

By the Committee on Children, Families, and Elder Affairs; and
Senator Bean

586-03355-13

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

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18 Be It Enacted by the Legislature of the State of Florida:

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

22 Section 2. Developmental Disabilities Savings Program.—

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

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30 creation of a savings and investment program for families with
31 such children can offer continued accessibility to services,
32 regardless of income, insurance, or Medicaid eligibility. It is,
33 therefore, the intent of the Legislature that the Developmental
34 Disabilities Savings Program be established so that families may
35 begin saving in advance for the later costs associated with
36 providing services for these children. The savings and
37 investment program must be conducted in a manner that maximizes
38 program efficiency and effectiveness.

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

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

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

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

50 (d) "Eligible services" means:

51 1. Specific services that may include respite care,
52 provision of rehabilitation and habilitation services,
53 transportation, assistive technology, personal assistance
54 services, counseling, support for families headed by aging
55 caregivers, vehicular and home modifications, and assistance to
56 cover extraordinary expenses associated with the needs of
57 individuals who have developmental disabilities.

58 2. Health-related services that may include medical,

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59 dental, mental health, and other human and social services to
60 enhance the well-being of the individual, as well as durable and
61 consumable medical supplies.

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

66 4. Education-related services to facilitate attendance in a
67 training or educational setting, such as technology and
68 personnel-related services that assist in obtaining and
69 maximizing the educational experience.

70 5. Employment-related services that are necessary to assist
71 the individual in meeting essential job functions through
72 technology, personnel-related expenses, and transportation
73 expenses.

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

78 (f) "Savings account contract" means the contract under the
79 savings program which allows a contributor or benefactor to make
80 payments into an investment plan that will provide funds that
81 may be used to pay for eligible services for a qualified
82 beneficiary.

83 (g) "Savings program" means the Developmental Disabilities
84 Savings Program.

85 (3) There is created the Developmental Disabilities Savings
86 Program. The savings program shall:

87 (a) Offer an investment plan through which eligible

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88 services for a qualified beneficiary may be saved for in
89 advance.

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

93 (c) Inform the contributor of the potential impact of plan
94 participation on eligibility for Medicaid or other state or
95 federally funded programs.

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

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

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

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

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117 (6) The savings program shall be administered by the
118 Developmental Disabilities Savings Program Board as a body
119 corporate with all the powers of a body corporate for the
120 purposes delineated in this section.

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

122 1. The Chief Financial Officer or the Director of the
123 Division of Treasury.

124 2. The Director of the Agency for Persons with
125 Disabilities.

126 3. The President of The Arc of Florida.

127 4. The Chair of the Family Care Council Florida, or his or
128 her designee.

129 5. Three members, appointed by the Governor for 3-year
130 terms, who possess knowledge, skill, and experience in the areas
131 of accounting, actuarial disciplines, risk management, or
132 investment management. Any person appointed to fill a vacancy
133 for the balance of an unexpired term is eligible for appointment
134 for a full term.

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

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

143 2. Notwithstanding any vacancies on the board, a majority
144 of the members constitutes a quorum. The board may not take
145 official action in the absence of a quorum.

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

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

151 1. To appoint an executive director, whose compensation
152 shall be provided from revenue generated by the program, to
153 serve as the chief administrative and operational officer of the
154 program and to perform other duties assigned to him or her by
155 the board.

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

158 3. To adopt an official seal and procedures.

159 4. To make and execute contracts and other necessary
160 instruments.

161 5. To establish agreements or other transactions with
162 federal, state, and local agencies.

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

165 7. To appear on its own behalf before commissions or other
166 boards or governmental agencies.

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

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

173 10. To solicit proposals and contract for the marketing of
174 the savings program. Any materials produced for the purpose of

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175 marketing must be submitted to the board for review. Materials
176 may not be made available to the public before being approved by
177 the board. The state and the board are not liable for
178 misrepresentation of the savings program by a marketing agent.

179 11. To invest funds not required for immediate
180 disbursement.

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

183 13. To solicit and accept gifts, grants, loans, and other
184 aids from any source or participate in any other way in any
185 government program in order to carry out the purposes of the
186 savings program.

187 14. To require and collect administrative fees and charges
188 in connection with any transaction.

189 15. To sue and be sued.

190 16. To endorse insurance coverage written exclusively for
191 the purpose of protecting the investment plan, and the
192 contributors, benefactors, and beneficiaries thereof.

193 17. To procure insurance against any loss in connection
194 with the property, assets, and activities of the savings program
195 or the board.

196 18. To provide for the receipt of contributions.

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

200 20. To delineate the terms and conditions under which
201 contributions may be withdrawn from the investment plan and
202 impose reasonable fees and charges for such withdrawal. Such
203 terms and conditions must be specified in the savings account

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204 contract.

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

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

208 1. Investment managers to provide investment portfolios for
209 the savings program. The board and investment managers owe a
210 fiduciary duty to the savings program. Investment managers are
211 limited to authorized insurers as defined in s. 624.09, Florida
212 Statutes, banks as defined in s. 658.12, Florida Statutes,
213 associations as defined in s. 665.012, Florida Statutes,
214 registered United States Securities and Exchange Commission
215 investment advisers, and investment companies as defined in the
216 Investment Company Act of 1940. All investment managers must
217 have their principal place of business and corporate charter
218 located and registered in the United States. In addition, each
219 investment manager must agree to meet the obligations of the
220 board to qualified beneficiaries if moneys in the fund fail to
221 offset the obligations of the board as a result of imprudent
222 investing by such manager. Each registered insurer shall
223 evidence superior performance overall on an acceptable level of
224 surety in meeting its obligations to its policyholders and other
225 contractual obligations. Only custodians approved by the Chief
226 Financial Officer are eligible for board consideration. Each
227 investment company shall provide investment plans as specified
228 within the request for proposals.

229 2. Investment consultants to review the performance of the
230 board's investment managers and advise the board on investment
231 management and performance and investment policy, including the
232 contents of investment plans.

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233 3. Trustee services firms to provide trustee and related
234 services to the board. The trustee services firm must agree to
235 meet the obligations of the board to qualified beneficiaries if
236 moneys in the plan fail to offset the obligations of the board
237 as a result of imprudent selection or supervision of investment
238 plans by such firm.

239 4. The services of records administrators.

240 (e) The goals of the board in procuring investment services
241 are to provide all contributors and benefactors with the most
242 well-diversified and beneficially administered savings program
243 possible in order to provide such services to the state at no
244 cost and to the contributors and benefactors at the lowest cost
245 possible. Procurement processes are subject to chapter 287,
246 Florida Statutes. Evaluations of proposals submitted pursuant to
247 paragraph (d) must consider, without limitation, fees and other
248 costs that are charged to contributors or benefactors which
249 affect account values, or which impact the operational costs of
250 the savings program; past experience and past performance in
251 providing the required services; financial history and current
252 financial strength and capital adequacy to provide the required
253 services; and the capabilities and experience of proposed
254 personnel who will provide the required services.

255 (f) The board may adopt procedures necessary for the
256 savings program in order to qualify for or retain its status as
257 a qualified tax-deferred program or other similar status of the
258 program, contributors, and qualified beneficiaries under the
259 Internal Revenue Code. The board shall inform participants in
260 the savings program of changes to the tax or securities status
261 of the investment plan.

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

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