

**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 Appropriations Subcommittee on Education

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BILL: PCS/SB 1784 (776336)

INTRODUCER: Appropriations Subcommittee on Education and Senator Gainer

SUBJECT: Vocational Rehabilitation Services

DATE: February 17, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Sikes</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1784 aligns Florida law with federal requirements for state vocational rehabilitation programs to provide preemployment transition services for eligible individuals with a disability who are between 14 and 21 years of age. Specifically, the bill:

- Clarifies that vocational rehabilitation services include preemployment transition services.
- Expands requirements for the Division of Vocational Rehabilitation (VR) to cooperate with other agencies in coordinating preemployment transition plan services for eligible students.
- Modifies the requirements of the assessment performed by the Florida Rehabilitation Council to include an analysis of the alignment of preemployment transitions services with labor market demands.
- Enhances the required annual performance report provided by the VR by requiring the report to include the timeframes for handling cases, the uses of matching federal funds, and preemployment transition services data.
- Modifies the membership of the Florida Rehabilitation Council and expands the Council's scope of review.
- Modifies provisions related to The Able Trust, including clarifying that administrative costs are based on actual expenditures in any fiscal year, adds the Director of VR, or his or her designee, as an ex officio member of the board, and revises board member terms.

The bill has no impact on state revenues or expenditures. See Section V.

The bill takes effect on July 1, 2020.

## II. Present Situation:

According to the 2018 U.S. Census Bureau American Community Survey, approximately 2.7 million individuals with a disability live in Florida, representing over 13 percent of the state's population.<sup>1</sup> Ten percent of the state's working age population, ages 18-64, is composed of individuals with a disability.<sup>2</sup> Individuals with a disability have an unemployment rate of twice the state average and may be eligible for vocational rehabilitation services.<sup>3</sup>

Vocational rehabilitation is a federal-state program that helps people who have a physical or mental disability get or keep a job.<sup>4</sup> The Rehabilitation Services Administration (RSA) within the U.S. Department of Education oversees and administers the program and provides funds to state agencies for these services.<sup>5</sup> In Fiscal Year 2019, the vocational rehabilitation program in Florida received 78.7 percent of its funding, or \$161,156,579, through a grant from the RSA. The remaining 21.3 percent of the costs, or \$43,616,711, were funded by other state appropriations.<sup>6</sup>

### The Florida Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (VR) within the Department of Education (DOE) administers the vocational rehabilitation program in Florida. The VR provides services to help individuals with a disability find, advance in, or retain employment, and provides services to youth and students with a disability to aid in the transition from high school to a meaningful career path.<sup>7</sup> In the 2018-2019 fiscal year, VR served 48,439 individuals, including 26,086 customers who were between the ages of 14 through 21.<sup>8</sup>

An individual with a disability<sup>9</sup> is presumed eligible for vocational rehabilitation services if the person requires rehabilitation services to prepare for, enter, engage in, or retain gainful employment.<sup>10</sup> After determining eligibility, the VR must complete an assessment to determine

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<sup>1</sup> U.S. Census Bureau, *Florida 2018: ACS 5-Year Estimates Data*, available at <https://data.census.gov/cedsci/table?q=&d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=0400000US12&lastDisplayedRow=104> (last visited Jan. 28, 2020).

<sup>2</sup> U.S. Census Bureau, *supra* note 1.

<sup>3</sup> Florida Department of Education, Division of Vocational Rehabilitation, *2018-2019 Annual Report* (2019), available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf>, at 6.

<sup>4</sup> Florida Division of Vocational Rehabilitation, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited Jan. 28, 2020).

<sup>5</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, *RSA's mission*, <https://rsa.ed.gov/> (last visited Jan. 28, 2020).

<sup>6</sup> Florida Department of Education, Division of Vocational Rehabilitation, *2018-2019 Annual Report* (2019), available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf>, at 8.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* at 10.

<sup>9</sup> Disability means "a physical or mental impairment that constitutes or results in a substantial impediment to employment." Section 413.20(7), F.S.

