



JAMES L. McINTIRE
State Treasurer

State of Washington
Office of the Treasurer

November 1, 2015

Dear Members of the Legislature:

The Legislature passed 2SHB2063 creating a work group to make recommendations to implement the “Achieving a Better Life Experience” (ABLE) Act. The group was hosted by the Office of the State Treasurer and was asked to:

- Recommend an appropriate lead agency;
- Identify an appropriate instrumentality to invest moneys such as the State Investment Board (SIB), a public or private sector entity other than the SIB, or another state;
- Propose an implementation plan that includes effective dates and communication with the public about investing in ABLE accounts;
- Recommend the composition, purpose, role and responsibilities of the ABLE board; and
- Estimate the number of eligible ABLE program participants.

Federal legislation passed in December 2014 as part of P.L. 113-295 permits states to create “Achieving a Better Life Experience” (ABLE) programs to benefit individuals with disabilities. Similar to “529” college savings plans, if Washington implements an ABLE program, eligible people with disabilities could hold up to \$100,000 of *their own money* in tax-advantaged savings accounts with contributions up to \$14,000 per year – without affecting their eligibility for federal SSI, Medicaid and other means-tested public benefits.

The report from the ABLE work group is attached. We are grateful for the active and thoughtful participation of all work group members – all of whom fully support the recommendations included in this report. We will continue to work with the group to draft legislation to implement these recommendations that will be ready in time for the 2016 Legislative Session.

Sincerely,

A handwritten signature in black ink that reads "James L. McIntire". The signature is written in a cursive style with a large initial "J" and "M".

James L. McIntire
State Treasurer

Background

Federal legislation passed in December 2014 as part of P.L. 113-295 permits states to create “Achieving a Better Life Experience” (ABLE) programs to benefit individuals with disabilities. The ABLE program is modeled after college savings plans found in Section 529 of the Internal Revenue Service code with the ABLE act in Section 529A.

If Washington implements an ABLE program, eligible people with disabilities could hold up to a maximum of \$100,000 of *their own money* in tax-advantaged savings accounts with contributions up to \$14,000 per year – without affecting their eligibility for SSI, Medicaid and other means-tested public benefits. Any person, including family members and friends, can also contribute to the accounts on behalf of their relatives.

To be eligible to use ABLE accounts, a person must have become disabled prior to age 26 *and* must meet the SSI definition of disability – either by already participating in federal SSI/SSDI programs or by an equivalent certification from a physician.

Federal law requires each state to set up its own ABLE program if that state wants people with disabilities in their state to participate. Federal law offers states three options:

- Create a state run program;
- Contract with another state; or
- Collaborate with other states.

To date, 35 states – including Washington – have taken steps to create ABLE programs. The table at the end of this report compiled by the College Savings Plan Network provides a summary of state activities as of late October 2015.

Because of its experience with 529 college savings plan programs, the College Savings Plan Network (CSPN) – in conjunction with the National Association of State Treasurers (NAST) – is serving as a coordinating body for states that are working on ABLE. Washington is well positioned to work with these organizations because GET director Betty Lochner is serving as president of CSPN and State Treasurer Jim McIntire is the president of NAST for 2016.

CSPN is giving special attention to regulatory and implementation issues. In summer 2015, representatives of the states held a two day meeting with officials from the US Treasury Department, the Social Security Administration, and national disability advocates to discuss and work on items including:

- Proposed federal program rules;
- Responsibility for and method of eligibility determination;
- Record keeping and reporting procedures;
- Financial disclosure requirements;

- Cost effective account administration for the state; and
- Affordability for participants.

Most states – including Washington – are waiting for the US Treasury and the Social Security Administration to issue final rules before they finish program designs. US Treasury’s public hearing on their rules was October 14, 2015 (for which OST provided written comments). Final program rules are still being developed but are expected within several months.

