

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 642

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Individuals with Disabilities

DATE: February 18, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson/Knudson	Knudson	BI	<b>Favorable/CS</b>
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 642 creates the Florida Achieving a Better Life Experience (ABLE) program, which would assist individuals with disabilities in saving money without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence and a better quality of life. The ABLE accounts resemble in some respects the federal 529-college savings plan that are tax-advantaged savings accounts. This program was created by the federal ABLE Act of 2014 (“ABLE Act”), which authorizes states to establish ABLE programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.<sup>1</sup> Florida ABLE, Inc., is required to implement the Florida ABLE Program on or before July 1, 2016.

Currently, many individuals with disabilities and their families face financial challenges in paying for living expenses, and necessary care and treatment, such as medical bills, educational and early intervention programs, and related expenses. Individuals with disabilities can also face significant barriers to finding and holding employment and living independently because their access to certain state and federal programs, such as Supplemental Security Insurance (SSI) and Medicaid can be lost once they establish a minimum level of savings and income. The Florida ABLE program would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI if certain conditions are met. Under the Florida ABLE program, an eligible individual for the program would be an individual who

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<sup>1</sup> H.R. 5771, Division B, Title I. Public Law 113-295.

becomes blind or disabled prior to age 26 and is entitled to benefits due to blindness or disability under the Social Security Disability Income program or SSI program or meets eligibility through the disability certification process and meets other requirements. A designated beneficiary is defined to mean an eligible individual who establishes an ABLE account or the eligible individual to whom an account is transferred.

Under the Florida ABLE Program, individuals with disabilities family members and other can contribute funds to an ABLE account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses that include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Earnings, cash contributions, and qualified distributions associated with an ABLE account would not count as taxable income or resources for an individual with disabilities who meets certain eligibility requirements. For 2015, aggregate contributions to an ABLE Account during a taxable year are capped at \$14,000. For purposes of eligibility for Supplemental Security Income (SSI) disability eligibility, only the first \$100,000 in an ABLE account is disregarded. If the balance in an ABLE account exceeds \$100,000, any SSI benefits are suspended until the balance is reduced to \$100,000; however, an individual would continue to be eligible for Medicaid and other means-tested programs.

The bill creates the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. It would be comprised of the chair of the Florida Prepaid College Board, another director of the Florida Prepaid College Board, the director of the Agency for Persons with Disabilities, one appointee of the Florida Senate, and one appointee of the Florida House of Representatives. The legislative appointees would include one advocate for individuals with disabilities and one advocate for individuals with developmental disabilities. The bill provides that the Florida ABLE, Inc., would operate under a contract with the Florida Prepaid Board.

The bill provides that the state Medicaid agency, the Agency for Health Care Administration would be a creditor of ABLE accounts. Upon the death of designated beneficiary of an account, and subject to any outstanding payments due for qualified disability expenses, all amounts remaining in the account, not to exceed the total medical assistance paid by or on behalf of Medicaid for such individuals after the account was opened would be distributed to a state Medicaid program.

## **II. Present Situation:**

In 2011, almost 28 percent of non-institutionalized individuals in the United States with disabilities, ages 21-64, lived below the federal poverty line, compared with 12 percent of individuals without disabilities. In Florida, approximately 9.5 percent of individuals ages 16-64

are individuals with disabilities.<sup>2</sup> The unemployment rate of this group is 35.6 percent and the poverty rate is 24.2 percent.<sup>3</sup>

The costs associated with caring for an individual with disabilities can vary based on the individual's unique circumstances. Some of these costs may include out-of-pocket health care, behavioral therapy, speech therapy, physical therapy, occupational therapy, educational services, transportation, caregivers, and other services.

