

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 861 Board of Directors of Florida Able, Inc.

SPONSOR(S): Botana and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	16 Y, 0 N	Kiner	Kiner
2) Education & Employment Committee	20 Y, 0 N	Kiner	Hassell

SUMMARY ANALYSIS

The bill 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.

The bill is effective July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ABLE Programs

Federal ABLE Act

Congress enacted the ABLE Act (Achieving a Better Life Experience Act) in 2014.¹ The ABLE Act permits a state to implement an ABLE Program and establish ABLE accounts for eligible individuals with disabilities² to spend distributions on “qualified disability expenses.”³ 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.⁴

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.⁵ 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.⁶

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.⁷ Among the individuals in the program, 44 percent have a developmental disability.⁸ As of May 15, 2020, 4,724 individuals have an ABLE United account.⁹ The average account balance is \$5,474.¹⁰

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;

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

² 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.

³ 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 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.”

⁴ 26 U.S.C. § 529(b).

⁵ Section 2, ch. 2015-56, L.O.F.

⁶ Section 1009.986(3), F.S.

⁷ 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).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

- 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.¹¹

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.¹²

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-appointed 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.

B. SECTION DIRECTORY:

Section 1. Amending s. 1009.986, F.S., revising the composition of the membership of the Florida ABLE, Inc., board of directors; removing a limit on the number of terms that certain reappointed members may serve.

Section 2. Providing 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.

¹¹ Section 1009.986(3)(d)1., F.S.

¹² Section 1009.986(3)(d)2.b., F.S.

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:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.