

**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 Banking and Insurance

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BILL: SB 642

INTRODUCER: Senator Benacquisto

SUBJECT: Individuals with Disabilities

DATE: February 16, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson/Knudson	Knudson	BI	<b>Pre-meeting</b>
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 642 creates the Florida ABLÉ program, which would assist individuals with disabilities in saving money without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence and a better quality of life. This program was created by the federal Achieving a Better Life Experience Act of 2014 (ABLE Act), which authorizes states to establish ABLÉ programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.<sup>1</sup> The ABLÉ accounts resemble in some respects the federal 529-college savings plan that are tax-advantaged savings accounts.

Currently, many individuals with disabilities and their families face financial challenges in paying for living expenses, and necessary care and treatment, such as medical bills, educational and early intervention programs, and related expenses. Individuals with disabilities can also face significant barriers to finding and holding employment and living independently because their access to certain state and federal programs, such as Supplemental Security Insurance (SSI) and Medicaid can be lost once they establish a minimum level of savings and income. The Florida ABLÉ program would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI if certain conditions are met. Under the Florida ABLÉ program, an eligible individual for the program would be an individual who becomes blind or disabled prior to age 26 and is entitled to benefits due to blindness or disability under the Social Security Disability Income program or SSI program or meets eligibility through the disability certification process. A designated beneficiary is defined to mean an eligible individual who establishes an ABLÉ account and is the owner of such account.

Under the Florida ABLÉ Program, individuals with disabilities family members and other can contribute funds to a tax-exempt ABLÉ account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified

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<sup>1</sup> H.R. 5771, Division B, Title I. Public Law 113-295.

disability expenses that include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Earnings, cash contributions, and qualified distributions associated with an ABLE account would not count as taxable income or resources for an individual with disabilities who meets certain eligibility requirements. For 2015, aggregate contributions to an ABLE Account during a taxable year are capped at \$14,000. For purposes of eligibility for Supplemental Security Income (SSI) disability eligibility, only the first \$100,000 in an ABLE account is disregarded. If the balance in an ABLE account exceeds \$100,000, any SSI benefits are suspended until the balance is reduced to \$100,000; however, an individual would continue to be eligible for Medicaid and other means-tested programs.

The bill creates the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. It would be comprised of the chair of the Florida Prepaid College Board, the executive director of the Florida Prepaid College Board, the director of the Agency for Persons with Disabilities, two appointees of the Florida Senate, and two appointees of the Florida House of Representatives. The legislative appointees would include one advocate for individuals with disabilities, one advocate for individuals with developmental disabilities, and two individuals with expertise in accounting, risk management. The bill provides that the Florida ABLE, Inc., would operate under a contract with the Florida Prepaid Board.

The bill provides that the state Medicaid agency, the Agency for Health Care Administration would be a creditor of ABLE accounts. Upon the death of designated beneficiary of an account, and subject to any outstanding payments due for qualified disability expenses, all amounts remaining in the account, not to exceed the total medical assistance paid by or on behalf of Medicaid for such individuals after the account was opened would be distributed to a state Medicaid program.

## **II. Present Situation:**

In 2011, almost 28 percent of non-institutionalized individuals in the United States with disabilities, ages 21-64, lived below the federal poverty line, compared with 12 percent of individuals without disabilities. In Florida, approximately 9.5 percent of individuals ages 16-64 are individuals with disabilities.<sup>2</sup> The unemployment rate of this group is 35.6 percent and the poverty rate is 24.2 percent.<sup>3</sup>

The costs associated with caring for an individual with disabilities can vary based on the individual's unique circumstances. Some of these costs may include out-of-pocket health care, behavioral therapy, speech therapy, physical therapy, occupational therapy, educational services, transportation, caregivers, and other services.

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<sup>2</sup> National Disability Institute with support from the Florida Developmental Disabilities Council, *The Changing Face of Benefits, Knowledge for Successful Employment and Asset Development*, March 2013.

