

**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 Rules

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BILL: SB 828

INTRODUCER: Senator Benacquisto

SUBJECT: Florida ABLE Program

DATE: February 10, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Hendon</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 828 saves from repeal Florida ABLE, Inc., a direct-support organization for the Florida Prepaid College Board. Florida ABLE Inc. administers the Florida ABLE Program, a program that allows individuals to make tax exempt contributions to meet certain expenses associated with a disabled beneficiary.

The bill has no impact on state revenues or expenditures and takes effect upon becoming law.

**II. Present Situation:**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose are prescribed by statute and by a written contract with the agency the organization supports.

**Transparency and Reporting Requirements**

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.<sup>1</sup> Specifically, the law requires each organization to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:<sup>2</sup>

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;

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<sup>1</sup> Section 3, ch. 2014-96, L.O.F.

<sup>2</sup> Section 20.058(1), F.S.

- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).<sup>3</sup>

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the organization.<sup>4</sup> Additionally, any contract between an agency and a CSO or DSO must be contingent upon the organization submitting and posting the information.<sup>5</sup> If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the organization.<sup>6</sup> The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.<sup>7</sup>

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.<sup>8</sup>

Finally, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the organization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. Such organization in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.<sup>9</sup>

### **Audit Requirements**

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.<sup>10</sup> The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO supports and submitted to the Auditor General and applicable state agency within nine months after the end of the fiscal year.

In addition, the Auditor General may conduct audits or other engagements of the accounts and records of the organization, pursuant to his or her own authority, or at the direction of the

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<sup>3</sup> The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

<sup>4</sup> Section 20.058(2), F.S.

<sup>5</sup> Section 20.058(4), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 20.058(3), F.S.

<sup>9</sup> Section 20.058(5), F.S.

<sup>10</sup> The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Legislative Auditing Committee.<sup>11</sup> The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.<sup>12</sup>

### **Ethics Code Requirement**

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>13</sup>

### **ABLE Programs**

#### ***Federal ABLE Act of 2014***

The federal Achieving a Better Life Experience Act (ABLE) of 2014 authorizing states to implement ABLE programs became law on December 19, 2014.<sup>14</sup> An ABLE program provides a tax-advantaged approach for certain individuals with disabilities<sup>15</sup> to build financial resources without losing eligibility for Supplemental Security Income (SSI)<sup>16</sup> or Medicaid. The law authorizes ABLE accounts for individuals with disabilities who meet certain criteria, to spend distributions on “qualified disability expenses.”<sup>17</sup> 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>18</sup>

#### ***Florida Prepaid College Board***

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program and the Florida College Savings Program, and performs specified essential governmental functions.<sup>19</sup> Both are tax-favored 529 college savings plans authorized by Section

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<sup>11</sup> Section 11.45(3)(d), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 112.3251, F.S.

<sup>14</sup> Public Law 113-295, 26 U.S.C. 529A.

<sup>15</sup> An individual is an eligible individual for a taxable year if during such taxable year: (1) 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 (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year. *Id.*

<sup>16</sup> An account balance exceeding \$100,000 may cause suspension of SSI benefits; no such restriction affects Medicaid eligibility. ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf), at 14.

<sup>17</sup> *Id.* The term “qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including 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 approved by the Secretary of Education under specified conditions. *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Section 1009.971(1), F.S. See ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. *Id.* The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the

529 of the Internal Revenue Code. The Board establishes policy and oversees the investment and financial performance of the programs.<sup>20</sup>

### ***Florida ABLE Program***

The Florida ABLE Program was created in 2015<sup>21</sup> to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.<sup>22</sup>

The Florida Prepaid College Board is required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program. ABLE United is:<sup>23</sup>

- A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.
- Organized and operated to receive, hold, invest, and administer property and to make expenditures for the benefit of the Florida ABLE program.

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.<sup>24</sup>

ABLE United has developed the ABLE United Program to be a qualified ABLE program pursuant to Section 529A of the Internal Revenue Code. The program launched on July 1, 2016. As of May 15, 2019, 3,231 persons with disabilities have an ABLE United account with an average account balance of \$4,674. Among the individuals in the program, 44 percent have a developmental disability.<sup>25</sup>

### **Legislative Findings and Recommendations**

Senate professional staff reviewed documents related to ABLE United for compliance with accountability and authorizing statutes. ABLE United appears to be in compliance with such statutes. Findings and recommendations are summarized below.

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Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Section 1009.971(2), F.S.

<sup>20</sup> Florida Prepaid, *About the Board*, <https://www.myfloridaprepaid.com/about-us/> (last visited Aug. 19, 2019).

<sup>21</sup> Section 2, ch. 2015-56, L.O.F.

