

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: S. 138, Secs. C.5, C.6-C.8, C.9 \_\_\_\_\_ Name of Bill: An act relating promoting economic development

Agency/ Dept: DAIL \_\_\_\_\_ Author of Bill Review: Stuart Schurr, Deputy Commissioner \_\_\_\_\_

Date of Bill Review: 5/30/15 \_\_\_\_\_ Related Bills and Key Players: H. 402; H.333/S.145 - Senate Committee on Economic Development, Housing and General Affairs and House Committee on Commerce and Economic Development

Status of Bill: (check one): \_\_\_\_\_ Upon Introduction \_\_\_\_\_ As passed by 1<sup>st</sup> body \_\_\_x\_\_\_ As passed by both

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**Recommended Position:**

\_\_\_x\_\_\_ Support \_\_\_\_\_ Oppose \_\_\_\_\_ Remain Neutral \_\_\_\_\_ Support with modifications identified in #8 below

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**Analysis of Bill**

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**1. Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

Of particular importance to DAIL, and, therefore, discussed herein, are **Sections C.5**, *Vermont Governor's Committee on Employment of People with Disabilities*; **C.6-C.8**, *Vermont Achieving a Better Life Experience (ABLE) Program*; and **C.9**, *Medicaid for Working People With Disabilities, Rulemaking*.

Section C.5

In addition to adding to the Governor's Committee on Employment of People with Disabilities one representative each from the Department of Labor's Workforce Development Division and the Jobs for Veterans State Grant, the U.S Department of Veterans Affairs and the State of Vermont Office of Veterans Affairs, the bill adds a representative from DAIL's Division for the Blind and Visually Impaired. This individual will join the existing representative from DAIL's Division of Vocational Rehabilitation.

Sections C.6-C.8

ABLE is federal legislation that would allow families and individuals to save for the disability-related expenses of a disabled individual in a federal tax-advantaged account. The legislation is modeled after the 529 education savings program legislation and provides similar federal income tax advantages – contributions grow tax deferred and are tax exempt when used for "qualified disability expenses." Qualified disability expenses may include expenses for the individual's:

- education, housing, transportation, and employment training and support;
- assistive technology and personal support services;
- health, prevention, and wellness;
- financial management and administrative services, legal fees, and expenses for oversight and monitoring;
- funeral and burial expenses; and
- other expenses approved by the Secretary of the Treasury under regulations.

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ABLE savings programs need to be “established and maintained” by a state. This bill establishes the Program, under which one may make contributions to an eligible individual’s account, and authorizes the State Treasurer to adopt rules, policies and procedures. This bill also creates a Vermont ABLE Task Force for the purpose of making recommendations to the Legislature on planning and delivery of the Program (e.g., marketing, rules, fees to be charged, and the composition and charge of an ABLE Advisory Board). The Task Force, which includes the State Treasurer and representatives of DAIL, the Vermont Developmental Disabilities Council, VCIL, GMSA, and other stakeholders, must submit its recommendations to the House and Senate Committees on or before January 15, 2016.

#### Section C.9

The bill proposes rule changes affecting individuals eligible or potentially eligible for the Medicaid for Working People with Disabilities (MWPD) Program. It also proposes rules which may also affect the spouses of MWPD applicants and recipients. The intent of the bill is to promote work incentives and increase stability of healthcare coverage for individuals with disabilities. The bill directs the Agency of Human Services (AHS), on or before October 1, 2015, to request permission from the Centers for Medicare and Medicaid Services (CMS) to make the four proposed changes. Within 30 days after receipt of CMS approval, AHS must commence the rulemaking process pursuant to 3 V.S.A. Chapter 25. The specific actions set forth in (a) through (d) are as follows:

- (a) The bill proposes an increase in the asset limit for eligibility for MWPD to \$10,000 per individual and \$15,000 per couple. The current asset limit for the program is \$5,000 for a single individual and \$6,000 for a couple’s household. The change is designed to allow more financial stability in a potentially eligible household.
- (b) The second specific action proposed in the bill is to disregard the income of a spouse who is an eligible MWPD individual in calculating the eligibility of the other spouse to receive traditional Medicaid benefits. This provision addresses situations in which a working person with a disability can continue to maintain Medicaid coverage while working, but that person’s income makes his/her non-working spouse ineligible for Medicaid. This creates a disincentive for employment.
- (c) Similar to the second proposed action, the third action proposes disregarding the income of the MWPD applicant’s or beneficiary’s spouse in determining eligibility for Medicaid for a working spouse. This addresses situations in which an individual meets all the criteria for MWPD but countable income from the spouse makes the individual ineligible for MWPD.
- (d) The fourth action proposed is to disregard the Social Security income for purposes of calculating eligibility for the MWPD program for beneficiaries who have reached the Social Security Retirement age and whose Social Security Disability Benefits (SSDI) have automatically converted to Social Security retirement benefits. Current rules specify a disregard of SSDI benefits or Veterans’ Disability Benefits in the calculation of MWPD. Those beneficiaries who reach full retirement age lose this disregard, which may cause a loss of MWPD due to that countable income. This provision addresses that issue.

In addition to these specific program changes, the bill directs AHS to engage the assistance of benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and of other work incentives for individuals with disabilities. Finally, the bill

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directs AHS, on or before January 15, 2016, to report on the implementation of this section to the House Committees on Commerce and Economic Development and on Human Services and to the Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare.

**2. Is there a need for this bill?** *Please explain why or why not.*

Section C.5

Yes. It is important for the interests of individuals who are blind or visually impaired to be represented on this Committee.

Sections C.6-C.8

Yes. Millions of individuals with disabilities and their families depend on public benefits for income, healthcare, food and housing assistance. Individuals who report more than \$2,000 in cash savings, retirement funds, and other items of significant value are subject to means testing that limits their eligibility for programs such as SSI, Supplemental Nutritional Assistance Program, and Medicaid. As a result, public policy has required individuals to remain poor and without savings to be eligible for these public benefits.

The ABLE Act addresses this problem by treating assets held in an ABLE Account, and any distribution for qualified disability expenses, as disregarded for purposes of determining an individual's eligibility to receive, or the amount of, any assistance or benefit authorized by any federal means-tested program, including Medicaid. There are limitations, however. In the case of the SSI program, distributions for housing expenses are not disregarded, nor are amounts in an ABLE account in excess of \$100,000. In the case that an individual's ABLE account balance exceeds \$100,000, such individual's SSI benefits shall not be terminated, but instead shall be suspended until such time as the individual's resources fall below \$100,000.

There are 58 million individuals with disabilities in the United States, many of whom may seek to establish ABLE Accounts.

Section C.9

Yes. The Medicaid for Working People with Disabilities Program provides a work incentive to individuals with disabilities by ensuring continued healthcare coverage while working. There are some constraints to eligibility for the program that limit its effectiveness as a work incentive. The current asset limit of \$5,000/\$6,000 may not be realistic for financial stability of potential MWPD households. In the case of married couples in which both are disabled, a working individual may access Medicaid through MWPD eligibility but his/her income may preclude eligibility for the non-working spouse, creating a disincentive for that working person. Similarly, the non-working spouse's income may preclude the otherwise eligible MPWD applicant from Medicaid eligibility. The provision allowing for the continuation of a Social Security benefit disregard when the MWPD beneficiary reaches full retirement age promotes continued employment for the aging worker currently subject to a possible loss of Medicaid with existing rules.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

Section C.5

DAIL anticipates no fiscal or programmatic implications, except for the participation of its two representatives on the Committee.

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#### Sections C.6-C.8

DAIL anticipates no fiscal implications for the Department. Programmatically, DAIL will participate on the Task Force and will assist in preparing the recommendations for submission to the Legislature on the planning and delivery of the ABLE Program.

#### Section C.9

The proposed changes primarily affect Medicaid eligibility rules, so it is expected that there will be little fiscal impact to DAIL. The directive for AHS to engage benefits counselors in increasing public awareness of MWPD and other work incentives could have some programmatic implications for DAIL's Vocational Rehabilitation benefits counselors.

#### **4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

#### Section C.5

Unknown.

#### Sections C.6-C.8

The bill grants the State Treasurer authority to establish and administer the ABLE Program. The Treasurer has indicated that since the Vermont Student Assistance Corporation (VSAC) is the only entity in the state which administers section 529 programs, a contractor would need to be identified to administer the ABLE Program. That cost is unknown at this time. Further, despite having initially expressed an interest in excluding specific program procedures in the bill until such time as the Treasury Department and the IRS promulgate rules and issue guidance to the states concerning requirements of an account established under section 529A, the State Treasurer voiced no objection to the bill as passed. It is important to note that on March 10, 2015, the IRS announced that it did not want the lack of guidance to discourage states from enacting their enabling legislation and creating their ABLE programs. Finally, the Treasurer will need to determine whether the Program limitations are consistent with the state Finance and Management transaction procedures.