### **State and Federal Programs for Individuals with Disabled**

Often, individuals with disabilities may qualify for state or federal assistance. The Social Security Disability Insurance (SSDI)<sup>4</sup> and Supplemental Security Income<sup>5</sup> (SSI) programs are two types of disability programs administered by the federal Social Security Administration. Applicants for each of the programs must meet strict medical requirements to qualify for disability benefits. Under the programs, disability is defined as the inability to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment expected to result in death or last at least 12 months.<sup>6</sup> A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA.<sup>7</sup>

The SSDI program is an insurance program that provides benefits to individuals who have contributed to the Social Security system and meet certain minimum work requirements. In contrast, SSI is a means-tested program for aged, blind, or disabled individuals who meet certain income and resource limitations; however, there are no contribution or minimum work requirements.<sup>8</sup> The SSI program provides cash payments assuring a minimum income for aged, blind, or disabled individuals who have very limited income and assets. Effective January 1, 2015, the maximum monthly Federal benefit rate is \$733 for an eligible individual and \$1,100 for an eligible individual with an eligible spouse.<sup>9</sup> The countable resource limit for SSI eligibility is \$2,000 for individuals and \$3,000 for couples with exclusions.<sup>10</sup> In December 2013, there were 547,594 SSI recipients (aged, blind, or disabled) and 551,858 disabled workers that were recipients of SSDI in Florida.<sup>11</sup>

A SSI recipient living alone or in a household where all members receive SSI benefits are generally eligible for Medicaid. The Department of Children and Families is responsible for

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<sup>2</sup> National Disability Institute with support from the Florida Developmental Disabilities Council, *The Changing Face of Benefits, Knowledge for Successful Employment and Asset Development*, March 2013.

<sup>3</sup> *Id.*

<sup>4</sup> 42 U.S.C. ss. 401-433.

<sup>5</sup> 42 U.S.C. ss. 1381 note-1385 note.

<sup>6</sup> See <http://www.socialsecurity.gov/disability/professionals/bluebook/general-info.htm> (last accessed January 16, 2015).

<sup>7</sup> The monthly SGA earnings limit in 2015 for statutorily blind individuals is \$1,820. For non-blind individuals, the monthly SGA amount for 2015 is \$1,090. The amount of some SSI payments may be adjusted based on receipt of other income.

<sup>8</sup> The definition of disability for disabled children receiving SSI benefits is slightly different from the definition for adults. See criteria at: <http://www.ssa.gov/ssi/text-eligibility-ussi.htm#disabled-child> (last accessed on January 12, 2015).

<sup>9</sup> Generally, the maximum monthly payment changes yearly due to changes in the Consumer Price Index. The 2015 schedule is available at: <http://www.socialsecurity.gov/OACT/COLA/SSI.html> (last visited January 11, 2015).

<sup>10</sup> 20 C.F.R. s. 416.1201 and 20 C.F.R. ss. 416.1210-416.1239.

<sup>11</sup> Social Security Administration *Annual Statistical Supplement, 2014* available at:

<http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/5j.pdf> and

<http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/7b.pdf> (last accessed January 12, 2015).

determining eligibility for Medicaid and other programs. Medicaid is the medical assistance program, administered by the Agency for Health Care Administration (agency), which provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. Medicaid is a partnership between the states and the federal government, with each paying about half the cost. The Division of Operations' Third Party Liability (TPL) Unit of the agency is responsible for identifying, managing and recovering funds for claims paid for by Florida Medicaid for which a third party was liable, thereby ensuring Medicaid is the payer of last resort. The TPL recovery services are contracted with Xerox State Healthcare, LLC (Formerly ACS State Healthcare, LLC). Some examples of liable third parties include Medicare and other insurance companies, casualty settlements, recipient estates, and trust and annuity recovery. An estimated 446,000 individuals in Florida are under age 65 and are recipients of SSI and Medicaid benefits.<sup>12</sup>

### **Federal ABLÉ Act of 2014**

The federal ABLÉ Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014.<sup>13</sup> The ABLÉ Act permits a state to implement a qualified ABLÉ program and establish ABLÉ accounts for individuals with disabilities that meet certain criteria and are deemed "eligible individuals." A designated beneficiary of an ABLÉ account is an eligible individual who establishes an ABLÉ account and is the owner of such of an account.<sup>14</sup> The provisions of the ABLÉ Act are effective for taxable years beginning after December 31, 2014.