<sup>3</sup> *Id.*

## State and Federal Programs for Individuals with Disabled

Often, individuals with disabilities may qualify for state or federal assistance. The Social Security Disability Insurance (SSDI)<sup>4</sup> and Supplemental Security Income<sup>5</sup> (SSI) programs are two types of disability programs administered by the federal Social Security Administration. Applicants for each of the programs must meet strict medical requirements to qualify for disability benefits. Under the programs, disability is defined as the inability to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment expected to result in death or last at least 12 months.<sup>6</sup> A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA.<sup>7</sup>

The SSDI program is an insurance program that provides benefits to individuals who have contributed to the Social Security system and meet certain minimum work requirements. In contrast, SSI is a means-tested program for aged, blind, or disabled individuals who meet certain income and resource limitations; however, there are no contribution or minimum work requirements.<sup>8</sup> The SSI program provides cash payments assuring a minimum income for aged, blind, or disabled individuals who have very limited income and assets. Effective January 1, 2015, the maximum monthly Federal benefit rate is \$733 for an eligible individual and \$1,100 for an eligible individual with an eligible spouse.<sup>9</sup> The countable resource limit for SSI eligibility is \$2,000 for individuals and \$3,000 for couples with exclusions.<sup>10</sup> In December 2013, there were 547,594 SSI recipients (aged, blind, or disabled) and 551,858 disabled workers that were recipients of SSDI in Florida.<sup>11</sup>

A SSI recipient living alone or in a household where all members receive SSI benefits are generally eligible for Medicaid. Medicaid is the medical assistance program, administered by the Agency for Health Care Administration (agency), which provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. Medicaid is a partnership between the states and the federal government, with each paying about half the cost. The Department of Children and Families is responsible for determining eligibility for Medicaid and other programs. The Division of Operations' Third Party Liability (TPL) Unit of the agency is responsible for identifying, managing and recovering funds for claims paid for by Florida Medicaid for which a third party was liable, thereby ensuring Medicaid is the payer of last resort. The TPL recovery services are contracted with Xerox State Healthcare, LLC (Formerly ACS State Healthcare, LLC). Some examples of liable third parties include Medicare and other insurance companies,

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<sup>4</sup> 42 U.S.C. ss. 401-433.

<sup>5</sup> 42 U.S.C. ss. 1381 note-1385 note.

<sup>6</sup> See <http://www.socialsecurity.gov/disability/professionals/bluebook/general-info.htm> (last accessed January 16, 2015).

<sup>7</sup> The monthly SGA earnings limit in 2015 for statutorily blind individuals is \$1,820. For non-blind individuals, the monthly SGA amount for 2015 is \$1,090. The amount of some SSI payments may be adjusted based on receipt of other income.

<sup>8</sup> The definition of disability for disabled children receiving SSI benefits is slightly different from the definition for adults. See criteria at: <http://www.ssa.gov/ssi/text-eligibility-ussi.htm#disabled-child> (last accessed on January 12, 2015).

<sup>9</sup> Generally, the maximum monthly payment changes yearly due to changes in the Consumer Price Index. The 2015 schedule is available at: <http://www.socialsecurity.gov/OACT/COLA/SSI.html> (last visited January 11, 2015).

<sup>10</sup> 20 C.F.R. s. 416.1201 and 20 C.F.R. ss. 416.1210-416.1239.

<sup>11</sup> Social Security Administration *Annual Statistical Supplement, 2014* available at:

<http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/5j.pdf> and

<http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/7b.pdf> (last accessed January 12, 2015).

casualty settlements, recipient estates, and trust and annuity recovery. An estimated 446,000 individuals in Florida are under age 65 and are recipients of SSI and Medicaid benefits.<sup>12</sup>

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

The federal ABLE Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014. The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for individuals with disabilities that meet certain criteria and are deemed “eligible individuals.” A designated beneficiary of an ABLE account is an eligible individual who establishes an ABLE account and is the owner of such of an account.<sup>13</sup> The provisions of the Act are effective for taxable years beginning after December 31, 2014.

