

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

|                       |               |       |
|-----------------------|---------------|-------|
| ADOPTED               | <u>      </u> | (Y/N) |
| ADOPTED AS AMENDED    | <u>      </u> | (Y/N) |
| ADOPTED W/O OBJECTION | <u>      </u> | (Y/N) |
| FAILED TO ADOPT       | <u>      </u> | (Y/N) |
| WITHDRAWN             | <u>      </u> | (Y/N) |
| OTHER                 | <u>      </u> |       |

1 Committee/Subcommittee hearing bill: Healthy Families  
 2 Subcommittee

3 Representative Ford offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7  
 8 Section 1. Developmental Disabilities Savings Program.-

9 (1) The Legislature recognizes that there is a need to  
 10 provide families that have children with developmental  
 11 disabilities who will become ineligible for services due to age  
 12 with sufficient access to services for those children. The  
 13 continued provision of educational, health, housing, employment,  
 14 and other support services for children with developmental  
 15 disabilities is critical. The Legislature finds that the  
 16 creation of a savings and investment program for families with  
 17 such children can offer continued accessibility to services,  
 18 regardless of income, insurance, or Medicaid eligibility. It is,  
 19 therefore, the intent of the Legislature that the Developmental  
 20 Disabilities Savings Program be established through which many

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21 of the later costs associated with services for these children  
22 may be saved for in advance. Such savings and investment program  
23 must be conducted in a manner that maximizes program efficiency  
24 and effectiveness.

25 (2) As used in this section, the term:

26 (a) "Savings account" means the contract under the savings  
27 program which allows a contributor or benefactor to make  
28 payments into an investment plan that will provide funds that  
29 may be used to pay for eligible services for a qualified  
30 beneficiary.

31 (b) "Benefactor" means any person making a deposit,  
32 payment, contribution, gift, or other expenditure into the  
33 investment plan for a qualified beneficiary, and may include a  
34 noncustodial parent who is obligated to make payments into the  
35 plan for his or her child.

36 (c) "Developmental disability" has the same meaning as  
37 provided in s. 393.063, Florida Statutes, or means any severe,  
38 chronic disability that:

39 1. Is attributable to a mental or physical impairment or a  
40 combination of those impairments.

41 2. Occurs before the individual attains 18 years of age.

42 3. Is likely to continue indefinitely.

43 4. Results in substantial functional limitations in three  
44 or more of the following areas of major life activity: self-  
45 care, receptive and expressive language, learning, mobility,  
46 self-direction, capacity for independent living, or economic  
47 self-sufficiency.

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48 5. Reflects the individual's need for a combination and  
49 sequence of special, interdisciplinary, or generic services,  
50 individualized supports, or other forms of assistance that are  
51 of lifelong or extended duration and are individually planned  
52 and coordinated.

53 6. For a child younger than 10 years of age, is likely to  
54 meet the criteria in subparagraphs 1.-5. without intervention.

55 (d) "Eligible services" means:

56 1. Specific services that may include respite care,  
57 provision of rehabilitation and habilitation services,  
58 transportation, assistive technology, personal assistance  
59 services, counseling, support for families headed by aging  
60 caregivers, vehicular and home modifications, and assistance to  
61 cover extraordinary expenses associated with the needs of  
62 individuals with developmental disabilities.

63 2. Health-related services that may include medical,  
64 dental, mental health, and other human and social services to  
65 enhance the well-being of the individual, as well as durable and  
66 consumable medical supplies.

67 3. Housing-related services that may result in individuals  
68 with developmental disabilities having access to and use of  
69 housing and housing supports and services in their communities,  
70 including assistance related to modifying an apartment or home.

71 4. Education-related services to facilitate attendance in  
72 a training or educational setting, such as technology and  
73 personnel-related services that assist in obtaining and  
74 maximizing the educational experience.

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75 5. Employment-related services that are necessary to  
76 assist the individual in meeting essential job functions through  
77 technology, personnel-related expenses, and transportation  
78 expenses.

79 (e) "Contributor" means a resident of this state who is  
80 the parent or grandparent of a qualified beneficiary and who  
81 enters into a savings account.

82 (f) "Qualified beneficiary" means an individual with a  
83 developmental disability who is a resident of the state and who  
84 is younger than 22 years of age at the time a contributor enters  
85 into a savings account on his or her behalf.

86 (g) "Savings program" means the Developmental Disabilities  
87 Savings Program.

88 (3) There is created the Developmental Disabilities  
89 Savings Program.

90 (a) The savings program shall offer an investment plan  
91 through which eligible services for a qualified beneficiary may  
92 be saved for in advance.

93 (b) The savings program shall provide information and  
94 training concerning the program and its benefits for a qualified  
95 beneficiary to advance his or her goals and become a  
96 contributing member of society.