<sup>22</sup> Section 1009.986(1), F.S. The Florida ABLE program is authorized under s. 529A of the Internal Revenue Code to allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the ABLE account. Section 1009.986(2)(h), F.S.

<sup>23</sup> Section 1009.986(3), F.S.

<sup>24</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1. The maximum annual contribution to an ABLE account is \$15,000, which may be increased if the beneficiary is working. ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf), at 2.

<sup>25</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1.

### ***Compliance with Accountability Requirements***

By August 1 of each year, ABLE United must submit the following information to the Board:<sup>26</sup>

- The name, mailing address, telephone number, and website address of ABLE United.
- The statutory authority or executive order pursuant to which ABLE United was created.
- A brief description of the mission of, and results obtained by, ABLE United.
- A brief description of the plans of ABLE United for the next 3 fiscal years.
- A copy of ABLE United's code of ethics.
- A copy of ABLE United's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Senate Professional staff found that the ABLE United annual disclosure contains all required information.<sup>27</sup> However, the Internal Revenue Service has determined that ABLE United is exempt from the requirement of filing Form 990.<sup>28</sup>

The Board must make such information submitted above available to the public through the Board's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.<sup>29</sup> The Board includes the ABLE United required annual disclosure report on the Board's website.<sup>30</sup> However, the Board does not provide a link to ABLE United on the Board's website. Senate Professional staff recommend that the Board provide a link to the ABLE United website on the Board's website.

By August 15 of each year, the Board must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the OPPAGA the information provided by ABLE United. The report must also include a recommendation by the Board, with supporting rationale, to continue, terminate, or modify the Board's association with ABLE United.<sup>31</sup> The Board provided the ABLE United required annual disclosure on July 8, 2019. In the required annual disclosure report the Board recommended continued association with ABLE United.<sup>32</sup>

The contract between the Board and ABLE United must be contingent upon ABLE United's submission and posting of information required to be submitted to the Board and must include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by ABLE United within 30 days after its authorizing statute is repealed, the contract is terminated, or ABLE United is dissolved. If ABLE United fails to submit the required

<sup>26</sup> Section 20.058(1), F.S.

<sup>27</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 1.

<sup>28</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 10-11.

<sup>29</sup> Section 20.058(2), F.S.

<sup>30</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1.

<sup>31</sup> Section 20.058(3), F.S.

<sup>32</sup> Cover letters to the annual disclosure report dated July 8, 2019, were distributed to the Governor, Speaker of the House of Representatives, President of the Senate, and OPPAGA. Email, Florida Prepaid College Board (Aug. 23, 2019).

information for 2 consecutive years, the Board chair must terminate any contract between the Board and ABLE United.<sup>33</sup> Senate Professional staff found that the contract between the Board and ABLE United incorporates the ABLE United Articles of Incorporation and Bylaws.<sup>34</sup> The Articles of Incorporation includes a provision for termination of the program and distribution of funds to the Board, or to the State of Florida if the Board is terminated.<sup>35</sup> In addition, the ABLE United Bylaws include a similar provision regarding the dissolution of ABLE United and reversion of funds.<sup>36</sup>

ABLE United must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General (AG) pursuant to s. 11.45(8) and the Board. The audit report must be submitted within 9 months after the end of the fiscal year to the AG and to the Board.<sup>37</sup> Senate Professional staff found that ABLE United provided for an annual financial audit for the fiscal year ending June 30, 2018, conducted by Carr, Riggs & Ingram, LLC, and completed on December 21, 2018.<sup>38</sup>

ABLE United must adopt its own ethics code. The ethics code must contain the standards of conduct and disclosures required under ss. 112.313 and 112.3143(2), respectively. The ethics code must be conspicuously posted on the ABLE United website.<sup>39</sup> The Foundation's Code of Ethics must address specified standards of conduct.<sup>40</sup> ABLE United has adopted a code of ethics, which is also the code of ethics that applies to all employees of the State Board of Administration.<sup>41</sup> The review by Senate Professional staff found that the code of ethics addresses the required standards of conduct.<sup>42</sup> However, the code of ethics is not posted on the ABLE United website. Senate Professional staff recommend that ABLE United post its code of ethics on the ABLE United website.

### ***Compliance with Authorizing Requirements***

ABLE United must operate under a written contract with the Board. The contract must include, but is not limited to, provisions that require:<sup>43</sup>

- The articles of incorporation and bylaws of ABLE United approved by the Board.
- ABLE United to submit an annual budget for approval by the Board. The budget must comply with rules adopted by the Board.

<sup>33</sup> Section 20.058(4), F.S.

<sup>34</sup> Email, Florida Prepaid College Board (July 23, 2019).