### ***Qualified ABLE Program***

A qualified ABLE program is a program established and maintained by a state or an agency or instrumentality of the state. A qualified ABLE program must meet many requirements, including the following:

- A person may make contributions for the benefit of an eligible individual to an ABLE account which is established for meeting the qualified disability expenses of the designated beneficiary of the account.
- The program must limit a designated beneficiary to one ABLE account.
- The program must allow for the establishment of ABLE accounts only for designated beneficiaries who are either residents of the state maintaining such ABLE program or residents of a state that has not established an ABLE program (“contracting state”) but has entered into a contract with a program state to provide the contracting state’s residents with access to the program state’s ABLE program.
- Contributions must generally be made in cash.
- The program must provide a separate accounting for each designated beneficiary.
- The program must limit investment directions from the designated beneficiary to a maximum of two times in any calendar year.
- The program may not pledge any interest in the program as a security for a loan.
- The program must establish adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the amount established by the state under s. 529(b)(6). Aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality thereof.<sup>14</sup>
- Each officer or employee having control of the qualified ABLE program or their designee is required to report to the Secretary of the Department of Treasury information concerning the contributions, distributions, the return of excess contributions, and other information that may be required.

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<sup>12</sup> A number of individuals in the SSI file under age 65 did not have a disability onset set. Information provided by the Department of Children and Families (January 21, 2015) (on file with the Senate Committee on Banking and Insurance).

<sup>13</sup> A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual.

<sup>14</sup> . The current maximum account balance for 529 plans in Florida is \$418,000. This cap is subject to periodic review and possible revision. States may be required to share information about account balances to ensure this provision is not violated. Caps in other states range from \$235,000 to \$450,000. Email from Florida Prepaid College Board staff (February 7, 2015) (on file with the Senate Committee on Banking and Insurance).

- States Able programs are required to submit electronically on a monthly basis to the Commissioner of Social Security statements on relevant distributions and account balances of all ABLÉ accounts.

Earnings in an ABLÉ Act and distributions from the account for qualified disability expense would not count as taxable income of the contributor or the designated beneficiary. The act provides that an ABLÉ account may not receive aggregate contributions during a taxable year in excess of the annual gift-tax exclusion amount (\$14,000 for 2015).<sup>15</sup> If the distributions from a qualified ABLÉ account do not exceed the qualified distribution expenses of the designated beneficiary, no amount is includible in gross income. If the distributions exceed the qualified distribution expenses, the amount otherwise includible in gross income would be reduced by an amount that bears the same ratio to the distributed amount as the qualified disability expenses bear to that amount. The portion of any distribution that is includible in gross income is subject to an additional 10-percent tax unless it was made after the death of the beneficiary. Amounts in an ABLÉ account may be rolled over without income tax liability to another ABLÉ account for the same beneficiary or another ABLÉ account for the designated beneficiary's brother, sister, stepbrother or stepsister who is also an eligible individual. Taxes may apply, however, to a change of designated beneficiary during any taxable year unless, as of the beginning of the year, the new beneficiary is both an eligible individual for the taxable year and a brother, sister, stepbrother or stepsister of the former beneficiary.

### *Eligible individuals*

As described above, a qualified ABLÉ program may provide for the establishment of ABLÉ accounts only if those accounts have as their designated beneficiary an eligible individual. An individual is an eligible individual for a taxable year during such taxable year:

- 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 the individual attained age 26; or
- A disability certification with respect to such individual has been filed with the Secretary of Treasury for the taxable year. A disability certification is a certification to the satisfaction of the Secretary of Treasury made by the eligible individual or the parent or guardian of the eligible individual, that the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind and such blindness or disability occurred before the date on which the individual attained age 26. The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician.

### *Qualified Disability Expenses*

The ABLÉ act provides that earnings on distributions from an ABLÉ account are excluded from income only to the extent total distributions do not exceed the qualified disability expenses of the designated beneficiary. For purposes of the act, qualified disability expenses are any expenses

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<sup>15</sup> See Internal Revenue Service information at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Whats-New-Estate-and-Gift-Tax> (last visited February 7, 2015).

related to the eligible individual's blindness or disability that are made for the benefit of the designated beneficiary. Such expenses include 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 authorized pursuant to regulations adopted by the Secretary of Treasury.

