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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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The Committee on Children, Families, and Elder Affairs (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

Section 2. Developmental Disabilities Savings Program.—

(1) The Legislature recognizes that there is a need to provide families who have children that have developmental disabilities who will become ineligible for services due to age with sufficient access to services for those children. The continued provision of educational, health, housing, employment,



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13 and other support services for children who have developmental  
14 disabilities is critical. The Legislature finds that the  
15 creation of a savings and investment program for families with  
16 such children can offer continued accessibility to services,  
17 regardless of income, insurance, or Medicaid eligibility. It is,  
18 therefore, the intent of the Legislature that the Developmental  
19 Disabilities Savings Program be established so that families may  
20 begin saving in advance for the later costs associated with  
21 providing services for these children. The savings and  
22 investment program must be conducted in a manner that maximizes  
23 program efficiency and effectiveness.

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

25 (a) "Benefactor" means any person making a deposit,  
26 payment, contribution, gift, or other expenditure into the  
27 investment plan for a qualified beneficiary, and may include a  
28 noncustodial parent who is obligated to make payments into the  
29 plan for his or her child.

30 (b) "Contributor" means a resident of this state who is the  
31 parent or grandparent of a qualified beneficiary and who opens a  
32 savings account.

33 (c) "Developmental disability" has the same meaning as  
34 provided in s. 393.063, Florida Statutes.

35 (d) "Eligible services" means:

36 1. Specific services that may include respite care,  
37 provision of rehabilitation and habilitation services,  
38 transportation, assistive technology, personal assistance  
39 services, counseling, support for families headed by aging  
40 caregivers, vehicular and home modifications, and assistance to  
41 cover extraordinary expenses associated with the needs of



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42 individuals who have developmental disabilities.

43 2. Health-related services that may include medical,  
44 dental, mental health, and other human and social services to  
45 enhance the well-being of the individual, as well as durable and  
46 consumable medical supplies.

47 3. Housing-related services that may result in individuals  
48 who have developmental disabilities having access to and use of  
49 housing and housing supports and services in their communities,  
50 including assistance related to modifying an apartment or home.

51 4. Education-related services to facilitate attendance in a  
52 training or educational setting, such as technology and  
53 personnel-related services that assist in obtaining and  
54 maximizing the educational experience.

55 5. Employment-related services that are necessary to assist  
56 the individual in meeting essential job functions through  
57 technology, personnel-related expenses, and transportation  
58 expenses.

59 (e) "Qualified beneficiary" means an individual who has a  
60 developmental disability, who is a resident of the state, and  
61 who is younger than 22 years of age at the time a contributor  
62 opens a savings account on his or her behalf.

63 (f) "Savings account contract" means the contract under the  
64 savings program which allows a contributor or benefactor to make  
65 payments into an investment plan that will provide funds that  
66 may be used to pay for eligible services for a qualified  
67 beneficiary.

68 (g) "Savings program" means the Developmental Disabilities  
69 Savings Program.

70 (3) There is created the Developmental Disabilities Savings



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71 Program. The savings program shall:

72 (a) Offer an investment plan through which eligible  
73 services for a qualified beneficiary may be saved for in  
74 advance.

75 (b) Provide information and training concerning the program  
76 and its benefits for a qualified beneficiary to advance his or  
77 her goals and become a contributing member of society.

78 (c) Inform the contributor of the potential impact of plan  
79 participation on eligibility for Medicaid or other state or  
80 federally funded programs.

81 (4) The savings program may not be implemented until the  
82 board created under subsection (6), which is administering the  
83 savings program, has obtained the following:

84 (a) A written opinion of a qualified attorney specializing  
85 in federal securities law stating that the savings program does  
86 not violate federal securities law; and

87 (b) A private letter ruling from the Internal Revenue  
88 Service indicating that under the savings program taxes on any  
89 payments made, moneys deposited, or investments made, and  
90 resulting earnings may be deferred under the Internal Revenue  
91 Code. If the Internal Revenue Service declines to rule on the  
92 request for a private letter ruling, the program may rely on a  
93 legal opinion rendered by a qualified attorney specializing in  
94 tax law.