### ***Qualified ABLÉ Program***

A qualified ABLÉ program is a program established and maintained by a state or an agency or instrumentality of the state. A qualified ABLÉ program must meet many requirements, including the following:

- A person may make contributions for the benefit of an eligible individual to an ABLÉ account which is established for meeting the qualified disability expenses of the designated beneficiary of the account.
- The program must limit a designated beneficiary to one ABLÉ account.
- The program must allow for the establishment of ABLÉ accounts only for designated beneficiaries who are either residents of the state maintaining such ABLÉ program or residents of a state that has not established an ABLÉ program ("contracting state") but has entered into a contract with a program state to provide the contracting state's residents with access to the program state's ABLÉ program.
- Contributions must be made in cash.
- The program must provide a separate accounting for each designated beneficiary.
- The program must limit investment directions from the designated beneficiary to a maximum of two times in any calendar year.
- The program may not pledge any interest in the program as a security for a loan.

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<sup>12</sup> A number of individuals in the SSI file under age 65 did not have a disability onset set. Information provided by the Department of Children and Families (January 21, 2015) (on file with the Senate Committee on Banking and Insurance).

<sup>13</sup> H.R. 5771, Division B, Title I. Public Law 113-295.

<sup>14</sup> A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLÉ account, provided such new designated beneficiary is also an eligible individual.

- The program must establish adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the amount established by the state under s. 529(b)(6). Aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality thereof.<sup>15</sup>
- Each officer or employee having control of the qualified ABLE program or their designee is required to report to the Secretary of the Department of Treasury information concerning the contributions, distributions, the return of excess contributions, and other information that may be required.
- A State Able program is required to submit electronically on a monthly basis to the Commissioner of Social Security statements on relevant distributions and account balances of all ABLE accounts.

As discussed earlier, an ABLE account provides favorable tax treatment for a designated beneficiary if certain conditions are met. Earnings in an ABLE Act and distributions from the account for qualified disability expense would not count as taxable income of the contributor or the designated beneficiary. The act provides that an ABLE account may not receive aggregate contributions during a taxable year in excess of the annual gift-tax exclusion amount (\$14,000 for 2015).<sup>16</sup> If the distributions from a qualified ABLE account do not exceed the qualified distribution expenses of the designated beneficiary, no amount is includible in gross income. If the distributions exceed the qualified distribution expenses, the amount otherwise includible in gross income would be reduced by an amount that bears the same ratio to the distributed amount as the qualified disability expenses bear to that amount. The portion of any distribution that is includible in gross income is subject to an additional 10-percent tax unless it was made after the death of the beneficiary. Amounts in an ABLE account may be rolled over without income tax liability to another ABLE account for the same beneficiary or another ABLE account for the designated beneficiary's brother, sister, stepbrother or stepsister who is also an eligible individual. Taxes may apply, however, to a change of designated beneficiary during any taxable year unless, as of the beginning of the year, the new beneficiary is both an eligible individual for the taxable year and a brother, sister, stepbrother or stepsister of the former beneficiary.

### *Eligible individuals*

As described above, a qualified ABLE program may provide for the establishment of ABLE accounts only if those accounts have as their designated beneficiary an eligible individual. An individual is an eligible individual for a taxable year during such taxable year:

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date the individual attained age 26; or
- A disability certification with respect to such individual has been filed with the Secretary of Treasury for the taxable year. A disability certification is a certification to the satisfaction of the Secretary of Treasury made by the eligible individual or the parent or guardian of the

<sup>15</sup> . The current maximum account balance for 529 plans in Florida is \$418,000. This cap is subject to periodic review and possible revision. States may be required to share information about account balances to ensure this provision is not violated. Caps in other states range from \$235,000 to \$450,000. Email from Florida Prepaid College Board staff (February 7, 2015) (on file with the Senate Committee on Banking and Insurance).

<sup>16</sup> See Internal Revenue Service information at <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Whats-New-Estate-and-Gift-Tax> (last visited February 7, 2015).

eligible individual, that the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind and such blindness or disability occurred before the date on which the individual attained age 26. The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician.

### ***Qualified Disability Expenses***

The ABLE Act provides that earnings on distributions from an ABLE account are excluded from income only to the extent total distributions do not exceed the qualified disability expenses of the designated beneficiary. For purposes of the act, qualified disability expenses are any expenses related to the eligible individual's blindness or disability that are made for the benefit of the designated beneficiary. Those funds could be used for the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are authorized pursuant to regulations adopted by the Secretary of the U.S. Department of Treasury.