<sup>10</sup> Section 413.30(1), F.S.

rehabilitation needs and ensure that an individualized plan for employment (IPE)<sup>11</sup> is prepared.<sup>12</sup> The IPE must be designed to achieve the specific employment outcome of the individual and may include services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.<sup>13</sup>

The VR is only required to provide services to the extent they are funded by the Legislature. All individuals eligible for services are placed in categories on a prioritized waiting list based on the significance of their disability.<sup>14</sup> Categories include:

- Category 1, comprised of individuals with the most significant disabilities;
- Category 2, comprised of individuals with a significant disability; and
- Category 3, comprised of individuals with a disability.

In the 2018-2019 fiscal year, the VR served 26,744 individuals in category 1, and, as of June 30, 2019, had a waiting list of 300 individuals in category 3.<sup>15</sup>

The RSA issued a 2017 monitoring report on the Florida Division of Vocational Rehabilitation. The report identified findings and observations related to: non-compliance with eligibility and employment plan development within the required federal time frames; match requirements; a lower percentage of youth with disabilities exiting with employment compared to similar agencies; and the lack of a state educational agreement that meets the requirements prescribed in law.<sup>16</sup>

### **The Florida Rehabilitation Council**

The Florida Rehabilitation Council (Council) is responsible for assisting the VR in the planning and development of statewide rehabilitation programs and services, recommending improvements to such programs and services, and performing other statutory directives as required.<sup>17</sup> Members of the Council are appointed by the Governor and must include current or former applicants for, or recipients of, vocational rehabilitation services.<sup>18</sup>

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<sup>11</sup> An individualized plan for employment includes a “comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services.” Section 413.20(3), F.S.

<sup>12</sup> See Section 413.30(4)-(5), F.S.

<sup>13</sup> Florida Department of Education, Division of Vocational Rehabilitation, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited Jan. 28, 2020).

<sup>14</sup> Section 413.731, F.S.

<sup>15</sup> Florida Department of Education, Division of Vocational Rehabilitation, *2018-2019 Annual Report* (2019), at 10, available at <http://www.rehabworks.org/rehab/AnnualReport19.pdf?id=1>.

<sup>16</sup> U.S. Department of Education, Office of Special Education and Rehabilitative Services Rehabilitation Services Administration, *Fiscal Year 2017 Monitoring Report on the Florida Division of Vocational Rehabilitation-Vocational Rehabilitation and Support Employment Programs* (April 12, 2018), available at <https://www2.ed.gov/rschstat/eval/rehab/107-reports/fy2017-fl-g.pdf>.

<sup>17</sup> Section 413.405, F.S.

<sup>18</sup> Section 413.405(1), F.S.

The Council must also consult with the board of directors of CareerSource Florida, Inc.,<sup>19</sup> in carrying out its functions, including the duty to conduct a review and analysis of:<sup>20</sup>

- The functions performed by state agencies and other public and private entities responsible for providing services for individual who have a disability.
- Vocational rehabilitation services.
- The employment outcomes achieved by eligible individuals receiving vocational rehabilitation services, including the availability of health or other employment benefits in connection with those employment outcomes.

### **The Able Trust**

To encourage public and private support to enhance vocational rehabilitation and employment of Florida's disabled population, the Legislature established the Florida Endowment Foundation for Vocational Rehabilitation, also known as The Able Trust, as a direct support organization for the Division of Vocational Rehabilitation.<sup>21</sup> A board of directors, appointed by the Governor, oversees the operations of The Able Trust and ensures that funds are provided for programs or initiatives which engage in the research, promotion, or aid of job training and counseling for Florida's disabled citizens.<sup>22</sup>

In June 2019, the Florida Department of Education's Office of Inspector General (OIG) conducted an audit of the Able Trust's administrative costs. The OIG found that The Able Trust misinterpreted the statute related to administrative costs, which could lead to inaccurate reporting of costs and noncompliance. The OIG recommended that The Able Trust enhance its procedures to ensure administrative costs are only paid from private resources and up to the prescribed percentage of the interest and earning on the endowment principal pursuant to s.413.615(9)(j), F.S. The OIG also recommended that the statutory language should be changed from "calendar year" to "fiscal year" and from "estimated expenditures" to "actual expenditures," to align the language in the statute with The Able Trust's operations.<sup>23</sup>

### **Preemployment Transition Services**

#### ***Eligibility for Preemployment Transition Services***

The Workforce Innovation and Opportunity Act of 2014 (WIOA)<sup>24</sup> aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.<sup>25</sup> The WIOA requires that state vocational rehabilitation

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<sup>19</sup> CareerSource Florida, Inc., is the principal workforce policy organization for the state. Section 445.004, F.S.