<sup>35</sup> Florida ABLE, Inc., *Articles of Amendment to Articles of Incorporation of Florida ABLE, Inc.* (Dec. 6, 2019), at Article X.

<sup>36</sup> Florida ABLE, Inc., *First Amendment to the By-laws of Florida ABLE, Inc.* (Dec. 6, 2016), at Article XII.

<sup>37</sup> Section 215.981(1), F.S.

<sup>38</sup> Florida ABLE, Inc., *Financial Statements, June 30, 2018* (Dec. 21, 2018), available at <https://www.ableunited.com/wp-content/uploads/FINAL-FI-ABLE-with-required-12.21.18.pdf>.

<sup>39</sup> Section 112.3251, F.S.

<sup>40</sup> Section 112.313, F.S.

<sup>41</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 2.

<sup>42</sup> ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 2.

<sup>43</sup> Section 1009.986(3)(b), F.S.

- ABLE United to pay reasonable consideration to the Board for products or services provided directly or indirectly by the Board.
- The Board to solicit proposals, to contract or subcontract, or to amend contractual service agreements of the Board for the benefit of ABLE United.
- The Board to maintain the website of ABLE United.
- The Board to annually certify that ABLE United is complying with the terms of the contract and acting in a manner consistent with this section and in the best interest of the state. The certification must be reported in the official minutes of a meeting of the Board.
- The disclosure of material provisions in the contract and of the distinction between the Board and ABLE United to donors of gifts, contributions, or bequests, and the inclusion of such disclosure on all promotional and fundraising publications.
- The fiscal year for ABLE United to begin on July 1 and end on June 30 of the following year.

The Board and ABLE United entered into a contract on August 14, 2015.<sup>44</sup> The review by Senate Professional staff found that the contract between the Board and ABLE United includes all required provisions.<sup>45</sup> In addition, as required in the contract the Board certified on March 26, 2019, that ABLE United was in compliance with the terms of the contract and acting in a manner in the best interest of the State of Florida.<sup>46</sup>

ABLE United must provide for an annual financial audit in accordance with s. 215.981, F.S.<sup>47</sup> The review by Senate Professional staff found that ABLE United provided for an annual financial audit for the fiscal year ending June 30, 2018, conducted by Carr, Riggs & Ingram, LLC, and completed on December 21, 2018.<sup>48</sup>

The board of directors of ABLE United must consist of:<sup>49</sup>

- The chair of the FL Prepaid Board, who serves as chair of the board of directors of Florida ABLE, Inc.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the FL Prepaid Board. A current member of the FL Prepaid Board, other than the chair, may be appointed.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker

<sup>44</sup> Email, Florida Prepaid College Board (July 23, 2019).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Section 1009.986(3)(c), F.S. Section 215.981(1), F.S., requires that each direct-support organization and each citizen support organization with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than a university, district board of trustees of a community college, or district school board, must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and the state agency that created, approved, or administers the direct-support organization or citizen support organization.

<sup>48</sup> Florida ABLE, Inc., *Financial Statements, June 30, 2018* (Dec. 21, 2018), available at <https://www.ableunited.com/wp-content/uploads/FINAL-FL-ABLE-with-required-12.21.18.pdf>.

<sup>49</sup> Section 1009.986(3)(d)

of the House of Representatives. At least one of the individuals so appointed must be an advocate of persons with developmental disabilities.

In addition, ABLE United must comply with statutory requirements relating to the board of directors' meeting schedule, member terms, and member reimbursement.<sup>50</sup> The ABLE United Board of Directors includes the Chair of the Florida Prepaid College Board, an appointee of the Florida Prepaid College Board, and one member each appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate who meet the specified qualifications.<sup>51</sup> The review by Senate Professional staff found that the ABLE United Bylaws include provisions in compliance with requirements regarding member terms, individual authority of board members, meeting schedule, quorum, and reimbursement.<sup>52</sup>

The ABLE United participation agreement must include provisions specifying that:<sup>53</sup>

- The participation agreement is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund and is not a debt or obligation of the Board or the state.
- Participation in the Florida ABLE program does not guarantee that sufficient funds will be available to cover all qualified disability expenses for any designated beneficiary and does not guarantee the receipt or continuation of any product or service for the designated beneficiary.
- The designated beneficiary must be a resident of this state or a resident of a contracting state at the time the ABLE account is established.
- The establishment of an ABLE account in violation of federal law is prohibited.
- Contributions in excess of the limitations set forth in s. 529A of the Internal Revenue Code (IRC) are prohibited.
- The state is a creditor of ABLE accounts as, and to the extent, set forth in s. 529A of the IRC.
- Material misrepresentations by a party to the participation agreement, other than ABLE United, in the application for the participation agreement or in any communication with ABLE United regarding the Florida ABLE program may result in the involuntary liquidation of the ABLE account. If an account is involuntarily liquidated, the designated beneficiary is entitled to a refund, subject to any fees or penalties provided by the participation agreement and the IRC.