95 (5) The savings program is not a promise or guarantee that  
96 a qualified beneficiary will become eligible for Medicaid,  
97 receive permanent services, be enrolled in the Medicaid waiver  
98 program, or receive any other state or federal assistance. The  
99 state is not responsible for and does not make assurances



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100 regarding the performance of the savings program or associated  
101 investment plans.

102 (6) The savings program shall be administered by the  
103 Developmental Disabilities Savings Program Board as a body  
104 corporate with all the powers of a body corporate for the  
105 purposes delineated in this section.

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

107 1. The Chief Financial Officer or the Director of the  
108 Division of Treasury.

109 2. The Director of the Agency for Persons with  
110 Disabilities.

111 3. The President of The Arc of Florida.

112 4. The Chair of the Family Care Council Florida, or his or  
113 her designee.

114 5. Three members, appointed by the Governor for 3-year  
115 terms, who possess knowledge, skill, and experience in the areas  
116 of accounting, actuarial disciplines, risk management, or  
117 investment management. Any person appointed to fill a vacancy  
118 for the balance of an unexpired term is eligible for appointment  
119 for a full term.

120 (b) The board shall annually elect a chair and vice chair  
121 from the board members, and shall designate a secretary-  
122 treasurer who need not be a member of the board. The secretary-  
123 treasurer shall keep a record of the board proceedings and shall  
124 be the custodian of all printed material filed with or by the  
125 board and its official seal.

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

128 2. Notwithstanding any vacancies on the board, a majority



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129 of the members constitutes a quorum. The board may not take  
130 official action in the absence of a quorum.

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

135 (c) The board shall have the following powers and duties:

136 1. To appoint an executive director, whose compensation  
137 shall be provided from revenue generated by the program, to  
138 serve as the chief administrative and operational officer of the  
139 program and to perform other duties assigned to him or her by  
140 the board.

141 2. To delegate responsibility for administering the savings  
142 program to persons who the board determines are qualified.

143 3. To adopt an official seal and procedures.

144 4. To make and execute contracts and other necessary  
145 instruments.

146 5. To establish agreements or other transactions with  
147 federal, state, and local agencies.

148 6. To form strategic alliances with public and private  
149 entities in order to provide benefits to the savings program.

150 7. To appear on its own behalf before commissions or other  
151 boards or governmental agencies.

152 8. To procure and contract for goods and services, employ  
153 personnel, and engage the services of private consultants,  
154 actuaries, managers, legal counsel, and auditors in a manner  
155 determined to be necessary and appropriate by the board.

156 9. To adopt procedures for governing contract dispute  
157 proceedings between the board and its vendors.



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158       10. To solicit proposals and contract for the marketing of  
159 the savings program. Any materials produced for the purpose of  
160 marketing must be submitted to the board for review. Materials  
161 may not be made available to the public before being approved by  
162 the board. The state and the board are not liable for  
163 misrepresentation of the savings program by a marketing agent.

164       11. To invest funds not required for immediate  
165 disbursement.

166       12. To hold, buy, and sell any instruments, obligations,  
167 securities, and property determined appropriate by the board.

168       13. To solicit and accept gifts, grants, loans, and other  
169 aids from any source or participate in any other way in any  
170 government program in order to carry out the purposes of the  
171 savings program.

172       14. To require and collect administrative fees and charges  
173 in connection with any transaction.

174       15. To sue and be sued.

175       16. To endorse insurance coverage written exclusively for  
176 the purpose of protecting the investment plan, and the  
177 contributors, benefactors, and beneficiaries thereof.

178       17. To procure insurance against any loss in connection  
179 with the property, assets, and activities of the savings program  
180 or the board.

181       18. To provide for the receipt of contributions.

