

**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 Governmental Oversight and Accountability

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BILL: SB 1136

INTRODUCER: Senator Rodrigues

SUBJECT: Board of Directors of Florida ABLE, Inc.

DATE: March 23, 2021

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

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

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## I. Summary:

SB 1136 revises the member composition of the board of directors of the Florida Achieving a Better Life Experience (ABLE) program. The bill authorizes the Florida Prepaid College Board to appoint up to three individuals (rather than one) who possess knowledge, skill, and experience in the area of accounting, risk management, or investment management.

The bill also removes the limit on the number of terms board members appointed by the Governor and presiding officers of the Legislature may serve.

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 defines 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 the

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, appointed by Florida Prepaid. A current member of Florida Prepaid, other than the chair, may be appointed as this director.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House of Representatives. At least one of these individuals 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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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 each director appointed by the Governor or the presiding officers of the Legislature appointed for a 3-year term and may be reappointed for 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 authorizes Florida Prepaid to appoint 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.

The bill also eliminates the current term limits for the directors appointed by the Governor and the presiding officers of the Legislature. Under the bill, there is no limit on the number of terms for which these members may serve.

The bill is effective July 1, 2021.

### **IV. Constitutional Issues:**

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

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

#### **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.