### ***Medicaid Recovery***

In the event the designated beneficiary dies, the account is subject to Medicaid recovery for the total amount of medical assistance provided for the designated beneficiary under the Medicaid program, less any premiums paid by or on behalf of the designated beneficiary to a Medicaid buy-in program. Prior to the Medicaid payback, funds in the ABLE account of the deceased designated beneficiary would be distributed for the payment of qualified disability expenses. The state is deemed a creditor of an ABLE account

### ***Treatment of ABLE accounts under Federal programs***

Generally, any amount in an ABLE account, and any distribution for qualified disability expenses, is disregarded for determining eligibility to receive, or the amount of, any assistance or benefit authorized by any Federal means-tested program with respect to any period an individual maintains, makes contributions to, or receives distributions from such ABLE account. However, in the case of the SSI program, a distribution for housing expenses is 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, the individual's SSI benefits will be suspended until the individual's resources fall below \$100,000. However, the suspension does not apply for purposes of Medicaid eligibility. For the purposes of determining eligibility for SSI, the eligible individual is the owner of the account.

The Secretary of the U.S. Department of Treasury is required to issue regulations or other guidance no later than six months after the date of enactment of the ABLE Act to implement the Act, including regulations:

- to enforce the one ABLE account per eligible individual limit;
- to specify information required to be presented to open an ABLE account;

- to define qualified disability expenses;
- to provide a process for disability certifications and determinations of disability, to be developed in consultation with the Commissioner of Social Security,
- to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses; and
- to allow for transfers from one ABLE account to another ABLE account in cases in which an eligible individual has a change in state of residence.

### **Sunset Review of Direct Support Organizations**

Pursuant to s. 20.058, F.S., any law creating or authorizing the creation of a direct support organization must state that the creation of or authorization for the DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature.

### **III. Effect of Proposed Changes:**

CS/SB 642 creates the Florida Achieving a Better Life Experience (ABLE) Act. The Florida ABLE Act establishes the Florida ABLE program, which would assist individuals with disabilities in saving money without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence and a better quality of life. This program was created by the federal Achieving a Better Life Experience Act of 2014 (ABLE Act), which authorizes states to establish ABLE programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.

The Florida ABLE program would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI if certain conditions are met. Under the Florida ABLE program, an eligible individual for the program would be an individual who becomes disabled prior to age 26 and is entitled to benefits due to blindness or disability under the Social Security Disability Income program or SSI program or meets eligibility through the disability certification process. A designated beneficiary is defined to mean an eligible individual who establishes an ABLE account or the eligible individual to whom an account was transferred.

Under the Florida ABLE Program, individuals with disabilities family members and others can contribute funds to a tax-exempt ABLE account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses that include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Earnings, cash contributions, and qualified distributions associated with an ABLE account would not count as taxable income or resources for an individual with disabilities who meets certain eligibility requirements. For 2015, aggregate contributions to an ABLE Account during a taxable year are capped at \$14,000. For purposes of eligibility for Supplemental Security Income (SSI) disability eligibility, only the first \$100,000 in an ABLE account is disregarded. If the balance in

an ABLE account exceeds \$100,000, any SSI benefits are suspended until the balance is reduced to \$100,000; however, an individual would continue to be eligible for Medicaid and other means-tested programs.

**Section 1** of the bill creates s. 1009.985, F.S., which provides that sections 1009.985-1009.988 may be cited as the “Florida Achieving a Better Life Experience (ABLE) Act.”

**Section 2** of the bill creates s. 1009.986, F.S., creating the Florida ABLE, Inc., as a direct support organization, and the Florida ABLE program. The bill provides a statement that the Legislature intends to establish a qualified ABLE program in Florida that is implemented consistently with federal law and maximizes program efficiency and effectiveness. The bill also provides definitions consistent with the federal ABLE Act.

**Creation of Florida ABLE, Inc.** [s. 1009.986(3), F.S.]

The Florida ABLE program (Program) will be established through the creation of Florida ABLE, Inc., (Florida ABLE), a not-for-profit direct support organization (DSO) established by the Florida Prepaid College Fund Board (Florida Prepaid). Florida ABLE will receive, hold, invest, and administer property and make expenditures for the Florida ABLE Program. Florida ABLE will be audited in accordance with s. 215.981, F.S., which contains the audit requirements for state agency DSOs.