<sup>20</sup> Section 413.405(9), F.S.

<sup>21</sup> Section 413.615(5), F.S.; *see also* The Able Trust, *Our Mission*, <http://www.abletrust.org/about-us> (last visited Jan. 9, 2020).

<sup>22</sup> Section 413.615(4)(8)(10), F.S.

<sup>23</sup> Florida Department of Education, Office of Inspector General, *The Florida Endowment for Vocational Rehabilitation, Inc., dba The Able Trust- Administrative Costs, Report # A-1819DOE-021* (June 2019), available at <http://www.fldoe.org/core/fileparse.php/7514/urlt/FEVR-ABLETRUST.PDF>.

<sup>24</sup> Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

<sup>25</sup> *See* U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, <https://www.doleta.gov/wioa/about/overview/> (last visited Jan. 9, 2020).

agencies set aside at least 15 percent of their federal funds to provide preemployment transition services to eligible individuals with a disability who:<sup>26</sup>

- Are between 14 and 21 years of age; and
- Have a current individual education plan (IEP); or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.

Since the passage of the WIOA, Florida statutes have not been updated to reflect the changes required by WIOA for the division to provide pre-employment transition services (Pre-ETS); however, the State Board of Education has promulgated rules to assist the division with the provision of such services.

Section 504 of the Rehabilitation Act of 1973<sup>27</sup> prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. State and local agencies that administer federally funded programs or activities may devise an accommodation plan for someone with a disability to allow the disabled person's participation in the program.<sup>28</sup>

All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education.<sup>29</sup> The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability.<sup>30</sup> To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team begins the process of identifying the need for transition services before the student with a disability attains the age of 14 years. When the student attains the age of 16, the IEP must include an annually updated statement addressing the intent for the student to pursue a standard high school diploma and other appropriate measurable long-term postsecondary education and career goals.<sup>31</sup>

### ***Required Preemployment Transition Services***

Under the WIOA, the VR must provide five preemployment transition services, including:<sup>32</sup>

- Job Exploration Counseling – exploring career path options suited to a student's skills, abilities and interests.
- Work-Based Learning Experiences – providing hands-on training for employability skills.
- Counseling on Post-Secondary Education – providing information about continuing education options.

<sup>26</sup> Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited Jan. 28, 2020).

<sup>27</sup> Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. s. 794.

<sup>28</sup> See *Alexander v. Choate*, 469 U.S. 287 (1985).

<sup>29</sup> Section 1003.5716, F.S.

<sup>30</sup> Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

<sup>31</sup> Section 1003.5716(2), F.S.

<sup>32</sup> Florida Department of Education, Division of Vocational Rehabilitation, Presentation to the House Higher Education & Career Readiness Subcommittee (Oct. 24, 2019), at 20, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3016&Session=2020&DocumentType=Meeting%20Packets&FileName=hec%2010-24-19.pdf>.

- Workplace Readiness Training – a focus on employability and related skills that prepare individuals with a disability to work.
- Instruction in Self-Advocacy – instruction in effective communication of one’s own needs and planning for one’s future.

### ***Student Transition Activities Record (STAR)***

The VR may also cooperate with other agencies in the provision of vocational rehabilitation services.<sup>33</sup> The VR may attend IEP meetings for students, work with local workforce development boards to develop work opportunities, and work with schools to coordinate and provide preemployment transition services.<sup>34</sup>

The VR operates a web-based platform known as the Student Transition Activities Record (STAR) to facilitate the delivery of preemployment transition services. The STAR program is designed to help VR staff and school districts work together in the provision of preemployment transition services. The STAR program provides a platform for school personnel to make referrals to the VR for preemployment transition services for students who do not wish to apply to or participate in the vocational rehabilitation eligibility process.<sup>35</sup>

In the 2018-2019 fiscal year, the VR provided preemployment transition services to 15,402 students with a disability.<sup>36</sup> In June 2019, the VR was providing vocational rehabilitation services to 21,248 youth and students between the ages of 14 to 21 years, including 11,779 who were receiving preemployment transition services.<sup>37</sup>

### **Annual Performance Report**

The VR submits an annual performance report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes:<sup>38</sup>

- Caseload data.
- Service use data.
- Financial data.
- Outcome data. Employment data must be provided separately for supported employment.