The 2016 Legislature will have both this report and will also know more about the shape of the final federal rules before considering implementing legislation for Washington. In contrast, states that are developing programs ahead of the adoption of federal rules are at risk of needing to reshape their programs to conform to whatever rules are eventually adopted.

ABLE in Washington State

Instead of passing implementing legislation in 2015, the Washington Legislature passed 2SHB2063 to establish a work group hosted by the Office of the State Treasurer (OST). This work group is charged with answering several key questions:

- Recommend an appropriate lead agency;
- Identify an appropriate instrumentality to invest moneys such as the State Investment Board (SIB), a public or private sector entity other than the SIB, or another state;
- Propose an implementation plan that includes effective dates and communication with the public about investing in ABLE accounts;
- Recommend the composition, purpose, role and responsibilities of the ABLE board; and
- Estimate the number of eligible ABLE program participants.

Washington’s ABLE work group has 8 members including representatives of the Department of Commerce, the State Investment Board, the GET program, the Developmental Disability Endowment Fund Governing Board, and representatives of the disability community.

The work group met several times in open public meetings to create this report and recommendations. Notes and other documents shared at meetings were posted on OST’s website. A report from the ABLE work group is due to the Governor and Legislature on November 1, 2015.

Goals and Features for ABLE in Washington

The work group’s recommendations to the Legislature are guided by several goals and features that the group felt were important to keep in mind as they created this report, including:

- Preserve and improve the dignity of people with disabilities;
- Reduce the stigma associated with disabilities;

- Avoid unnecessary rules, audits, and compliance activities;
- Treat people with disabilities fairly and equitably regardless of the cause of their disability;
- Help empower people with disabilities.
- Focus on the needs of ABLE program participants;
- Easy for participants to use;
- Remains cost effective for participants;
- Uses the simplest possible determination of eligibility;
- Keeps federal tax and compliance issues between participants and federal agencies;
- Uses broadest possible definition of eligible uses of funds; and
- Provides immediate access to funds (for some) with longer term investments (for others).

Options Considered by the Work Group

The work group looked into and discussed all three options available under federal law.

- Create a state run program;
- Contract with another state; or
- Collaborate with other states.

The group ***recommends that Washington create and run its own ABLE program.*** Doing this:

- Maintains control over the design, deployment and marketing efforts;
- Capitalizes on our long experience operating the DDEF;
- Could use investment services from the state’s successful State Investment Board; and
- Could consider obtaining back-office and call center support from the state’s GET program.

The group ***does not recommend*** at this time that Washington contract with another state either for operation of the program or for investment management because:

- Other state programs are not yet far enough along in their development to provide sufficient information, cost data, or confidence.
- Opting to contract with another state at this time would put Washington at risk of losing control of investment and program design decisions that we should make ourselves.
- The ABLE board can be provided options in statute to consider contracting with other states (or for Washington’s program to provide services to other states) in the future should the board find these options desirable in the future.

The group also indicated that ***it is premature to collaborate with other states.***

- While 35 states are at some stage in development of their ABLE programs, it remains too early to introduce the added complexity associated with collaboration.
- Because economies of scale could emerge in the future, the group recommends the ABLE board be given the authority to consider such options after various programs are more fully implemented around the country.

Role and Composition of Washington's ABLE Governing Board

A seven member ABLE governing board should be created to act in a fiduciary role to govern the program. The ABLE board should:

- Have the legal authority to independently operate the program in the best interests of participants.
- Maintain its fiduciary responsibility because it will be running a program that invests private funds. The board should be charged in statute with having this undivided loyalty to program participants.
- Include three ex officio members (the State Treasurer, Director of the Office of Financial Management, and the Director of the Guaranteed Education Tuition (GET) program).
- Include four members who would be appointed by the Governor with preference for board members with financial, legal or disability program experience.
- Be given the legal authority to appoint advisory committees as it sees fit. Appointees will serve staggered terms, receive reimbursement for travel and meeting expenses, but would not be otherwise compensated.
- Have rule-making authority, and be statutorily permitted to contract for financial services.
- Consider interagency agreements with other state agencies such as the GET program for back-office operations.
- Be statutorily permitted to participate in meetings electronically.

