

1 A bill to be entitled
2 An act relating to developmental disabilities;
3 providing a short title; providing legislative
4 findings and intent; establishing the Developmental
5 Disabilities Savings Program; providing purpose of the
6 program; providing definitions; requiring the program
7 to provide certain information; providing that the
8 program may not be implemented until certain legal
9 opinions are obtained; establishing the Developmental
10 Disabilities Savings Program Board to administer the
11 program; providing for membership, purpose, powers,
12 and duties of the board; providing for the expiration
13 of the act; providing a contingent effective date.
14

15 Be It Enacted by the Legislature of the State of Florida:
16

17 Section 1. This act may be cited as the "C.V. Clay
18 Ford/Gabriela Poole Developmental Disabilities Savings Plan."

19 Section 2. Developmental Disabilities Savings Program.—

20 (1) The Legislature recognizes that there is a need to
21 provide families that have children with developmental
22 disabilities who will become ineligible for services due to age
23 with sufficient access to services for those children. The
24 continued provision of educational, health, housing, employment,
25 and other support services for children with developmental
26 disabilities is critical. The Legislature finds that the
27 creation of a savings and investment program for families with
28 such children can offer continued accessibility to services,

29 regardless of income, insurance, or Medicaid eligibility. It is
30 the intent of the Legislature that the Developmental
31 Disabilities Savings Program be established through which many
32 of the later costs associated with services for these children
33 may be saved for in advance. Such savings and investment program
34 must be conducted in a manner that maximizes program efficiency
35 and effectiveness. The Legislature further finds that the
36 savings program is not a promise or guarantee that a qualified
37 beneficiary or a designated beneficiary will become eligible for
38 Medicaid, receive permanent services, be enrolled in the
39 Medicaid waiver program, or receive any other state or federal
40 assistance. The state is not responsible for, and does not make
41 assurances regarding, the performance of the savings program or
42 associated investment plans.

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

44 (a) "Benefactor" means any person making a deposit,
45 payment, contribution, gift, or other expenditure into the
46 investment plan for a qualified beneficiary and may include a
47 noncustodial parent who is obligated to make payments into the
48 plan for his or her child.

49 (b) "Contributor" means a resident of this state who is
50 the parent or grandparent of a qualified beneficiary and who
51 enters into a savings account.

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

55 1. Is attributable to a mental or physical impairment or a
56 combination of those impairments.

57 | 2. Occurs before the individual attains 18 years of age.

58 | 3. Is likely to continue indefinitely.

59 | 4. Results in substantial functional limitations in three
 60 | or more of the following areas of major life activity: self-
 61 | care, receptive and expressive language, learning, mobility,
 62 | self-direction, capacity for independent living, or economic
 63 | self-sufficiency.

64 | 5. Reflects the individual's need for a combination and
 65 | sequence of special, interdisciplinary, or generic services;
 66 | individualized supports; or other forms of assistance that are
 67 | of lifelong or extended duration and are individually planned
 68 | and coordinated.

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

71 | (d) "Eligible services" means:

72 | 1. Specific services that may include respite care,
 73 | provision of rehabilitation and habilitation services,
 74 | transportation, assistive technology, personal assistance
 75 | services, counseling, support for families headed by aging
 76 | caregivers, vehicular and home modifications, and assistance to
 77 | cover extraordinary expenses associated with the needs of
 78 | individuals with developmental disabilities.

79 | 2. Health-related services that may include medical,
 80 | dental, mental health, and other human and social services to
 81 | enhance the well-being of the individual, as well as durable and
 82 | consumable medical supplies.

83 | 3. Housing-related services that may result in individuals
 84 | with developmental disabilities having access to and use of

85 housing and housing supports and services in their communities,
86 including assistance related to modifying an apartment or home.

87 4. Education-related services to facilitate attendance in
88 a training or educational setting, such as technology and
89 personnel-related services that assist in obtaining and
90 maximizing the educational experience.

91 5. Employment-related services that are necessary to
92 assist the individual in meeting essential job functions through
93 technology, personnel-related expenses, and transportation
94 expenses.

