

**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 Appropriations Subcommittee on Education

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**BILL:** CS/SB 644

**INTRODUCER:** Banking and Insurance Committee and Senator Benacquisto

**SUBJECT:** Florida ABLE Program Trust Fund/State Board of Administration

**DATE:** March 2, 2015      **REVISED:** \_\_\_\_\_

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

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 644 creates the Florida ABLE Program Trust Fund (trust fund) within the State Board of Administration (SBA). The trust fund will hold appropriations and moneys acquired from private sources or other governmental sources for the Florida ABLE program. The trust fund will also hold ABLE account moneys.

This bill has no fiscal impact.

CS/SB 644 is contingent upon CS/SB 642 or similar legislation becoming law and will become effective on the same date.

**II. Present Situation:**

**Trust Funds**

Section 19(f), Art. III of the State Constitution, requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than 4 years after the initial creation unless recreated.

## **Federal ABLE Act**

The federal ABLE Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014. The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for individuals with disabilities that meet certain criteria and are deemed “eligible individuals.” A designated beneficiary of an ABLE account is an eligible individual who establishes an ABLE account and is the owner of such of an account.<sup>1</sup> The provisions of the ABLE Act are effective for taxable years beginning after December 31, 2014.

## **Florida ABLE Program**

CS/SB 642 requires the Florida Prepaid College Board (Prepaid Board) to create the Florida ABLE, Inc., as a direct support organization organized as a not-for-profit corporation. Florida ABLE, Inc., would establish and administer the Florida ABLE Program. The board of directors of Florida ABLE, Inc., would be comprised of the chair of the Prepaid Board, two appointees (one by the Governor and one by the Prepaid Board) with expertise in accounting, risk management or investment management, and two appointees, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives, who are advocates for individuals with disabilities, one of whom is an advocate for individuals with developmental disabilities. The bill provides that the Florida ABLE, Inc., would operate under a contract with the Prepaid Board.

Individuals who participate in the Florida ABLE Program must meet certain requirements. Under the provisions of CS/SB 642, a designated beneficiary is an eligible individual who established an ABLE account or an eligible individual to whom an ABLE account was transferred.

A person is an eligible individual for an ABLE account for a taxable year if during such taxable year:

- The person 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 on which the individual attained age 26; or
- A disability certification with respect to the person is filed with the Secretary of the Department of Treasury for such taxable year.

The Florida ABLE Program would operate under a participation agreement between Florida ABLE, Inc., and a participant in the Florida ABLE Program.

Under the Florida ABLE Program, eligible individuals with disabilities, family members and others can contribute funds to an ABLE account without affecting the designated beneficiary’s eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses relating to the individual’s blindness or disability. These expenses would include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal

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<sup>1</sup> A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual.

regulations. Funds placed in the ABLE program would supplement, rather than supplant, benefits provided through state and federal programs, earnings, and other sources.

### III. Effect of Proposed Changes:

**Section 1** creates the Florida ABLE Program Trust Fund within the State Board of Administration. The trust fund will hold appropriations and moneys acquired from private sources or other governmental sources for the Florida ABLE program. The trust fund will also hold moneys held in individual ABLE accounts. The priority of expending trust fund assets is first to make payment to, or on behalf of, designated beneficiaries of the Florida ABLE program and then to pay administrative and operations costs of the Florida ABLE program.

Trust fund assets may be maintained, expended, and invested only to carry out the purposes of Florida ABLE program. Florida ABLE may, however, make investments in bonds, notes, or other obligations of the state, a state agency, or instrumentality of the state. Any year-end balance remains in the trust fund. Trust fund assets are exempt from the investment requirements of s. 17.57, F.S., and may be invested pursuant to s. 215.47, F.S.

The trust fund terminates on October 1, 2019, as required by s. 19(f)(2), Art. III of the Florida Constitution. Prior to termination, the trust fund will be reviewed by the State Board of Administration and the Governor who will recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or be re-created.

**Section 2** provides that the bill will take effect on the same date as CS/SB 642 or similar legislation if such legislation is adopted in the same legislative session, or an extension of the same session, and becomes law. The effective date of CS/SB 642 is upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

Article II, subsection 19(f) of the Florida Constitution prohibits the Legislature from creating or re-creating a trust fund unless the trust fund is created or re-created by law and approved by a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

State trust funds must terminate within 4 years after the effective date of the act authorizing the initial creation of the trust fund. Once re-created, a trust fund remains in existence indefinitely.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 1009.988 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

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

The CS renames the trust fund created by the bill the Florida ABLE Program Trust Fund to avoid confusion with the Florida Endowment Foundation for Vocational Rehabilitation, which is also known as “The Able Trust.”

## B. Amendments:

None.