In addition, the Legislature should allow the ABLE board to develop program and operational eligibility rules that provide the maximum flexibility permitted under federal law, IRS and SSA regulations.

And, the Legislature should provide a similar hold-harmless in state law to that provided at the federal level so that eligibility for state means-tested programs is not inadvertently affected by participation in the ABLE program.

Recommended Lead Agency, Including Role and Responsibilities

The group *recommends* that the ABLE board and program be co-located with the state's already-operating Developmental Disabilities Endowment Fund (DDEF). DDEF is currently housed at the Department of Commerce which provides administrative, operational and facilities support.

- A similar arrangement can be made for the ABLE board where Commerce's role is to host the program in a suitable facility and provide administrative support to the activities of the board.
- The ABLE board should otherwise independently set policy for and direct the program by overseeing its executive director and staff similar to DDEF and GET.

After it is formed, the ABLE board can consider whether the back-office functions of the state's GET program could be used on a fee-for-service basis to provide custody, record-keeping and information technology services and systems.

This option would become more viable if GET creates a traditional 529 college savings plan that would need many of the same back-office and technology components as an ABLE program.

The work group considered three other options for housing the ABLE board that are *not recommended at this time*, including:

- 1) Co-locate with the GET program;
 - GET is well-run, stable, and has significant back-office technology and call center infrastructure that could be beneficial to an ABLE program.
 - But, there are significant programmatic, service population and operational differences between GET and ABLE that make this option less desirable.
 - GET is entirely oriented to college savings – which affects its marketing, business cycles and communities of interest. Locating with GET would also likely reduce the visibility of the ABLE program because GET – housed at the Washington Student Achievement Council – does not have connections with communities of people with disabilities.
 - Co-locating ABLE and GET would require a strong cost allocation process to assure there is no cross subsidization between ABLE and GET.
- 2) Create an independent small agency – with or without DDEF;
 - While this approach provides the most independence for the program, there is concern that doing this would take more time and add risk to the start up process.
 - Once up and running, feasibility can be better assessed of placing DDEF and ABLE together in a small independent agency/entity with budget, payroll, accounting and technology services from Small Agency Client Services.
- 3) An umbrella “financial security” board that includes DDEF, GET-prepaid, GET-529, and ABLE;
 - Forming a single entity to include DDEF, GET and a new ABLE program where these seemingly similar activities are combined in an independent agency was considered, though the work group recognizes that this option is outside the scope of this report.
 - The work group is concerned that tackling something this big would slow the development and deployment of an ABLE program.
 - The work group recommends the top priority should be the successful launch of a sound and efficient ABLE program, but also recognizes there could be efficiencies and benefits to this approach that would make it worth exploring more in the future.

Recommended Instrumentality to Invest Funds

The Washington State Investment Board (SIB) is a successful, trust-worthy, low overhead investment option with an excellent investment track record. As a result, the work group recommends that SIB handle investments for the ABLE program.

- This could be structured in a manner similar to the DDEF where SIB develops investment allocations in line with the intended uses of the funds to be invested.
- The work group notes that the ABLE board and SIB should explore the feasibility of providing some degree of “self-direction”– perhaps in a form similar to the state’s successful Deferred Compensation Plan.
- Once created and appointed, the ABLE board can consult directly with SIB as to how to move forward. But, the ABLE board should retain the option to consider other investment instrumentalities should other options emerge as the program is further developed.

Implementation Plan Outline

Legislation to create an ABLE program will need to be enacted in the regular 2016 legislative session to establish the program in time for participants to begin investing in the 2017 tax year.