95 (e) "Qualified beneficiary" means an individual with a
96 developmental disability who is a resident of the state and who
97 is younger than 22 years of age at the time a contributor enters
98 into a savings account on his or her behalf.

99 (f) "Savings account" means the contract under the savings
100 program that allows a contributor or benefactor to make payments
101 into an investment plan that will provide funds that may be used
102 to pay for eligible services for a qualified beneficiary.

103 (g) "Savings program" means the Developmental Disabilities
104 Savings Program.

105 (3) There is created the Developmental Disabilities
106 Savings Program.

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

110 (b) The savings program shall provide information and
111 training concerning the program and its benefits for a qualified
112 beneficiary to advance his or her goals and become a

113 contributing member of society.

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

117 (4) The savings program may not be implemented until the
118 board created under subsection (5) that administers the savings
119 program has obtained the following:

120 (a) A written opinion of qualified counsel specializing in
121 federal securities law that the savings program and the offering
122 of participation in the investment plan does not violate federal
123 securities law.

124 (b) A private letter ruling from the United States
125 Internal Revenue Service indicating that under the savings
126 program taxes on any payments made, moneys deposited,
127 investments made, and resulting earnings may be deferred under
128 the Internal Revenue Code. If the Internal Revenue Service
129 declines to rule on the request for a private letter ruling, the
130 program may rely on legal opinion rendered by a qualified
131 attorney specializing in tax law.

132 (5) The savings program shall be administered by the
133 Developmental Disabilities Savings Program Board as a body
134 corporate with all the powers of a body corporate for the
135 purposes delineated in this section.

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

137 1. The Chief Financial Officer.

138 2. The Director of the Office of Financial Regulation.

139 3. The president of The Arc of Florida.

140 4. The chair of the Family Care Council of Florida or his

141 or her designee.

142 5. Three members, appointed by the Governor for 3-year
143 terms, who possess knowledge, skill, and experience in the areas
144 of accounting, actuarial evaluation, risk management, or
145 investment management. A person appointed to fill a vacancy for
146 such members shall serve only for the unexpired term and until a
147 successor qualifies but is eligible for reappointment.

148 (b) The board shall annually elect a chair and vice chair
149 from the board members and shall designate a secretary-treasurer
150 who need not be a member of the board. The secretary-treasurer
151 shall keep a record of the proceedings of the board and shall be
152 the custodian of all printed material filed with or by the board
153 and its official seal.

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

156 2. Notwithstanding the existence of vacancies on the
157 board, a majority of the members constitutes a quorum. The board
158 shall take no official action in the absence of a quorum.

159 3. Members of the board shall serve without compensation,
160 and each member shall file a full and public disclosure of
161 financial interests pursuant to s. 8, Art. II of the State
162 Constitution or s. 112.344, Florida Statutes.

163 (c) The board shall have the powers and duties necessary
164 to carry out the following responsibilities, including, but not
165 limited to:

166 1. Appointing an executive director to serve as the chief
167 administrative and operational officer of the program and to
168 perform other duties assigned by the board. The executive

169 director's compensation shall be provided from revenue generated
170 by the program.

171 2. Delegating responsibility for administration of the
172 savings program to persons the board determines are qualified.

173 3. Adopting an official seal and procedures.

174 4. Making and executing contracts and other necessary
175 instruments.

176 5. Establishing agreements or entering into other
177 transactions with federal, state, and local agencies.

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

180 7. Appearing on its own behalf before boards, commissions,
181 or other governmental agencies.

182 8. Procuring and contracting for goods and services,
183 employing personnel, and engaging the services of private
184 consultants, actuaries, managers, legal counsel, and auditors in
185 a manner determined to be necessary and appropriate by the
186 board.

187 9. Adopting procedures to govern contract dispute
188 proceedings between the board and its vendors.

189 10. Soliciting proposals and contracting for the marketing
190 of the savings program. Any materials produced for the purpose
191 of marketing must be submitted to the board for review.

192 Materials may not be made available to the public before the
193 materials are approved by the board. The state and the board are
194 not liable for misrepresentation of the savings program by a
195 marketing agent.

196 11. Investing funds not required for immediate

197 disbursement.

198 12. Holding, buying, and selling any instruments,
199 obligations, securities, and property determined appropriate by
200 the board.

