to move a degree or two closer to self-sufficiency. The Arc of Washington State supports this bill. There are a number of individuals who do not qualify for the Endowment Trust but would be eligible for ABLE accounts. The ABLE Act is a strong support for people with disabilities. There is a \$600 one-time fee that is matched by state funds for the Endowment Trust. Washington has a cost-effective State Investment Board, and it is best to leave to the governing board choices regarding operation of the program. The design of this program was carefully researched and it makes sense for the state to govern its own program. It makes sense for this state to take advantage of the resources that exist here. There would be a fee structure for ABLE accounts that would allow the program to become self-sufficient. The fee structure would be similar to a 529 account. The cost would be much less than the \$600 fee for the Endowment

Trust. There are three options for states, which are to run their own program, contract with another state, or collaborate with other states.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) House Bill (HB) 2323 breathes life into the Achieving a Better Life Experience (ABLE) Act. In 1990 Congress passed the American Disabilities Act (ADA), which broke down barriers for individuals with disabilities. The ADA literally opened doors and protected individuals from discrimination. It was not until 2014 that an equally powerful opportunity arose, providing a pathway of support for people with disabilities and their families. The ABLE accounts are tax-advantaged accounts. Congress and the state have already made similar policy decisions, such as the Guaranteed Educational Tuition program and state employee tax-advantaged healthcare plans. For the first time, HB 2323 will offer people with disabilities and their families the same tax-advantaged treatment. A Washington ABLE Act will offer these families: (1) an opportunity to save; (2) a pathway to independence; and (3) hope.

Washington already has the Developmental Disabilities Endowment Trust (DDETTF), which is now self-sustaining and provides a good model for the ABLE program. In 1999 a bipartisan effort unanimously passed the DDETTF legislation. The Governor appointed a six-member board which began meeting in 2000. The DDETTF helps individuals become as self-sufficient and independent as possible. The fund recognizes the high cost of lifetime services for people with disabilities. Families and individuals are able to establish trust accounts without losing government benefits.

The ABLE accounts (Accounts) will offer similar opportunities for people with qualified disabilities. The Accounts will provide more choice and control over spending and investments decisions, without affecting benefits such as Medicaid and Supplemental Security Income (SSI). People on SSI currently receive as little as \$700 a month and can only have \$2,000 in their savings account. This creates a cycle of poverty and a disincentive to save for the future. The Accounts will give people with disabilities more resources to cover essential expenses and participate in the economy. Qualified expenses for the ABLE Act include education, health expenses, housing, transportation, dental, financial management, and burial expenses. The ABLE Act's qualifying expenses are broader than those allowed under the DDETTF Program.

The ABLE Act needs seed money to start, but the DDETTF Program can help guide the process. The ABLE Act will be self-sufficient in the long run. Additionally, there will be favorable offsets which are hard to quantify. Some people work, but have difficulty continuing employment due to their illness. These Accounts will improve quality of life and help people create rainy-day funds. The ABLE Act will serve people with a wide variety of disabilities including, but not limited to veterans, people with traumatic brain injuries, and people with physical disabilities. This is a small amount of money for such a needed program.

The voices that really matter are the people with disabilities. If Congress can get it done, we can get it done here in Washington State. What matters is if the Legislature is willing to invest in people with disabilities and if the Legislature believes enough in the personhood of people with disabilities in our state. This is a game-changer and a step towards ending the institutionalized oppression that people with disabilities deal with every day of their lives. This bill has been a long time coming for people with disabilities, and it is not for their lack of effort, but our lack of understanding of what it is they face every day.

(Opposed) None.

Persons Testifying (Early Learning & Human Services): Representative Kilduff, prime sponsor; Emma and Amy Patterson, Down Syndrome Association of Snohomish County; Noah Seidel and Patty Bell, Arc of Washington; Emily Rogers, Washington Developmental Disabilities Council; Seth Dawson, National Alliance on Mental Illness; Margaret-Lee Thompson, Washington Developmental Disabilities Endowment Trust Fund; Wolfgang Opitz, Office of the State Treasury; Britney Stadden and Robert Wardell, People First of Pierce County.

Persons Testifying (Appropriations): Representative Kilduff, prime sponsor; Emma and Amy Patterson, Down Syndrome Association of Snohomish County; Margaret-Lee Thompson, Washington State Developmental Disabilities Trust Fund; Emily Rogers, Developmental Disabilities Council; Noah Seidel, Self Advocates in Leadership; and Seth Dawson, Community Employment Alliance and the National Alliance on Mental Illness-Washington.

Persons Signed In To Testify But Not Testifying (Early Learning & Human Services): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.