***Oversight by Florida Prepaid College Board*** – Florida ABLE will operate under a written contract with the Florida Prepaid College Board that requires the articles of incorporation and bylaws of Florida ABLE to be approved by Florida Prepaid. Florida ABLE is also required to submit an annual budget to Florida Prepaid for its approval. Florida Prepaid is required to certify annually that Florida ABLE, Inc., is complying with contract terms and acting in accordance with statute and in the best interest of the state. The Florida ABLE fiscal year will begin on July 1, and end June 30 of the following year.

The bill allows Florida ABLE to utilize the resources of Florida Prepaid and requires Florida ABLE to pay reasonable consideration to Florida Prepaid for its products and services. Florida ABLE must authorize Florida Prepaid to solicit proposals, contract, or subcontract, or amend Florida Prepaid contractual service agreements for the benefit of Florida ABLE. Florida Prepaid will also maintain the website of Florida ABLE.

Moneys and property held in trust by Florida ABLE, if it is no longer approved to operate, will revert to Florida Prepaid or the state. Disclosure must be made to donors of the distinction between Florida Prepaid and Florida ABLE, and the material provisions of the contract;

***Board of Directors of Florida ABLE, Inc.*** – The Florida ABLE, Inc., board of directors has the following 5 members:

- Chair of Florida Prepaid, who serves as chair of Florida ABLE board;
- Advocate for persons with disabilities appointed by the President of the Senate;
- Advocate for persons with disabilities appointed by the Speaker of the House;

- One of the two advocates for the disabled must be an advocate of persons with developmental disabilities as defined in s. 393.063, F.S., which are intellectual disability, cerebral palsy, autism, spina bifida, and Prader-Willi syndrome;
- A person with expertise in accounting, risk management, or investment management appointed by the Florida Prepaid board of directors;
- A person with expertise in accounting, risk management, or investment management appointed by the Governor.

The board must meet at least quarterly and may also meet upon the call of the chair. A quorum consists of a majority of the current membership of the board. Appointees to the board serve for 3 years and may be reappointed. Board members serve without compensation and may be reimbursed for travel expenses pursuant to s. 112.061, F.S.

### **Participation Agreements and Contracting** [s. 1009.986(4), F.S.]

**Participation Agreements** – The Florida ABLE program will enter into participation agreements with disabled beneficiaries. The participation agreement is the contract between Florida ABLE and qualified disabled beneficiaries that will allow the latter to set up an ABLE account.

The bill sets forth mandatory provisions of participation agreements including provisions prohibiting beneficiaries from establishing accounts in violation of federal law (such as establishing more than one account) or in excess of federal law (currently, the maximum annual contribution is \$14,000 per year). A participation agreement may be amended to increase or decrease the level of participation, change beneficiaries, and for other authorized purposes. The participation agreement must allow the involuntary liquidation of an ABLE account if a material misrepresentation is made.

A contract or participation agreement is not a debt of the state but is an obligation of the Florida ABLE program. The obligation of Florida ABLE, Inc., is limited to the amount in the Florida ABLE Trust Fund.

**Contracting** – Florida ABLE, Inc., may contract to participate in the ABLE program of another state if Florida does not establish a qualified ABLE program. Florida may also contract with other states that do not have an authorized ABLE program to allow those states to participate in the Florida ABLE program.

**Vested Rights of Beneficiaries** – Under the bill, the state pledges to designated beneficiaries that their vested rights will not be limited or altered until the program's obligations are met and discharged. Limiting or altering rights may be done if adequate provision is made by law to protect designated beneficiaries pursuant to the obligations of Florida ABLE, Inc. The pledge to beneficiaries also does not preclude termination of the Florida ABLE program if the program is determined to not be financially feasible.

### **Implementation of the Florida ABLE Program** [s. 1009.986(4), (9) F.S.]

**Legal Opinions Required Prior to Implementation** – On or before July 1, 2016, Florida ABLE, Inc., will establish and administer the Florida ABLE program. Before doing so, it must obtain a

legal opinion that the Florida ABLE program complies with s. 529A of the Internal Revenue Code (the federal ABLE Act) and complies with federal securities law and qualifies for tax exemptions under such law.