### ***Medicaid Recovery***

In the event the designated beneficiary dies, the account is subject to Medicaid recovery for the total amount of medical assistance provided for the designated beneficiary under the Medicaid program, less any premiums paid by or on behalf of the designated beneficiary to a Medicaid buy-in program. Prior to the Medicaid payback, funds in the ABLE account of the deceased designated beneficiary would be distributed for the payment of qualified disability expenses. The state is deemed a creditor of an ABLE account

### ***Treatment of ABLE accounts under Federal programs***

Generally, any amount in an ABLE account, and any distribution for qualified disability expenses, is disregarded for determining eligibility to receive, or the amount of, any assistance or benefit authorized by any Federal means-tested program with respect to any period an individual maintains, makes contributions to, or receives distributions from such ABLE account. However, in the case of the SSI program, a distribution for housing expenses is not disregarded, nor are amounts in an ABLE account in excess of \$100,000. In the case that an individual's ABLE account balance exceeds \$100,000, the individual's SSI benefits will be suspended until the individual's resources fall below \$100,000. However, the suspension does not apply for purposes of Medicaid eligibility. For the purposes of determining eligibility for SSI, the eligible individual is the owner of the account.

The Secretary is required to issue regulations or other guidance no later than six months after the date of enactment of the ABLE Act to implement the Act, including regulations:

- to enforce the one ABLE account per eligible individual limit; (2) providing for the information required to be presented;
  - to open an ABLE account;
  - to define qualified disability expenses;
  - to provide disability certifications and determinations of disability, to be developed in consultation with the Commissioner of Social Security,
  - to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses;
- to allow for transfers from one ABLE account to another ABLE account in cases in which an eligible individual has a change in state of residence.

### **Sunset Review of Direct Support Organizations**

Pursuant to s. 20.058, F.S., any law creating or authorizing the creation of a direct support organization must state that the creation of or authorization for the DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature.

### III. Effect of Proposed Changes:

SB 642 creates the Florida Achieving a Better Life Experience (ABLE) Act. The Florida ABLE Act establishes the Florida ABLE program, which would assist individuals with disabilities in saving money without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence and a better quality of life. This program was created by the federal Achieving a Better Life Experience Act of 2014 (ABLE Act), which authorizes states to establish ABLE programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.

Currently, many individuals with disabilities and their families face financial challenges in paying for living expenses, and necessary care and treatment, such as medical bills, educational and early intervention programs, and related expenses. Individuals with disabilities can also face significant barriers to finding and holding employment and living independently because their access to certain state and federal program, such as Supplemental Security Insurance (SSI) and Medicaid can be lost once they establish a minimum level of savings and income. The Florida ABLE program would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI if certain conditions are met. Under the Florida ABLE program, an eligible individual for the program would be an individual who becomes disabled prior to age 26 and is entitled to benefits due to blindness or disability under the Social Security Disability Income program or SSI program or meets eligibility through the disability certification process. A designated beneficiary is defined to mean an eligible individual who establishes an ABLE account and is the owner of such account.

Under the Florida ABLE Program, individuals with disabilities family members and other others can contribute funds to a tax-exempt ABLE account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses that include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Earnings, cash contributions, and qualified distributions associated with an ABLE account would not count as taxable income or resources for an individual with disabilities who meets certain eligibility requirements. For 2015, aggregate contributions to an ABLE Account during a taxable year are capped at \$14,000. For purposes of eligibility for Supplemental Security Income (SSI) disability eligibility, only the first \$100,000 in an ABLE account is disregarded. If the balance in an ABLE account exceeds \$100,000, any SSI benefits are suspended until the balance is reduced to \$100,000; however, an individual would continue to be eligible for Medicaid and other means-tested programs.

**Section 2** of the bill creates s. 1009.986, F.S., creating the Florida ABLE, Inc., as a direct service organization, and the Florida ABLE program. The bill provides a statement that the Legislature intends to establish a qualified ABLE program in Florida that is implemented consistently with federal law and maximizes program efficiency and effectiveness. The bill also provides definitions consistent with the federal ABLE Act.