After legislation is enacted, the Governor would need to appoint board members quickly so that more detailed program design decisions, rule-making, staffing, and procurement of custody banking, record keeping and information technology services can be launched. The State Treasurer’s Office, GET, SIB, DRS and the DD Endowment Fund are already familiar with these services so they can help make the start up more efficient and cost effective.

Based on other states’ experience (see the CSPN table) and the Washington’s own experience starting the GET program in 1998, it is plausible that Washington state would need to spend between \$1-1.5 million (GF-S) to start the program. These funds would be needed for items such as initial costs of back-office and information technology, procurement processes for custody banking services, legal services and costs pertaining to the board and staff.

Because the number of participants, rate of uptake, and size of investments to an ABLE program are still indeterminate, the period of time before the program can be fully self-supporting cannot yet be estimated. Once there are enough participants and an investment pool of sufficient size program fees can be charged against earnings to pay program costs.

Estimated Number of ABLE Participants

The National Disability Institute used Social Security Administration, National Center for Education Statistics, U.S. Census and other special purpose surveys to estimate that from 6.7 to 12 million children and adults nationwide could be eligible to use an ABLE account (Goodman and Morris, 2015).

Examination of national and state-level data from the U.S. Census and other state and national sources included below shows that the characteristics of Washington’s disabled population are fairly similar to those of the corresponding U.S. population.

Based on these data, assuming 2 percent of the U.S. population of people with disabilities resides in Washington, there would be an estimated 130,000 to 180,000 children and adults with disabilities in Washington that could potentially use the program. Further, of these **35,000**

to 50,000 people with disabilities are estimated to have sufficient resources available that could make it more feasible to participate in the ABLE program.

Several measures of the disability population confirm that Washington has approximately 2 percent of the national disabled population.

- Washington's working age population from ages 16 to 64 with a disability is 2.3 percent of the U.S. population with a disability of ages 16 to 64 (http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S1811&prodType=table, 2014);
- SSI enrollment is 1.8% of the U.S. total (<http://kff.org/medicaid/state-indicator/total-ssi-beneficiaries/>, 2013); and
- Public assistance recipients with a disability in Washington make up 2.3% of U.S. public assistance recipients with disabilities (<http://www.census.gov/prod/2013pubs/acsbr11-12.pdf>, 2011).

The U.S. and Washington disabled populations have other similarities too.

- There are an estimated 21.5% of disabled persons in poverty in the U.S. with 20.3% in Washington (<http://factfinder.census.gov/2014>); and
- The prevalence of disability by age and type of disability is also similar between the U.S. and Washington.

U.S.: http://www.disabilitystatistics.org/StatusReports/2013-PDF/2013-StatusReport_US.pdf, 2013; and WA: http://www.disabilitystatistics.org/StatusReports/2013-PDF/2013-StatusReport_WA.pdf, 2013

ABLE in the States

ABLE - Legislation Enacted	ABLE - in Legislative Process	No ABLE Legislation
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State	State Operator	Build/Annual Costs - Estimated	Build/Annual Costs - Appropriated
AL	TRS (s/a 529)	\$150,000-250,000/\$100,000-200,000	"\$75k/Yes, if budget request is approved. Amount not estimated at this time."
AK	Dept. of Commerce, Community & Economic Development		
AZ			
AR	ABLE Program Comm. (Dept. of Human Services, Career Ed & TRS)		
CA	TRS (s/a 529)	\$333,498/\$330k	"yes - board that administers the program will be responsible for repaying the startup and 1st year costs + interest within 5 years/\$330,000 estimated annually" Tax Revenues negatively impacted by an estimated \$100k FY15-16, \$400k in FY16-17, & \$900k in FY17.
CO	College Invest/Dept. of Higher Education	According to FIS, estimated to cost \$17,550 in FY16-17	
CT	TRS (s/a 529)	According to FIS, not expected to result in a cost - program will be offered through outside vendor who will earn fees from the investment of the accounts.	"no/no plans for future appropriations"
DE	ABLE Board & TRS	Too early to determine/Too early to determine	"Should receive funding for one non-state employee position to staff the program FY16-\$28,467, FY17-\$37,955, FY18-\$37,955"
DC	CFO of DC		
FL	FL Prepaid College Board -FL ABLE, Inc. to admin.	\$3.386 Million in FY 15-16	\$3.386 million/TBD
GA			
HI	Dir of Finance selects fin org to manage		
ID			
IL	TRS (s/a 3 of 4 §529 programs) TRS can appoint an account administrator.		
IN			
IA	TRS (s/a 529)	According to FIS, estimated at \$380k in FY16.	