97 (c) The savings program must inform the contributor of the  
98 potential impact of plan participation on eligibility for  
99 Medicaid or other state or federally funded programs.

100 (4) The savings program may not be implemented until the  
101 board created under subsection (6) which is administering the  
102 savings program has obtained the following:

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103 (a) A written opinion of qualified counsel specializing in  
104 federal securities law that the savings program and the offering  
105 of participation in the investment plan does not violate federal  
106 securities law; and

107 (b) A private letter ruling from the federal Internal  
108 Revenue Service indicating that under the savings program taxes  
109 on any payments made, moneys deposited, investments made, and  
110 resulting earnings may be deferred under the Internal Revenue  
111 Code. If the Internal Revenue Service declines to rule on the  
112 request for a private letter ruling, the program may rely on  
113 legal opinion rendered by a qualified attorney specializing in  
114 tax law.

115 (5) The savings program is not a promise or guarantee that  
116 a qualified beneficiary or a designated beneficiary will become  
117 eligible for Medicaid, receive permanent services, be enrolled  
118 in the Medicaid waiver program, or receive any other state or  
119 federal assistance. The state is not responsible for and does  
120 not make assurances regarding the performance of the savings  
121 program or associated investment plans.

122 (6) The savings program shall be administered by the  
123 Developmental Disabilities Savings Program Board as a body  
124 corporate with all the powers of a body corporate for the  
125 purposes delineated in this section.

126 (a) The board shall consist of seven members, including:

127 1. The Chief Financial Officer of Florida.

128 2. The director of the Office of Financial  
129 Responsibilities.

130 3. The president of the Arc of Florida.

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131 4. The chair of the Family Care Council of Florida, or his  
132 or her designee.

133 5. Three members, appointed by the Governor for 3-year  
134 terms, who possess knowledge, skill, and experience in the areas  
135 of accounting, actuary, risk management, or investment  
136 management. Any person appointed to fill a vacancy for such  
137 members shall serve only for the unexpired term and until a  
138 successor qualifies, but is eligible for reappointment.

139 (b) The board shall annually elect a chair and vice chair  
140 from the board members, and shall designate a secretary-  
141 treasurer who need not be a member of the board. The secretary-  
142 treasurer shall keep a record of the proceedings of the board  
143 and shall be the custodian of all printed material filed with or  
144 by the board and its official seal.

145 1. The board shall, at a minimum, meet on a quarterly  
146 basis at the call of the chair.

147 2. Notwithstanding the existence of vacancies on the  
148 board, a majority of the members constitutes a quorum. The board  
149 shall take no official action in the absence of a quorum.

150 3. Members of the board shall serve without compensation,  
151 and each member shall file a full and public disclosure of his  
152 or her financial interests pursuant to s. 8, Art. II of the  
153 State Constitution and corresponding statute.

154 (c) The board shall have the powers and duties necessary  
155 or proper to carry out the following provisions, including, but  
156 not limited to:

157 1. Appointing an executive director, whose compensation  
158 shall be provided from revenue generated by the program, to

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159 serve as the chief administrative and operational officer of the  
160 program and to perform other duties assigned to him or her by  
161 the board.

162  
163 2. Delegating responsibility for administration of the  
164 savings program to persons the board determines are qualified.

165 3. Adopting an official seal and procedures.

166 4. Making and executing contracts and other necessary  
167 instruments.

168 5. Establishing agreements or other transactions with  
169 federal, state, and local agencies.

170 6. Forming strategic alliances with public and private  
171 entities to provide benefits to the savings program.

172 7. Appearing on its own behalf before boards, commissions,  
173 or other governmental agencies.

174 8. Procuring and contracting for goods and services,  
175 employing personnel, and engaging the services of private  
176 consultants, actuaries, managers, legal counsel, and auditors in  
177 a manner determined to be necessary and appropriate by the  
178 board.

179 9. Adopting procedures to govern contract dispute  
180 proceedings between the board and its vendors.

181 10. Soliciting proposals and contracting for the marketing  
182 of the savings program. Any materials produced for the purpose  
183 of marketing must be submitted to the board for review.

184 Materials may not be made available to the public before the  
185 materials are approved by the board. The state and the board are

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186 not liable for misrepresentation of the savings program by a  
187 marketing agent.

188 11. Investing funds not required for immediate  
189 disbursement.

190 12. Holding, buying, and selling any instruments,  
191 obligations, securities, and property determined appropriate by  
192 the board.

193 13. Administering the savings program in a manner that is  
194 sufficiently actuarially sound to defray the obligations of the  
195 savings program. The board shall annually evaluate the actuarial  
196 soundness of the investment plan.

197 14. Soliciting and accepting gifts, grants, loans, and  
198 other aids from any source or participating in any other way in  
199 any government program to carry out the purposes of the savings  
200 program.