**Status Report** – On or before November 1, 2015, Florida ABLE, Inc., must provide to the Governor, President of the Senate, and Speaker of the House a status report and recommendations on the establishment of the Florida ABLE program.

**Termination of ABLE Program** – The Florida ABLE program shall continue in existence until terminated by law by the Legislature. The bill specifies that the state may terminate the program if it is financially infeasible. Generally a Legislature cannot bind the acts of a future Legislature by restricting the grounds for the repeal of a statute. Amounts in the Florida ABLE Trust Fund must be returned in accordance with the participation agreement. Unclaimed amounts may be transferred to the Florida Prepaid Tuition Scholarship Program.

**Provisions Related to Investment Management, Creditor's Claims and Medicaid Recovery, and Annual Reporting** [s. 1009.986(5)-(7) and (9), F.S.]

**Comprehensive Investment Plan** – Florida ABLE, Inc., must establish a comprehensive investment plan for the ABLE program. Florida ABLE, Inc., may place Florida ABLE program assets in investment products, but only in proportions designated in the investment plan and in compliance with federal and state laws and regulations. Designated beneficiaries may not direct investment of their contributions unless specific fund options are offered by Florida ABLE. The Federal ABLE Act prohibits direction of investments by beneficiaries more than two times in a calendar year. The plan is subject to the approval of the Florida Prepaid College Board.

**Exemption from Creditor's Claims** – Moneys paid into or out of the Florida ABLE Trust Fund by or for a designated beneficiary are exempt from creditors' claims. Section 3 of the bill amends s. 222.22, F.S., to provide that moneys paid into or out of an ABLE program, and the income and assets of the ABLE program, are exempt from creditor's claims against any designated beneficiary or other ABLE program participant.

**Priority of Distributions and Medicaid Recovery** – ABLE account funds of a deceased beneficiary must first be distributed for qualified disability expenses followed by distributions for a Medicaid claim. Any remaining amount is distributed pursuant to the participation agreement.

**Annual Report** – Florida ABLE, Inc., must prepare an annual report providing a detailed accounting of the Florida ABLE program, and describes the financial condition of the program. Copies of the report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of each legislative chamber. The report

must be made available to designated beneficiaries. Florida ABLE program accounts are subject to an annual audit by the Auditor General.

**Rulemaking Authority** [s. 1009.986(10), F.S.]

The Florida Prepaid College Board must adopt rules to administer the Florida ABLE program. The rules must include the governance and operating procedures for Florida ABLE, Inc.; the conditions for Florida ABLE, Inc., to use the property, facilities, or personnel of Florida Prepaid.; the procedures for determining that an ABLE account has been abandoned; and the provisions necessary for the Florida ABLE program to retain status as a qualified ABLE program, tax exempt status, or other similar status for the program or participants under the Internal Revenue Code. The Florida ABLE program must inform participants of changes to the tax or securities status of their participation agreements and interests in the ABLE program.

**Outreach Partners** [s. 1009.986(11), F.S.]

The Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education must assist Florida ABLE in providing public information and outreach about the Florida ABLE program.

**Repeal Date** [s. 1009.986(12), F.S.]

Section 2 of the bill, establishing the Florida ABLE program, will be repealed October 2, 2020, unless reviewed and saved from repeal by the Legislature. The repeal provision is necessary to comply with s. 20.058, F.S., which requires each law creating a direct-support organization to require its repeal on October 1 of the 5<sup>th</sup> year after enactment.

**Section 3** of the bill amends s. 222.22, F.S., to provide that, except as provided in s. 1009.986(7), F.S., (detailing priority of distributions upon the death of an ABLE account designated beneficiary) moneys paid into or out of an ABLE account, and the income and assets of the ABLE account program, are not liable to attachment, levy, garnishment or legal process in favor of any creditor or claimant against any designated beneficiary or other program participant.

**Section 4** amends s. 1009.971, F.S., to specify that the Florida Prepaid College Board has the powers and duties necessary to perform its obligations regarding the Florida ABLE program created by Section 2 of the bill.