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<sup>33</sup> Section 413.731, F.S.

<sup>34</sup> Workforce Innovation Technical Assistance Center, *supra* note 26.

<sup>35</sup> Florida Department of Education, Division of Vocational Rehabilitation, *STAR Program*, [http://www.rehabworks.org/stw\\_star.shtml](http://www.rehabworks.org/stw_star.shtml) (last visited Jan. 28, 2020).

<sup>36</sup> Email from Elizabeth Moya, Director of Legislative Affairs, Florida Department of Education, (Jan. 29, 2020) (on file with the Senate Committee on Education).

<sup>37</sup> Florida Department of Education, Division of Vocational Rehabilitation, Presentation to the House Higher Education & Career Readiness Subcommittee (Oct. 24, 2019), at 25, *available at* <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3016&Session=2020&DocumentType=Meeting%20Packets&FileName=hec%2010-24-19.pdf>.

<sup>38</sup> Section 413.207(4), F.S.

### III. Effect of Proposed Changes:

The bill aligns Florida law with federal requirements for state vocational rehabilitation programs to provide preemployment transition services for eligible individuals with a disability who are between 14 and 21 years of age. Specifically, the bill:

- Clarifies that vocational rehabilitation services include preemployment transition services.
- Expands requirements for the Division of Vocational Rehabilitation (VR) to cooperate with other agencies in coordinating preemployment transition plan services for eligible students.
- Modifies the requirements of the assessment performed by the Florida Rehabilitation Council to include an analysis of the alignment of preemployment transition services with labor market demands.
- Enhances the required annual performance report provided by the VR by requiring the report to include the timeframes for handling cases, the uses of matching federal funds, and preemployment transition services data.

#### **Preemployment Transition Services**

The bill clarifies that the VR must provide preemployment transition services in accordance with the duty to provide vocational rehabilitation services. The bill modifies s. 413.20, F.S., to define “preemployment transition services” as the services of job exploration counseling, work-based learning experiences, counseling on postsecondary education, workplace readiness training, and instruction in self-advocacy as required by the Workforce Innovation and Opportunity Act of 2014, which may be provided to students with a disability who are eligible or potentially eligible for vocational rehabilitation services.

#### ***Eligibility for Preemployment Transition Services***

The bill modifies s. 413.30, F.S., to expand the presumption that an individual will benefit from vocational rehabilitation services to include preemployment transition services, and the bill requires the VR to evaluate eligibility for preemployment transition services. The required initial assessment and individualized plan for employment must also assess the need for preemployment transition services, and must be prepared within 90 days after the date of determining eligibility, unless unforeseen circumstances prevent it, and the eligible individual agrees that an extension of time is warranted.

The bill creates s. 413.301, FS., to provide eligibility for preemployment transition services for an individual with a disability who is between 14 and 21 years of age; who is eligible or potentially eligible for vocational rehabilitation services in a secondary, postsecondary, or other recognized education program; and who has:

- A current individual education plan developed by a local school board in accordance with rules of the State Board of Education; or
- A 504 accommodation plan issued under s. 504 of the Rehabilitation Act of 1973.

These provisions align Florida law with federal eligibility requirements for providing preemployment transition services.

### ***Coordination of Services***

The bill modifies s. 413.41, F.S., to require the VR to enter into a formal interagency agreement with the state education agency to provide for the transition of students with a disability, including preemployment transition services and other vocational rehabilitation services. The VR must also enter into formal interagency agreements with all local educational agencies that are consistent with the state-level agreement and:

- Address the timely referral of eligible students with a disability for preemployment transition services, including through electronic referrals.
- Include preemployment transition coordination activities, such as attending individual education plan (IEP) meetings for students with a disability or attending person-centered planning meetings for students with a disability receiving Medicaid.