201 13. Administering the savings program in a manner that is
202 sufficiently actuarially sound to defray the obligations of the
203 savings program. The board shall annually evaluate the actuarial
204 soundness of the investment plan.

205 14. Soliciting and accepting gifts, grants, loans, and
206 other aids from any source or participating in any other way in
207 any government program to carry out the purposes of the savings
208 program.

209 15. Requiring and collecting administrative fees and
210 charges in connection with any transaction and imposing
211 reasonable penalties, including default, for delinquent payments
212 or for entering into a savings account on a fraudulent basis.

213 16. Suing and being sued.

214 17. Endorsing insurance coverage written exclusively for
215 the purpose of protecting the investment plan, and the
216 contributors, benefactors, and beneficiaries thereof.

217 18. Procuring insurance against any loss in connection
218 with the property, assets, and activities of the savings program
219 or the board.

220 19. Providing for the receipt of contributions in lump
221 sums or installment payments.

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

225 21. Delineating the terms and conditions under which
226 payments may be withdrawn from the investment plan and impose
227 reasonable fees and charges for such withdrawal. Such terms and
228 conditions must be specified within the savings account
229 contract.

230 22. Establishing other policies, procedures, and criteria
231 to implement and administer the savings program.

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

233 1. Investment managers to provide investment portfolios
234 for the savings program. The board and investment managers owe a
235 fiduciary duty to the Developmental Disabilities Savings
236 Program. Investment managers are limited to authorized insurers
237 as defined in s. 624.09, Florida Statutes, banks as defined in
238 s. 658.12, Florida Statutes, associations as defined in s.
239 665.012, Florida Statutes, registered Securities and Exchange
240 Commission investment advisers, and investment companies as
241 defined in the Investment Company Act of 1940. All investment
242 managers shall have their principal places of business and
243 corporate charters located and registered in the United States.
244 In addition, each investment manager must agree to meet the
245 obligations of the board to qualified beneficiaries if moneys in
246 the fund fail to offset the obligations of the board as a result
247 of imprudent investing by such manager. Each registered insurer
248 shall evidence superior performance overall on an acceptable
249 level of surety in meeting its obligations to its policyholders
250 and other contractual obligations. Only custodians approved by
251 the Chief Financial Officer are eligible for board
252 consideration. Each investment company shall provide investment

253 plans as specified in the request for proposals.

254 2. Investment consultants to review the performance of the
255 board's investment managers and advise the board on investment
256 management and performance and investment policy, including the
257 contents of investment plans.

258 3. Trustee services firms to provide trustee and related
259 services to the board. The trustee services firm must agree to
260 meet the obligations of the board to qualified beneficiaries if
261 moneys in the plan fail to offset the obligations of the board
262 as a result of imprudent selection or supervision of investment
263 plans by such firm.

264 4. The services of records administrators.

265 (e) The goals of the board in procuring investment
266 services are to provide all contributors and benefactors with
267 the most well-diversified and beneficially administered savings
268 program possible, provide those services to the state at no
269 cost, and provide those services to the contributors and
270 benefactors at the lowest cost possible. Procurement processes
271 are subject to chapter 287. Evaluations of proposals submitted
272 pursuant to paragraph (d) must consider, without limitation,
273 fees and other costs that are charged to contributors or
274 benefactors that affect account values or impact the operational
275 costs of the savings program; past experience and past
276 performance in providing the required services; financial
277 history and current financial strength and capital adequacy to
278 provide the required services; and capabilities and experience
279 of proposed personnel who will provide the required services.

280 (f) The board may adopt procedures necessary for the

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281 savings program to qualify for or retain its status as a
282 qualified tax-sheltered annuity program or other similar status
283 of the program, contributors to the program, and qualified
284 beneficiaries under the Internal Revenue Code. The board shall
285 inform participants in the savings program of changes to the tax
286 or securities status of the investment plan.

287 (6) This section expires on June 30, 2016.

288 Section 3. This act shall take effect July 1, 2013, or
289 upon the date that the federal "Achieving a Better Life
290 Experience (ABLE) Act of 2013," S.313/H.R.647, or similar
291 legislation becomes law, whichever occurs later.