**Section 5** of the bill provides that the act will take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida ABLE program will assist individuals with disabilities in saving money in tax-advantaged accounts without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence. The bill would allow an indeterminate number of individuals to save additional assets or resources in these accounts and use the funds to pay for qualified disability expenses.

The Florida Prepaid College Board estimates that 4,000 individuals in Florida may open ABLE accounts out of an estimated target population of 400,000.

C. Government Sector Impact:

The Florida Prepaid College Board estimates the costs for FY 2015-2016 associated with the implementation of the Florida ABLE program will be \$3,386,000. This budget anticipates starting the program as early as April 1, 2016 but no later than July 1, 2016. The FY 2015-1016 budget assumes having the plan open for one quarter of that fiscal year. As referenced above, the Florida Prepaid College Board estimates 4,000 individuals may open ABLE accounts during FY 2015-2016.

The impact on Medicaid and other federally means-tested programs is indeterminate at this time. According to a report<sup>17</sup> by the Congressional Budget Office (CBO), the legislation would increase the number of beneficiaries of federal means tested programs. The CBO expects that the ABLE Act would increase SSI caseloads for individuals whose eligibility for SSI benefits was denied or interrupted because of excess resources and individuals who do not apply for SSI under current law because of excess resources, but who would meet SSI's age or disability requirement and income requirement.

The CBO expects that enacting the ABLE Act would increase the number of disabled adults under the age of 65 who enroll in Medicaid because they could hold cash assets in an ABLE account that would not count against Medicaid eligibility. Because a beneficiary of an ABLE account must have a disability that occurred before he reached age 26, CBO does not expect an increase in the number of elderly individuals who enroll in Medicaid. Additionally, the CBO does not expect that establishment of ABLE accounts would increase the number of children and nondisabled adults enrolled in

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<sup>17</sup> Congressional Budget Office Cost Estimate, H.R. 647, September 23, 2014, as ordered reported by the House Committee on Ways and Means on July 31, 2014.

Medicaid because those individuals are not required to meet an asset test under current law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 222.22 and 1009.971.

This bill creates the following sections of the Florida Statutes: 1009.985 and 1009.986.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 17, 2015:**

The CS provides the following changes:

**Florida ABLE, Inc., Board of Directors**

The CS revises the composition of the board by reducing the number of directors from seven to five and changing the membership. The CS provides that the chair of the Florida Prepaid College Board would continue to serve on the Florida ABLE, Inc, Board along with one member appointed by the Governor and one additional member appointed by the Florida Prepaid College Board, and two directors appointed by the Legislature. Under the CS, an appointee of the Governor and appointee of the Florida Prepaid College Board would replace the director of the Agency for Persons with Disabilities and the executive director of the Florida Prepaid College Board. The CS reduces the number of legislative appointees from four to two—one from the Senate and one from the House. The legislative appointees would include an advocate for individuals with disabilities and one advocate for individuals with developmental disabilities.

**Florida ABLE Program Implementation**

The CS requires Florida ABLE Program to be implemented on or before July 1, 2016. Florida ABLE, Inc., is required to submit a status report to the Legislature by November 1, 2015, regarding the implementation of the program and any legislative recommendations, if applicable, that are necessary to ensure the program operates in an effective and efficient manner.

The CS changes the effective date of the bill from October 1, 2015, to effective upon becoming law to allow Florida ABLE, Inc., additional time to implement the ABLE program.

**State Outreach Partners**

The bill provides that the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education would coordinate with Florida ABLE, Inc, in the provision of outreach and public information about the ABLE accounts to reach the target audience.

**Unclaimed Property**

The CS provides that if an account is abandoned, as provided in rules adopted by the ABLE Program, the balance of the account could be used to operate the Florida ABLE program. CS/SB 642 allows these funds to be used for the ABLE program or for funding scholarships for economically disadvantaged youths. The CS provides that if the program is terminated because it is not financially feasible, funds would be distributed pursuant to the terms of the participation agreement unless the account is abandoned. CS/SB 642 provides that any unclaimed funds that were remaining would be used for scholarships for economically disadvantaged youths.

**Technical and Clarifying Changes**

The CS provides technical, clarifying changes relating to definitions and the provisions relating to powers and duties of Florida ABLE, Inc., Florida ABLE Program, and Florida Prepaid College Board.

**B. Amendments:**

None.