**Creation of Florida ABLE, Inc. [s. 1009.986(3), F.S.]**

The Florida ABLE program (Program) in Florida will be established through the creation of Florida ABLE, Inc., (Florida ABLE), a not-for-profit direct service organization (DSO) established by the Florida Prepaid College Fund Board (Florida Prepaid). Florida ABLE will receive, hold, invest, and administer property and make expenditures for the Florida ABLE Program. Florida ABLE will be audited in accordance with s. 215.981, F.S., which contains the audit requirements for state agency DSOs.

***Oversight by Florida Prepaid College Board*** – Florida ABLE will operate under a written contract with the Florida Prepaid College Board that requires the articles of incorporation and bylaws of Florida ABLE to be subject Florida Prepaid approval. Florida ABLE is also required to submit an annual budget to Florida Prepaid for its approval. Florida Prepaid is required to certify annually that Florida ABLE, Inc., is complying with contract terms and acting in accordance with statute and in the best interest of the state. The Florida ABLE, Inc., fiscal year will begin on July 1, and end June 30 of the following year.

The bill allows Florida ABLE, Inc., to utilize the resources of Florida Prepaid. The written contract requires Florida ABLE to pay reasonable consideration to Florida Prepaid for its products and services. To do so, Florida ABLE, Inc., but offer equal employment opportunities to all persons regardless of race, color, religion, age, or national origin. Additionally, Florida ABLE must authorize Florida Prepaid to solicit proposals, contract, or subcontract, or amend Florida Prepaid contractual service agreements for the benefit of Florida ABLE. Florida Prepaid will also maintain the website of Florida ABLE.

Moneys and property held in trust by Florida ABLE, if it is no longer approved to operate, will revert to Florida Prepaid or the state. Disclosure must be made to donors of the distinction between Florida Prepaid and Florida ABLE, and the material provisions of the contract;

***Board of Directors of Florida ABLE, Inc.*** – The Florida ABLE, Inc., board of directors has the following seven members:

- Chair of Florida Prepaid, who serves as chair of Florida ABLE board;
- Executive Director of Florida Prepaid;
- Director of the Agency for Persons with Disabilities;
- Advocate for persons with disabilities appointed by the President of the Senate;
- Advocate for persons with disabilities appointed by the Speaker of the House;
  - One of the two advocates for the disable must be an advocate of persons with developmental disabilities as defined in s. 393.063, F.S., which are intellectual disability, cerebral palsy, autism, spina bifida, and Prader-Willi syndrome.
- A person with expertise in accounting, risk management, or investment management appointed by the President of the Senate.
- A person with expertise in accounting, risk management, or investment management appointed by the Speaker of the House.

The board must meet at least quarterly and may also meet upon the call of the chair. A quorum consists of a majority of the current membership of the board. Appointees to the board serve for

3 years and may be reappointed consecutively once. Board members serve without compensation buy may be reimbursed for travel expenses pursuant to s. 112.061, F.S.

**Implementation of the Florida ABLE Program [s. 1009.986(4), F.S.]**

***Legal Opinions Required Prior to Implementation*** - Florida ABLE, Inc., will establish and administer the Florida ABLE program. Before doing so, it must obtain a legal opinion that the Florida ABLE program complies with s. 529A of the Internal Revenue Code (the federal ABLE Act) and complies with federal securities law and qualifies for tax exemptions.

***Participation Agreements*** - The Florida ABLE program will enter into participation agreements with disabled beneficiaries. The participation agreement is the contract between Florida ABLE and qualified disabled beneficiaries that will allow the latter to set up an ABLE account.

The participation agreements must include provisions prohibiting beneficiaries from establishing accounts in violation of federal law (such as establishing more than one account) or in excess of federal law (currently, the maximum annual contribution is \$14,000 per year and the maximum amount that may be held in an account in Florida is \$418,000). The participation agreement must also require the withdrawal of ABLE account funds to comply with requirements and procedures that are designed to make distributions as efficiently as is prudent and possible consistent with the requirements of the federal ABLE Act. A participation agreement may be amended to allow a participant to increase or decrease the level of participation, change beneficiaries, and for other authorized purposes.

