

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 887 Florida ABLE Program
SPONSOR(S): Rodrigues, R.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 828, SB 830

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 887 passed the House on March 10, 2020 as SB 828 and SB 830. SB 828 passed the Senate on March 3, 2020, and subsequently passed the House 112-0 on March 10, 2020. SB 830 passed the Senate on March 3, 2020, and subsequently passed the House 114-0 on March 10, 2020.

SB 828 saves from repeal Florida ABLE, Inc., a direct-support organization for the Florida Prepaid College Board. Florida ABLE Inc. administers the Florida ABLE Program, a program that allows individuals to make tax exempt contributions to meet certain expenses associated with a disabled beneficiary.

SB 830 saves from repeal the public records exemption relating to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE Program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer. This information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

The bill has no fiscal impact on state revenues or expenditures. See Fiscal Comments, infra.

SB 828 was approved by the Governor on April 4, 2020, ch. 2020-14, L.O.F., and became effective on that date. SB 830 was approved by the Governor on September 4, 2020, ch. 2020-165, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

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 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 Since the July 1, 2016 program launch, 4,020 Floridian’s with disabilities have enrolled in Florida’s ABLE Program.⁸ Among the individuals in the program, 44 percent have a developmental disability.⁹ As of November 13, 2019, individuals combined have contributed over \$21,000,000 and have withdrawn over \$4,500,000 from their ABLE accounts.¹⁰ The average account balance is \$4,674.¹¹

Public Records

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

² 26 U.S.C. s. 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. s. 529(e)(5). The term “qualified disability expenses” means any expenses 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. s. 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* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> [hereinafter *ABLE United DSO Disclosures*].

⁸ State Board of Administration, *Legislative Bill Analysis for HB 887* (Dec. 11, 2019) [hereinafter *SBA HB 887 Analysis*].

⁹ *ABLE United DSO Disclosures*, *supra* note 7.

¹⁰ *SBA HB 887 Analysis*, *supra* note 8.

¹¹ *ABLE United DSO Disclosures*, *supra* note 7.

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official government business.¹² This right applies to the official business of any public body, officer, or employee of the state.¹³

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁴ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁵

Florida Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions, with specified exceptions.¹⁶ The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁷

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁸ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;¹⁹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²¹

The Act also requires specified questions to be considered during the review process.²² If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Consumer Information Public Record Exemption

A consumer's personal financial and health information held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a

¹² Art. I, s. 24(a), Fla. Const.

¹³ *Id.*

¹⁴ Art. I, s. 24(c), Fla. Const.

¹⁵ *Id.*

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(b)1, F.S.

²⁰ Section 119.15(6)(b)2, F.S.

²¹ Section 119.15(6)(b)3, F.S.

²² Section 119.15(6)(a), F.S.

²³ Section 119.15(7), F.S.

consumer is confidential and exempt from public access.²⁴ However, the Florida Prepaid College Board and Florida ABLE, Inc., may disclose information made confidential and exempt to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.²⁵

Effect of Proposed Changes

SB 828

SB 828 deletes s. 1009.986 (12), F.S to save from repeal Florida ABLE, Inc., the direct-support organization for the Florida Prepaid College Board that administers the Florida ABLE Program. The bill will provide for the continuation of the Florida ABLE program.

SB 830

SB 830 amends s. 1009.987, F.S., to save from repeal the public records exemption relating to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE Program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer. This information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

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.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²⁴ Section 1009.987(2), F.S.

²⁵ Section 1009.987(3), F.S.

By providing for the continuation of the direct-support organization and the ABLE Program, the bill will provide a source of tax exempt savings for individuals with a disability, without jeopardizing eligibility for certain benefits, such as Medicaid and Supplemental Security Income (SSI).²⁶

D. FISCAL COMMENTS:

The 2019-2020 General Appropriations Act includes \$1.8 million in recurring General Revenue funding associated with the costs to administer the Florida ABLE Program.²⁷ This bill does not have a fiscal impact on the current program.

²⁶ *SBA HB 887 Analysis, supra* note 8.

²⁷ Specific Appropriation 71, ch. 2019-115, L.O.F.