#### Section C.9

The proposed changes provide enhancements to the program to increase its effectiveness, though it is believed that these changes, if approved by CMS, will not result in a large increase in the number of individuals accessing the Program. While a lack of data has made it challenging to provide a precise cost analysis of these changes, there are a number of factors which will minimize increased costs to the Medicaid program. The population of eligible MWPD individuals has consistently been below 700 for several years. This is a small number compared to the overall population of Vermont Medicaid recipients. The basic eligibility criteria for MWPD require that the individual meet Social Security Disability standards and have legitimate employment. Historically, these factors limit the eligible population in Vermont. We do not expect that increasing the asset limits will add many individuals to the Program, especially since participants' income must still be at or below 250% of FPL, and most individuals whose incomes are at that level do not accumulate significant assets. Further, since many MWPD recipients are eligible for traditional Medicaid prior to becoming MWPD eligible, the addition of certain disregards would not add individuals to the Medicaid population; rather, they would simply allow those individuals to retain their Medicaid coverage. Finally, a majority of MWPD recipients also have Medicare coverage, meaning that Medicaid is the secondary payer for any Medicare-covered services.

There will be programmatic implications for AHS (and, perhaps, specifically DCF and DVHA) in preparing its proposal to CMS on or before October 1, 2016, in promulgating rules upon receipt of CMS approval and in reporting to the committees of jurisdiction on the implementation of this section on or before January 15, 2016.

**5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)**

Section C.5

Unknown.

Sections C.6-C.8

There may be programmatic implications for stakeholders who will be participating on the Task Force and on the ABLE Advisory Board; however, it is anticipated those will be minimal.

Section C.9

There should be minimal, if any, implications for others.

**6. Other Stakeholders:**

**6.1 Who else is likely to support the proposal and why?**

Section C.5

Advocates and individuals who are blind or visually impaired support this bill.

Sections C.6-C.8

Advocates and individuals with disabilities and their families support this bill. Those testifying in support of these sections of the bill included the Vermont Developmental Disability Council and the Vermont Federation of Families for Children's Mental Health.

Section C.9

The beneficiaries and potentially-eligible beneficiaries likely support the bill. Vermont Center for Independent Living (VCIL) and other disability advocates have been supportive, as well.

**6.2 Who else is likely to oppose the proposal and why?**

Section C.5

None known

Sections C.6-C.8.

None known

Section C.9

None known

**7. Rationale for recommendation:** *Justify recommendation stated above.*

C.6-C.8

This legislation will allow eligible individuals and families to establish ABLE savings accounts that will not affect their eligibility for SSI, Medicaid and other public benefits. The legislation explains further that an ABLE account will, with private savings, "secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, SSI, the beneficiary's employment and other sources."

An ABLE Account will provide more choice and control for the beneficiary and family than a Special Needs Trust (SNT) or Pooled Income Trust. The cost of establishing an account will be considerably less than either a SNT or Pooled Income Trust. With an ABLE account, account owners will have the ability to control their funds and, if circumstances change, still have other options available to them. Determining which option is the most appropriate will depend upon individual circumstances. For many families, the ABLE account will be a significant and viable option in addition to, rather than instead of, a Trust program.

C.9

The specific changes in the bill will enhance a currently valuable work incentive for individuals with disabilities. The number of individuals impacted by these changes should be few, but the changes will likely be meaningful for them and make a difference in job attainment or retention. As the changes can be expected to affect few individuals, costs to the Medicaid program should be minimal. Additionally, in many cases, as with the current MWPD population, the individuals benefiting from the proposals have current Medicaid coverage. The changes would mean that they would not have to make a decision to work and lose Medicaid for themselves or a spouse or not work and retain Medicaid coverage.

**8. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

**9. Gubernatorial appointments to board or commission?**

Section C.5

The representatives added through this legislation are not gubernatorial appointees.

Sections C.6-C.8.

None

Section C.9

None

**Secretary/Commissioner has reviewed this document:** \_\_\_\_\_ **Date:** \_\_\_\_\_