The participation agreement must specify that the agreement is a debt of the Florida ABLE program and ABLE Trust Fund, but is not a debt of the state. The agreement must also specify that the state is a creditor of ABLE accounts as set forth in the federal ABLE Act. It must also specify that participation in the Florida ABLE program does not guarantee sufficient funds will be available to cover all qualified disability expenses or the receipt or continuation of any product or service for the beneficiary. The participation agreement must allow the involuntary liquidation of an ABLE account if a material to the participation agreement makes a material misrepresentation. The beneficiary is entitled to a refund of such funds, subject to any fees or penalties in the participation agreement and the IRC.

Participation agreements may include provisions specifying the requirements for opening an ABLE account, the eligibility requirements for a party to a participation agreement, and the rights of the party. The agreement may include requirements for making contributions to an ABLE account and for directing the investment of ABLE account assets. Other provisions that may be in the participation agreement are any administrative fees and other fees and penalties; the terms and conditions for modifying, transferring, or terminating an ABLE account or participation agreement; the disposition of abandoned ABLE accounts; and other terms and conditions determined by Florida ABLE, Inc., to be necessary or proper. The proceeds of abandoned ABLE accounts may be used to operate the Florida ABLE program or transferred to the Florida Prepaid Tuition Scholarship Program.

***Contracting*** – A contract or participation agreement is not a debt of the state but is an obligation of the Florida ABLE program. The obligation of Florida ABLE, Inc., is limited to the amount in the Florida ABLE Trust Fund.

Florida ABLE, Inc., may contract to participate in the ABLE program of another state if Florida does not establish a qualified ABLE program. Florida may also contract with other states that do not have an authorized ABLE program to allow those states to participate in the Florida ABLE program.

***Vested Rights of Beneficiaries*** – Under the bill, the state pledges to designated beneficiaries that their vested rights will not be limited or altered until the program's obligations are met and discharged. This does not preclude, however, limitations or alterations of rights if adequate provision is made by law to protect designated beneficiaries pursuant to the obligations of Florida ABLE, Inc. It also does not preclude termination of the Florida ABLE program if the program is determined to not be financially feasible.

***Termination of ABLE Program*** – The Florida ABLE program shall continue in existence until terminated by law by the Legislature. The bill specifies that the state may terminate the program if it is financially infeasible. Generally a Legislature cannot bind the acts of a future Legislature by restricting the grounds for the repeal of a statute. Amounts in the Florida ABLE Trust Fund must be returned in accordance with the participation agreement. Unclaimed amounts may be transferred to the Florida Prepaid Tuition Scholarship Program.

**Investment Management, Treatment of Creditors, Priority of Distributions, Medicaid Recovery, and Payroll Deduction Authority [s. 1009.986(5)-(8), F.S.]**

***Comprehensive Investment Plan*** – Florida ABLE, Inc., must establish a comprehensive investment plan for the ABLE program that specifies the investment policies that the Florida ABLE program will use. As part of the investment plan, Florida ABLE, Inc., may place Florida ABLE assets in investment products, but only in proportions designated in the investment plan. Such investment products must be underwritten and offered in compliance with federal and state laws and regulations. Designated beneficiaries may not direct investment of their contributions unless specific fund options are offered by Florida ABLE. The Federal ABLE Act prohibits direction of investments by beneficiaries more than two times in a calendar year. The plan is subject to the approval of the Florida Prepaid College Board.

***Exemption from Creditor's Claims*** – Moneys paid into or out of the Florida ABLE Trust Fund by or for a designated beneficiary are exempt from creditors' claims. The bill also amends s. 222.22, F.S., to provide that moneys paid into or out of an ABLE program, and the income and assets of the ABLE program, are exempt from creditor's claims against any designated beneficiary or other ABLE program participant.

***Priority of Distributions and Medicaid Recovery*** – ABLE account funds of a deceased beneficiary must first be distributed for qualified disability expenses followed by distributions for a Medicaid claim. Any remaining amount is distributed pursuant to the participation agreement.

**Payroll Deduction Authority** – Florida Prepaid and Florida ABLE, Inc., have payroll deduction authority pursuant to s. 1009.975, F.S., for purposes of administering the Florida ABLE program.

