

By Senator Bean

4-00518-13

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1                   A bill to be entitled  
2       An act relating to developmental disabilities;  
3       establishing the Developmental Disabilities Savings  
4       Program to allow for the advance payment of services  
5       for children who have developmental disabilities and  
6       who will be ineligible for certain services due to  
7       age; providing legislative intent; defining terms;  
8       requiring the program to provide certain information;  
9       providing that the program may not be implemented  
10      until certain legal opinions are obtained;  
11      establishing the Developmental Disabilities Savings  
12      Program Board to administer the savings program;  
13      providing for board membership; specifying the powers,  
14      duties, and goals of the board; authorizing the board  
15      to adopt rules; providing a contingent effective date.

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

18  
19       Section 1. Developmental Disabilities Savings Program.—

20       (1) The Legislature recognizes that there is a need to  
21 provide families who 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,

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30 therefore, 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 paid or saved for in advance. Such savings and investment  
34 program must be conducted in a manner that maximizes program  
35 efficiency and effectiveness.

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

37 (a) "Advance payment contract" means the contract under the  
38 savings program which allows a purchaser or benefactor to make  
39 payments into an investment plan that will provide funds that  
40 may be used to pay for eligible services for a qualified  
41 beneficiary.

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

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

50 1. Is attributable to a mental or physical impairment or a  
51 combination of those impairments.

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

53 3. Is likely to continue indefinitely.

54 4. Results in substantial functional limitations in three  
55 or more of the following areas of major life activity: self-  
56 care, receptive and expressive language, learning, mobility,  
57 self-direction, capacity for independent living, or economic  
58 self-sufficiency.

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59 5. Reflects the individual's need for a combination and  
60 sequence of special, interdisciplinary, or generic services,  
61 individualized supports, or other forms of assistance that are  
62 of lifelong or extended duration and are individually planned  
63 and coordinated.

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

66 (d) "Eligible services" means:

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

74 2. Health-related services that may include medical,  
75 dental, mental health, and other human and social services to  
76 enhance the well-being of the individual, as well as durable and  
77 consumable medical supplies.

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

82 4. Education-related services to facilitate attendance in a  
83 training or educational setting, such as technology and  
84 personnel-related services that assist in obtaining and  
85 maximizing the educational experience.

86 5. Employment-related services that are necessary to assist  
87 the individual in meeting essential job functions through

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88 technology, personnel-related expenses, and transportation  
89 expenses.

90 (e) "Purchaser" means a resident of this state who is the  
91 parent or grandparent of a qualified beneficiary and who enters  
92 into an advance payment contract.

93 (f) "Qualified beneficiary" means an individual with a  
94 developmental disability who is a resident of the state and who  
95 is younger than 22 years of age at the time a purchaser enters  
96 into an advance payment contract on his or her behalf.

97 (g) "Savings program" means the Developmental Disabilities  
98 Savings Program.

99 (3) There is created the Developmental Disabilities Savings  
100 Program.

101 (a) The savings program shall offer an investment plan  
102 through which eligible services for a qualified beneficiary may  
103 be paid for in advance.

104 (b) The savings program shall provide information and  
105 training concerning the program and its benefits for a qualified  
106 beneficiary to advance his or her goals and become a  
107 contributing member of society.

108 (c) The savings program must inform the purchaser of the  
109 potential impact of plan participation on eligibility for  
110 Medicaid or other state or federally funded programs.

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

114 (a) A written opinion of qualified counsel specializing in  
115 federal securities law that the savings program and the offering  
116 of participation in the investment plan does not violate federal

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117 securities law; and

118 (b) A private letter ruling from the federal Internal  
119 Revenue Service indicating that under the savings program taxes  
120 on any payments made, moneys deposited, investments made, and  
121 resulting earnings may be deferred under the Internal Revenue  
122 Code. If the Internal Revenue Service declines to rule on the  
123 request for a private letter ruling, the program may rely on  
124 legal opinion rendered by a qualified attorney specializing in  
125 tax law.

126 (5) The savings program is not a promise or guarantee that  
127 a qualified beneficiary or a designated beneficiary will become  
128 eligible for Medicaid, receive permanent services, be enrolled  
129 in the Medicaid waiver program, or receive any other state or  
130 federal assistance.

