

**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 Children, Families, and Elder Affairs

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BILL: SB 1136

INTRODUCER: Senator Rodrigues

SUBJECT: Board of Directors of Florida ABLE, Inc.

DATE: March 8, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

## I. Summary:

SB 1136 revises the member composition of the board of directors of the Florida ABLE program. The bill provides that the board of directors must consist of up to three individuals who possess knowledge, skill, and experience in the area of accounting, risk management, or investment management, one of whom may be a current member of the Florida Prepaid College Board.

The bill also removes a limit on the number of terms for which certain board members may be appointed.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### **ABLE Programs**

#### *Federal ABLE Act*

Congress enacted the ABLE Act (Achieving a Better Life Experience Act) in 2014.<sup>1</sup> The ABLE Act permits a state to implement an ABLE Program and establish ABLE accounts for eligible individuals with disabilities<sup>2</sup> to spend distributions on “qualified disability expenses.”<sup>3</sup> The

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<sup>1</sup> Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

<sup>2</sup> 26 U.S.C. § 529(e). 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.

<sup>3</sup> 26 U.S.C. § 529(e)(5). “Qualified disability expense” is defined as “any expense 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

purposes of the ABLE Act are to encourage individuals and families to save money to support individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities to supplement benefits provided through other sources.<sup>4</sup>

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

The Florida ABLE Program was created in 2015 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>5</sup> The Florida Prepaid College Board (Florida Prepaid) was required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program.<sup>6</sup>

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>7</sup> Among the individuals in the program, 44 percent have a developmental disability.<sup>8</sup> As of May 15, 2020, 4,724 individuals have an ABLE United account.<sup>9</sup> The average account balance is \$5,474.<sup>10</sup>

### ***Florida ABLE Program - Board of Directors***

Current law requires the board of directors of the Florida ABLE program to consist of:

- The chair of Florida Prepaid, who must serve as the chair of the board;
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who must be appointed by Florida Prepaid. A current member of Florida Prepaid, 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 must be appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom must be appointed by the President of the Senate and one of whom must be appointed by the Speaker of the House of Representatives. At least one of the individuals appointed must be an advocate of persons with developmental disabilities, as that term is defined in s. 393.063, F.S.<sup>11</sup>

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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 under regulations and consistent with the purposes of this section.”

<sup>4</sup> 26 U.S.C. § 529(b).

<sup>5</sup> Section 2, ch. 2015-56, L.O.F.

<sup>6</sup> Section 1009.986(3), F.S.

<sup>7</sup> ABLE United, *Direct Support Organization Disclosures* p. 1, (July 8, 2020), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2020-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> (last visited March 5, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Section 1009.986(3)(d)1., F.S.

Currently, the Governor-appointee and the individuals appointed by the President of the Senate and Speaker of the House all serve 3-year terms and each may be reappointed for up to one consecutive term.<sup>12</sup>

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

The bill modifies the makeup of the Florida ABLE program's board of directors. Specifically, the bill allows up to three individuals, rather than the current one, who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management to be appointed to the board by Florida Prepaid. The bill allows for one of the three members to be a current member of Florida Prepaid, and does not prohibit the chair of Florida Prepaid from serving as one of the three appointees.

The bill also eliminates the current term limit for the Governor-appointee board member and the board members appointed by the President of the Senate and Speaker of the House. Under the bill, there is no limit on the number of terms for which these members may be reappointed.

The bill is effective July 1, 2021.

### **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.

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<sup>12</sup> Section 1009.986(3)(d)2.b., F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**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.