182       19. To impose reasonable time limits on the use of benefits  
183 provided by the savings program. However, such limitations must  
184 be specified in the savings account contract.

185       20. To delineate the terms and conditions under which  
186 contributions may be withdrawn from the investment plan and



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187 impose reasonable fees and charges for such withdrawal. Such  
188 terms and conditions must be specified in the savings account  
189 contract.

190 21. To establish other policies, procedures, and criteria  
191 to implement and administer the savings program.

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

193 1. Investment managers to provide investment portfolios for  
194 the savings program. The board and investment managers owe a  
195 fiduciary duty to the savings program. Investment managers are  
196 limited to authorized insurers as defined in s. 624.09, Florida  
197 Statutes, banks as defined in s. 658.12, Florida Statutes,  
198 associations as defined in s. 665.012, Florida Statutes,  
199 registered United States Securities and Exchange Commission  
200 investment advisers, and investment companies as defined in the  
201 Investment Company Act of 1940. All investment managers must  
202 have their principal place of business and corporate charter  
203 located and registered in the United States. In addition, each  
204 investment manager must agree to meet the obligations of the  
205 board to qualified beneficiaries if moneys in the fund fail to  
206 offset the obligations of the board as a result of imprudent  
207 investing by such manager. Each registered insurer shall  
208 evidence superior performance overall on an acceptable level of  
209 surety in meeting its obligations to its policyholders and other  
210 contractual obligations. Only custodians approved by the Chief  
211 Financial Officer are eligible for board consideration. Each  
212 investment company shall provide investment plans as specified  
213 within the request for proposals.

214 2. Investment consultants to review the performance of the  
215 board's investment managers and advise the board on investment





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216 management and performance and investment policy, including the  
217 contents of investment plans.

218 3. Trustee services firms to provide trustee and related  
219 services to the board. The trustee services firm must agree to  
220 meet the obligations of the board to qualified beneficiaries if  
221 moneys in the plan fail to offset the obligations of the board  
222 as a result of imprudent selection or supervision of investment  
223 plans by such firm.

224 4. The services of records administrators.

225 (e) The goals of the board in procuring investment services  
226 are to provide all contributors and benefactors with the most  
227 well-diversified and beneficially administered savings program  
228 possible in order to provide such services to the state at no  
229 cost and to the contributors and benefactors at the lowest cost  
230 possible. Procurement processes are subject to chapter 287,  
231 Florida Statutes. Evaluations of proposals submitted pursuant to  
232 paragraph (d) must consider, without limitation, fees and other  
233 costs that are charged to contributors or benefactors which  
234 affect account values, or which impact the operational costs of  
235 the savings program; past experience and past performance in  
236 providing the required services; financial history and current  
237 financial strength and capital adequacy to provide the required  
238 services; and the capabilities and experience of proposed  
239 personnel who will provide the required services.

240 (f) The board may adopt procedures necessary for the  
241 savings program in order to qualify for or retain its status as  
242 a qualified tax-deferred program or other similar status of the  
243 program, contributors, and qualified beneficiaries under the  
244 Internal Revenue Code. The board shall inform participants in



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245 the savings program of changes to the tax or securities status  
246 of the investment plan.

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

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

252  
253 ===== T I T L E A M E N D M E N T =====

254 And the title is amended as follows:

255 Delete everything before the enacting clause  
256 and insert:

257 A bill to be entitled  
258 An act relating to developmental disabilities;  
259 providing a short title; establishing the  
260 Developmental Disabilities Savings Program to allow  
261 for advance saving for services for children who have  
262 developmental disabilities and who will be ineligible  
263 for certain services due to age; providing legislative  
264 intent; defining terms; requiring the program to  
265 provide certain information; providing that the  
266 program may not be implemented until certain legal  
267 opinions are obtained; establishing the Developmental  
268 Disabilities Savings Program Board to administer the  
269 savings program; providing for board membership;  
270 specifying the powers, duties, and goals of the board;  
271 providing a sunset clause; providing a contingent  
272 effective date.