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

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

136 1. The director of the Agency for Persons with  
137 Disabilities.

138 2. The director of the Division of Vocational  
139 Rehabilitation of the Department of Education.

140 3. The president of The Arc of Florida.

141 4. The chair of the Family Care Council of Florida, or his  
142 or her designee.

143 5. Three members, appointed by the Governor for 3-year  
144 terms, who possess knowledge, skill, and experience in the areas  
145 of accounting, actuary, risk management, or investment

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146 management. Any person appointed to fill a vacancy for such  
147 members shall serve only for the unexpired term and until a  
148 successor qualifies, but is eligible for reappointment.

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

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

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

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

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

167 1. Appointing an executive director, whose compensation  
168 shall be provided from revenue generated by the program, to  
169 serve as the chief administrative and operational officer of the  
170 program and to perform other duties assigned to him or her by  
171 the board.

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

174 3. Adopting an official seal and rules.

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- 175       4. Making and executing contracts and other necessary  
176 instruments.
- 177       5. Establishing agreements or other transactions with  
178 federal, state, and local agencies.
- 179       6. Forming strategic alliances with public and private  
180 entities to provide benefits to the savings program.
- 181       7. Appearing on its own behalf before boards, commissions,  
182 or other governmental agencies.
- 183       8. Procuring and contracting for goods and services,  
184 employing personnel, and engaging the services of private  
185 consultants, actuaries, managers, legal counsel, and auditors in  
186 a manner determined to be necessary and appropriate by the  
187 board.
- 188       9. Adopting procedures to govern contract dispute  
189 proceedings between the board and its vendors.
- 190       10. Soliciting proposals and contracting for the marketing  
191 of the savings program. Any materials produced for the purpose  
192 of marketing must be submitted to the board for review.  
193 Materials may not be made available to the public before the  
194 materials are approved by the board. The state and the board are  
195 not liable for misrepresentation of the savings program by a  
196 marketing agent.
- 197       11. Investing funds not required for immediate  
198 disbursement.
- 199       12. Holding, buying, and selling any instruments,  
200 obligations, securities, and property determined appropriate by  
201 the board.
- 202       13. Administering the savings program in a manner that is  
203 sufficiently actuarially sound to defray the obligations of the

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204 savings program. The board shall annually evaluate the actuarial  
205 soundness of the investment plan.

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

210 15. Requiring and collecting administrative fees and  
211 charges in connection with any transaction and imposing  
212 reasonable penalties, including default, for delinquent payments  
213 or for entering into an advance payment contract on a fraudulent  
214 basis.

215 16. Suing and being sued.

216 17. Endorsing insurance coverage written exclusively for  
217 the purpose of protecting the investment plan, and the  
218 purchasers, benefactors, and beneficiaries thereof.

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

222 19. Providing for the receipt of contributions in lump sums  
223 or installment payments.

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

227 21. Delineating the terms and conditions under which  
228 payments may be withdrawn from the investment plan and impose  
229 reasonable fees and charges for such withdrawal. Such terms and  
230 conditions must be specified within the advance payment  
231 contract.

232 22. Establishing other policies, procedures, and criteria



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233 to implement and administer the savings program.

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

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

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

259 3. Trustee services firms to provide trustee and related  
260 services to the board. The trustee services firm must agree to  
261 meet the obligations of the board to qualified beneficiaries if

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262 moneys in the plan fail to offset the obligations of the board  
263 as a result of imprudent selection or supervision of investment  
264 plans by such firm.

265 4. The services of records administrators.

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

282 (f) The board may adopt rules necessary for the savings  
283 program to qualify for or retain its status as a qualified tax-  
284 deferred program or other similar status of the program,  
285 purchasers, and qualified beneficiaries under the Internal  
286 Revenue Code. The board shall inform participants in the savings  
287 program of changes to the tax or securities status of the  
288 investment plan.

289 Section 2. This act shall take effect July 1, 2013, or upon  
290 the date that the Governor, by executive order filed with the

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291 Secretary of State, certifies that the United States Congress  
292 has passed the federal "Achieving a Better Life Experience Act  
293 of 2011" or "ABLE Act of 2011," S.1872/H.R.3423, or similar  
294 legislation, whichever occurs later, if such legislation becomes  
295 law before October 5, 2015.