The bill also modifies s. 413.23, F.S., to specify that the authority for the VR to cooperate with other departments, agencies, and public and private institutions includes the authority to:

- Cooperate to provide preemployment transition services.
- Contract with other entities to provide vocational rehabilitation or preemployment transition services.

In order to ensure that eligible students receive timely services, the bill requires the VR to contract with other providers to provide preemployment transition services if the VR is unable to provide the services within 90 days of recognizing the need for services.

### ***Individualized Education Plan***

The bill modifies s. 1003.5716, F.S., to add that the required statement of appropriate measurable long-term postsecondary education and career goals in a transition plan for a student with an IEP must also include preemployment transition services needed to assist the student in reaching those goals.

The additional coordination of services required by the bill may assist agencies in ensuring students receive appropriate preemployment transition services as needed.

### **The Florida Rehabilitation Council**

The bill modifies s. 413.405, F.S., to clarify that the requirement for the Florida Rehabilitation Council (Council) to include members who were former or current applicants for, or recipients of, vocational rehabilitation services includes preemployment transition services.

The bill also adds requirements to the Council's review and analysis of vocational rehabilitation services. In addition to existing requirements, the review and analysis must address:

- How employment outcomes under the vocational rehabilitation program align with labor market demands in the state; and, for youth with a disability, the availability of career pathways, including work-based learning experiences and customized employment.
- Preemployment transition services:
  - Provided or paid for from funds made available under the act or through other public or private sources.



- Provided by state agencies and other public and private entities responsible for providing preemployment transition services to students who have a disability.

### **The Able Trust**

To respond to the DOE's Office of Inspector General's audit findings on The Able Trust and compliance with administrative costs, the bill modifies s. 413.615, F.S., to clarify that the administrative costs are based on actual expenditures in any fiscal year, instead of estimated expenditures in any calendar year.

The bill repeals authority to pay administrative costs from interest and earnings on endowment principal for fiscal years that have already occurred.

The bill adds the DOE's Director of VR, or his or her designee, as an ex officio member of The Able Trust board and revises board member terms to two 3-year terms or until resignation or removal for cause. The bill provides that a board member may continue to serve until a successor is appointed.

### **Annual Performance Report**

The bill modifies s. 413.207, F.S., to add requirements to the performance report that the VR must annually submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The caseload data required in the report must include the timeframes in which eligibility is determined, plans are developed, and services are provided. The bill adds that the report must also include:

- Matching fund data, including the sources and amounts of matching funds received by the VR and the extent to which the state is meeting its cost-sharing requirements.
- Transition services data, including preemployment transition services, for students and youth with a disability by service type, including expenditure data on a statewide and service area basis, employment outcomes achieved by youth served, and postsecondary enrollment rates.

## **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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. In Fiscal Year 2019-2020, the Division of Vocational Rehabilitation received an increase of \$12.3 million in recurring federal budget authority to meet the federal requirements for Pre-Employment Transition Services.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 413.20, 413.207, 413.23, 413.30, 413.405, 413.41, 413.615, and 1003.5716.

The bill creates section 413.301 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.)

**Recommended CS by Appropriations Subcommittee on Education on February 13, 2020:**

The committee substitute makes the following changes to the bill:

- Incorporates counseling on comprehensive transition programs into the definition of preemployment transition services included in the bill.
- Removes the extended evaluation required to be conducted under existing law by the Division of Vocational Rehabilitation for an individual who cannot take advantage of trial work experiences.

- Removes the requirement of the bill that would have specifically required districts and public agencies to use the Student Transition Activities Record Program and instead generally requires local education agencies to use an electronic system to make referrals for preemployment transition services.

The committee substitute adds to the bill modifications to the Florida Endowment for Vocational Rehabilitation which:

- Clarify that administrative costs are based on actual expenditures in any fiscal year, instead of estimated expenditures in any calendar year.
- Repeal authority to pay administrative costs from interest and earnings on endowment principal for fiscal years that have already occurred.
- Add the DOE's Director of Vocational Rehabilitation, or his or her designee, as an ex officio member of The Able Trust board.
- Revise ABLE Trust board member terms to two 3-year terms or until resignation or removal for cause. The amendment provides that a board member may continue to serve until a successor is appointed.

**B. Amendments:**

None.