201 15. Requiring and collecting administrative fees and  
202 charges in connection with any transaction and imposing  
203 reasonable penalties, including default, for delinquent payments  
204 or for entering into a savings account on a fraudulent basis.

205 16. Suing and being sued.

206 17. Endorsing insurance coverage written exclusively for  
207 the purpose of protecting the investment plan, and the  
208 contributors, benefactors, and beneficiaries thereof.

209 18. Procuring insurance against any loss in connection  
210 with the property, assets, and activities of the savings program  
211 or the board.

212 19. Providing for the receipt of contributions in lump  
213 sums or installment payments.



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214 20. Imposing reasonable time limits on use of the benefits  
215 provided by the savings program. However, such limitations must  
216 be specified in the contract.

217 21. Delineating the terms and conditions under which  
218 payments may be withdrawn from the investment plan and impose  
219 reasonable fees and charges for such withdrawal. Such terms and  
220 conditions must be specified within the savings account  
221 contract.

222 22. Establishing other policies, procedures, and criteria  
223 to implement and administer the savings program.

224 (d) The board shall solicit proposals and contract for:

225 1. Investment managers to provide investment portfolios  
226 for the savings program. The board and investment managers owe a  
227 fiduciary duty to the Developmental Disabilities Savings  
228 Program. Investment managers are limited to registered insurers  
229 as defined in s. 624.09, Florida Statutes, banks as defined in  
230 s. 658.12, Florida Statutes, associations as defined in s.  
231 665.012, Florida Statutes, registered Securities and Exchange  
232 Commission investment advisers, and investment companies as  
233 defined in the Investment Company Act of 1940. All investment  
234 managers shall have their principal place of business and  
235 corporate charter located and registered in the United States.  
236 In addition, each investment manager must agree to meet the  
237 obligations of the board to qualified beneficiaries if moneys in  
238 the fund fail to offset the obligations of the board as a result  
239 of imprudent investing by such manager. Each registered insurer  
240 shall evidence superior performance overall on an acceptable  
241 level of surety in meeting its obligations to its policyholders

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242 and other contractual obligations. Only custodians approved by  
243 the Chief Financial Officer are eligible for board  
244 consideration. Each investment company shall provide investment  
245 plans as specified within the request for proposals.

246 2. Investment consultants to review the performance of the  
247 board's investment managers and advise the board on investment  
248 management and performance and investment policy, including the  
249 contents of investment plans.

250 3. Trustee services firms to provide trustee and related  
251 services to the board. The trustee services firm must agree to  
252 meet the obligations of the board to qualified beneficiaries if  
253 moneys in the plan fail to offset the obligations of the board  
254 as a result of imprudent selection or supervision of investment  
255 plans by such firm.

256 4. The services of records administrators.

257 (e) The goals of the board in procuring investment  
258 services shall be to provide all contributors and benefactors  
259 with the most well-diversified and beneficially administered  
260 savings program possible, to provide such services to the state  
261 at no cost and to the contributors and benefactors at the lowest  
262 cost possible. Procurement processes are subject to ch. 287,  
263 F.S. Evaluations of proposals submitted pursuant to paragraph  
264 (d) must consider, without limitation, fees and other costs that  
265 are charged to contributors or benefactors that affect account  
266 values, or that impact the operational costs of the savings  
267 program; past experience and past performance in providing the  
268 required services; financial history and current financial  
269 strength and capital adequacy to provide the required services;

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270 and capabilities and experience of proposed personnel who will  
271 provide the required services.

272 (f) The board may adopt procedures necessary for the  
273 savings program to qualify for or retain its status as a  
274 qualified tax-deferred program or other similar status of the  
275 program, contributors, and qualified beneficiaries under the  
276 Internal Revenue Code. The board shall inform participants in  
277 the savings program of changes to the tax or securities status  
278 of the investment plan.

279 (7) This section expires on June 30, 2016.

280 Section 2. This act shall take effect July 1, 2013, or  
281 upon the date that the federal "Achieving a Better Life  
282 Experience Act of 2013" or "ABLE Act of 2013," S.313/H.R.647, or  
283 similar legislation becomes law, whichever occurs later.

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288 **T I T L E A M E N D M E N T**

289 Remove everything before the enacting clause and insert:  
290 An act relating to developmental disabilities; establishing the  
291 Developmental Disabilities Savings Program to allow for the  
292 advance savings of services for children who have developmental  
293 disabilities and who will be ineligible for certain services due  
294 to age; providing legislative intent; defining terms; requiring  
295 the program to provide certain information; providing that the  
296 program may not be implemented until certain legal opinions are  
297 obtained; establishing the Developmental Disabilities Savings

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 339 (2013)

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298 Program Board to administer the savings program; providing for  
299 board membership; specifying the powers, duties, and goals of  
300 the board; providing a sunset clause; providing a contingent  
301 effective date.