The review by Senate Professional staff found that the ABLE United Program Description and Participation Agreement<sup>54</sup> includes all required provisions.

Florida United must establish a comprehensive investment plan for the Florida ABLE program, subject to the approval of the Board. The comprehensive investment plan must specify the investment policies to be used by Florida United in its administration of the program.<sup>55</sup> Senate Professional staff found that ABLE United has established a Comprehensive Investment Plan

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<sup>50</sup> *Id.*

<sup>51</sup> ABLE United, *About Us*, <https://www.ableunited.com/about-us/> (last visited Aug. 22, 2019).

<sup>52</sup> Florida ABLE, Inc., *By-Laws of Florida ABLE, Inc.* Email. *Florida Prepaid College Board*, July 23, 2019.

<sup>53</sup> Section 1009.986(4)(b), F.S.

<sup>54</sup> ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf).

<sup>55</sup> Section 1009.986(5), F.S.



approved by the Board. The plan establishes participant investment options, asset class allocation ranges and targets, administrative fees, and performance expectations and monitoring.<sup>56</sup>

On or before March 31 of each year, Florida United must prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the Florida ABLE program which includes a description of the financial condition of the program at the close of the fiscal year. Florida United must submit copies of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives and must make the report available to each designated beneficiary.<sup>57</sup> Senate Professional staff found that the ABLE United 2018 Annual Report contains the required financial information and is available on the ABLE United website.<sup>58</sup> The report was distributed to the required recipients in March 2019.<sup>59</sup>

The Board must adopt rules to administer the Florida ABLE program. Rules must include, but are not limited to:<sup>60</sup>

- Specifying the procedures by which Florida United must be governed and operate, including requirements for the budget of Florida United and conditions with which Florida United must comply to use property, facilities, or personal services of the Board.
- The procedures for determining that an ABLE account has been abandoned.
- Adoption of provisions determined necessary by the Board for the Florida ABLE program to retain its status as a qualified ABLE program or the tax-exempt status or other similar status of the program or its participants under the Internal Revenue Code.

Senate Professional staff found that the Board adopted the required rules to administer the Florida ABLE program. Rule 19B-17.001, F.A.C., addresses Florida ABLE, Inc., governance; submission of an annual budget; and use of property, facilities, and personal services. Rule 19B-18.003, F.A.C., incorporates the ABLE United Program Description and Participation Agreement,<sup>61</sup> which provides the procedures for abandoned accounts and necessary safeguards to retain its status as a qualified ABLE program.

### III. Effect of Proposed Changes:

Subsection (12) of s. 1009.986, F.S., repeals the entire section of statute that creates the ABLE program rather than subsection (3) that contains the DSO. So by removing subsection 12, the bill saves from repeal both the direct-support organization Florida ABLE Inc. and the Florida ABLE program. The bill will provide for the continuation of the administration of the Florida ABLE program by ABLE United, which provides private savings plans in tax-exempt accounts to pay

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<sup>56</sup> Florida ABLE, Inc., *Comprehensive Investment Plan, Florida ABLE Program* (Apr. 1, 2019). Email. *Florida Prepaid College Board*, July 23, 2019.

<sup>57</sup> Section 1009.986(9), F.S.

<sup>58</sup> ABLE United, *2018 Annual Report*, available at [https://www.ableunited.com/wp-content/uploads/2018-ABLE\\_United-Annual-Report\\_FINAL-WEB-as-of-3.28.19.pdf](https://www.ableunited.com/wp-content/uploads/2018-ABLE_United-Annual-Report_FINAL-WEB-as-of-3.28.19.pdf).

<sup>59</sup> Email, Florida Prepaid College Board (July 23, 2019).

<sup>60</sup> Section 1009.986(10), F.S.

<sup>61</sup> ABLE United, *Program Description & Participation Agreement* (March 2019), available at [https://www.ableunited.com/wp-content/uploads/ABLEUnited\\_PDPA\\_2019.pdf](https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf).

for qualified expenses for individuals with a disability, without removing eligibility for Supplemental Security Income and Medicaid.

The bill takes effect upon becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By extending the repeal date of the direct-support organization and the ABLE program, the bill will provide a source of tax exempt savings for individuals with a disability, without jeopardizing eligibility for certain benefits, such as Medicaid and Supplemental Security Income (SSI).

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1009.986 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.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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