**Annual Report [s. 1009.986(9), F.S.]**

Florida ABLE, Inc., must prepare an annual a report providing a detailed accounting of the Florida ABLE program, and describes the financial condition of the program. Copies of the report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of each legislative chamber. The report must be made available to designated beneficiaries. Florida ABLE program accounts are subject to annual audit by the Auditor General.

**Rulemaking Authority [s. 1009.986(10), F.S.]**

The Florida Prepaid College Board must adopt rules to administer the Florida ABLE program. The rules must include the governance and operating procedures for Florida ABLE, Inc.; the conditions for Florida ABLE, Inc., to use the property, facilities, or personnel of Florida Prepaid.; the procedures for determining that an ABLE account has been abandoned; and the provisions necessary for the Florida ABLE program to retain status as a qualified ABLE program, tax exempt status, or other similar status for the program or participants under the Internal Revenue Code. The Florida ABLE program must inform participants of changes to the tax or securities status of their participation agreements and interests in the ABLE program.

**Repeal Date [s. 1009.986(11), F.S.]**

Section 2 of the bill, establishing the Florida ABLE program, will be repealed October 2, 2020, unless reviewed and saved from repeal by the Legislature. The repeal provision is necessary to comply with s. 20.058, F.S., which requires each law creating a direct-support organization to require its repeal on October 1 of the 5<sup>th</sup> year after enactment.

**Section 3** of the bill amends s. 222.22, F.S., to provide that, except as provided in s. 1009.986(7), F.S., (detailing priority of distributions upon the death of an ABLE account designated beneficiary) moneys paid into or out of an ABLE account, and the income and assets of the ABLE account program, are not liable to attachment, levy, garnishment or legal process in favor of any creditor or claimant against any designated beneficiary or other program participant.

**Section 4** amends s. 1009.971, F.S., to specify that the Florida Prepaid College Board has the powers and duties necessary to perform its obligations regarding the Florida ABLE program created by Section 2 of the bill.

**Section 5** of the bill provides an effective date of October 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida ABLE program will assist individuals with disabilities in saving money in tax-advantaged accounts without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence. The bill would allow an indeterminate number of individuals to save additional assets or resources in these accounts and use the funds to pay for qualified disability expenses.

The Florida Prepaid College Board estimates that 4,000 individuals in Florida may open ABLE accounts out of an estimated target population of 400,000.

C. Government Sector Impact:

The Florida Prepaid College Board estimates the costs for FY 2015-2016 associated with the implementation of the Florida ABLE program will be \$3,386,000. This budget anticipates starting the program as early as April 1, 2016 but no later than July 1, 2016. The FY 2015-2016 budget assumes having the plan open for one quarter of that fiscal year. As referenced above, the Florida Prepaid College Board estimates 4,000 individuals may open ABLE accounts during FY 2015-2016.

According to a report<sup>16</sup> by the Congressional Budget Office (CBO), the legislation would increase the number of beneficiaries of federal means tested programs. The CBO expects that the ABLE Act would increase SSI caseloads for individuals whose eligibility for SSI benefits was denied or interrupted because of excess resources and individuals who do not apply for SSI under current law because of excess resources, but who would meet SSI's age or disability requirement and income requirement.

The CBO expects that enacting the ABLE Act would increase the number of disabled adults under the age of 65 who enroll in Medicaid because they could hold cash assets in an ABLE account that would not count against Medicaid eligibility. Because a beneficiary of an ABLE account must have a disability that occurred before he reached age 26, CBO does not expect an increase in the number of elderly individuals who enroll

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<sup>16</sup> Congressional Budget Office Cost Estimate, H.R. 647, September 23, 2014, as ordered reported by the House Committee on Ways and Means on July 31, 2014.

in Medicaid. Additionally, the CBO does not expect that establishment of ABLE accounts would increase the number of children and nondisabled adults enrolled in Medicaid because those individuals are not required to meet an asset test under current law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 222.22 and 1009.971.

This bill creates the following sections of the Florida Statutes: 1009.985 and 1009.986.

**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.