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State	State Operator	Build/Annual Costs - Estimated	Build/Annual Costs - Appropriated
KS	TRS (s/a 529)	Assumption is that "existing resources" would be used to start program. In FY2017, program would use \$500k to create marketing materials and attract new owners. Tax Revenues negatively impacted by an estimated \$18-40k in FY2017.	
KY	Dept for Behavioral Health, Devel. and Intellectual Disabilities	Not available at this time	Not available at this time
LA	Dept of Education (HB598) - admin by ABLE Account Authority	According to FIS, estimated at \$64k in FY15-16, \$54k thereafter to run	
ME	TRS		
MD	Task Force established to determine management		
MA	MEFA (s/a 529)		
MI	TRS (s/a 529)		
MN	Department of Human Services	FY16 \$73,000, FY17 \$81,000/\$98,000	"FY16-17 \$105k. Starting in FY17 appropriation decreases as the FTE becomes supported by an account fee./By FY18 the program and FTE are no longer funded and completely reliant on an account fee"
MS			
MO	Missouri ABLE Board (TRS - chair, Dir., Dept. Health and Sr Svcs, Commr Office of Admin, Dir. Dept of Econ Devel., member apt by Sen, House and GOV)		
MT	Depart of Health & Human Services		
NE	TRS (s/a 529)	\$476,785/ \$206,785	FY 2015-2016 \$476,785/ FY 2016-2017 \$206,785
NV	State Treasurer's Office		No appropriation at this time.
NH	New Hampshire ABLE Program Advisory Commission	No information available at this time	No information available at this time
NJ	Division of Developmental Disabilities in Department of Human Services		

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State	State Operator	Build/Annual Costs - Estimated	Build/Annual Costs - Appropriated
NM	State Investment Office	According to FIS: "indeterminate but significant fiscal implications in establishing program"	
NY	NY State Supt of Financial Services		
NC	North Carolina Department of State Treasurer	1st year estimate \$935k, 2nd year estimate \$595k/\$550k estimate	"anticipate receiving \$935k 2015-2016 and \$595k 2016-2017/\$550k for 2017-2018 and after"
ND	Bank of ND	\$150,000/ undetermined	"No/Not in the next biennium. Possibly 4 years from now depending on what we are able to show as actual costs and enrollment numbers."
OH	TRS (to contract with financial org)		
OK			
OR	Oregon 529 College Savings Board	According to FIS, \$896k in 15-17 Biennium, \$673k in 17-19 Biennium	
PA	TRS (s/a 529)		
RI	Executive Office of Health and Human Services or its "designated administrator"	According to FIS, "indeterminate".	
SC	TRS (s/a 529)	\$600,000-\$1 Mil/\$600,00	No/No
SD			
TN	State Treasurer		
TX	Texas Prepaid Higher Education tuition Board		
UT	Dept of Workforce Services		
VT	TRS	Not Calculated/Not Calculated	No/Unknown
VA	VA529	\$4.9M/\$3.4	
WA	TRS to convene work group. Report due by 11/01/15 on implement issues - including Admin of ABLE including lead agency nomination		
WV	TRS (may contract with a "fin org" to act as depository and manager of the program)		
WI	Department of Administration, Capital Finance Office (same as 529)		

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State	State Operator	Build/Annual Costs - Estimated	Build/Annual Costs - Appropriated
WY			