

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 937 Trust Funds/Florida ABLE Trust Fund/State Board of Administration

**SPONSOR(S):** Rodrigues

**TIED BILLS:** HB 935 **IDEN./SIM. BILLS:** CS/SB 644

| REFERENCE                                    | ACTION    | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|-----------|--|
| 1) Children, Families & Seniors Subcommittee | 12 Y, 0 N | Tuszynski | Brazzell                                 |
| 2) Education Appropriations Subcommittee     | 13 Y, 0 N | Butler    | Heflin                                   |
| 3) Health & Human Services Committee         | 17 Y, 0 N | Tuszynski | Calamas                                  |

### SUMMARY ANALYSIS

The federal Achieving a Better Life Experience of 2014 (ABLE Act) authorized states to establish ABLE programs or contract with other states to administer such programs if certain conditions are met. ABLE programs would provide a tax-advantaged approach for certain individuals with disabilities to build financial resources for disability related expenses without losing state or federal benefit eligibility, similar to 529 college savings plans.

HB 935 establishes the Florida ABLE Program. This bill, tied to HB 935, creates the Florida ABLE Program Trust Fund (trust fund) within the State Board of Administration. The trust fund will hold appropriations and moneys acquired from private or governmental sources for the Florida ABLE program. The trust fund will also hold ABLE account moneys.

Article III, section 19(f) of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund.

The bill has no fiscal impact.

This bill is effective on the same date that HB 935 or similar legislation takes effect.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Trust Funds

Section 19(f), Art. III of the Florida 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 Achieving a Better Life Experience Act of 2014 (ABLE Act) became law on December 19, 2014. The purposes of the federal ABLE Act are to encourage and assist individuals and families in saving to support individuals with disabilities in maintaining health, independence, and quality of life, and provide secure funding for disability-related expenses that will supplement, but not supplant, other sources.<sup>1</sup> 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.”

##### Florida ABLE Program

HB 937 is tied to and implement HB 935, which requires the Florida Prepaid College Board to create Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation to receive, hold, invest, and administer property and to make expenditures for the benefit of the Florida ABLE program. HB 935 requires Florida ABLE, Inc., to operate under a contract with the Florida Prepaid College Board, which administers the Florida College Savings program. The Florida College Savings Program is a tax-advantaged account that allows the tax-free accumulation and distribution of cash assets for qualified educational expenses under s. 529 of the Internal Revenue Code. These plans are very similar to the tax advantaged disability savings plans envisioned by the federal ABLE Act under s. 529A of the Internal Revenue Code.

Under the Florida ABLE Program, eligible individuals<sup>2</sup> with disabilities, family members and others can contribute funds to an ABLE account without affecting the individual's eligibility for state and federal benefits, such as Supplemental Security Income and Medicaid. A beneficiary may use the funds for qualified disability expenses relating to the individual's blindness or disability. These expenses include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized by federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

#### **Effect of Proposed Changes**

The bill 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 ABLE accounts. The priority of expending trust fund assets is first to make payment to, or on behalf of, designated

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

<sup>2</sup> An individual is eligible to establish an ABLE account for a taxable year if 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 on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year.

beneficiaries of the Florida ABLE program and then to pay administrative and operational costs of the Florida ABLE program.

Trust fund assets shall be maintained, expended, and invested only for the purposes of the Florida ABLE program. Florida ABLE, Inc., 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.

The bill will take effect on the same date as HB 935 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 HB 935 is October 1, 2015.

**B. SECTION DIRECTORY:**

**Section 1:** Creates the Florida ABLE Program Trust Fund.

**Section 2:** Provides for an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**