

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 2192

INTRODUCER: Senator Peaden

SUBJECT: Developmental Disabilities Savings Program

DATE: April 11, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.	Wilson	Wilson	GO	Favorable
3.			FT	
4.			HI	
5.			WPSC	
6.				

I. Summary:

Committee Substitute for Senate Bill 2192 establishes the Services for Children with Developmental Disabilities Task Force and creates the Developmental Disabilities Savings Program.

This bill creates two unnumbered sections of Florida Statutes.

II. Present Situation:

Federal law requires each state to make a free appropriate public education available to all children with disabilities residing in the state between the ages of three and 21, inclusive, including children with disabilities who have been suspended or expelled from school.¹ The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.²

Special Education Services

The law defines special education services as specially designed instruction and related services as are needed for an exceptional student to benefit from education, and may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language therapy; job placement; orientation and mobility training;

¹ 20 U.S.C. s. 1412.

² 34 C.F.R. s. 300.149

braillests, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other services as approved by the rules of the State Board of Education (SBE).³

Exceptional Students in Florida

Section 1003.01(3)(a), F.S. defines the term “exceptional student” as

...any student who has been determined eligible for a special program in accordance with SBE rules. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; another health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e).

In the fall of 2009, there were over 370,000 exceptional students in the state, not including those designated as gifted students.⁴ When a student is identified as an exceptional student, the school district is required to provide instruction that is appropriate to the student’s needs.⁵

Agency for Persons with Disabilities Waitlist

Currently there are 18,862 persons awaiting waiver services through the Agency for Persons with Disabilities (APD). Of those, 10,926 are less than 22 years of age.⁶ Many of the individuals on the waitlist have few options for meaningful activities, training, or employment.

Prepaid Educational Plans

The Stanley G. Tate Florida Prepaid College Program allows purchasers to buy prepaid contracts to pay the registration fees, local fees, tuition differential fees, and dormitory expenses of beneficiaries at Florida community colleges and state universities, in advance of enrollment.⁷ Beneficiaries of prepaid contracts are permitted to transfer the benefits of their contracts to any of the following institutions that qualify as an “eligible educational institution” under s. 529 of the Internal Revenue Code:

³ Section 1003.01(3)(b), F.S.

⁴ Membership in Programs for Exceptional Students, 2009-10, Tables 9 and 18, available at: <http://www.fldoe.org/eias/eiaspubs/default.asp> (last accessed on March 16, 2010).

⁵ Section 1003.57, F.S.

⁶ Email from Logan McFaddin, Agency for Persons with Disabilities (March 17, 2010, 8:35 A.M. EST)(on file with the committee).

⁷ Section 1009.98, F.S.

- An independent college or university located and chartered in Florida, that confers degrees and is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and that confers degrees;
- Any out-of-state college or university that confers degrees, is not-for-profit, and is accredited by a regional accrediting association; and
- An applied technology diploma program or career certificate program operated by a Florida community college or a career center operated by a district school board.⁸

Prepaid Services for Parents of Children with Developmental Disabilities Study Group

Chapter 2009-56, Laws of Florida, created the Prepaid Services for Parents of Children with Developmental Disabilities Study Group (study group).⁹ The study group was charged with evaluating the feasibility of establishing a prepaid service plan for children with disabilities modeled after the Florida prepaid college plan.

In its Final Report,¹⁰ the study group concluded that “the years after a student with a developmental disability ages out of the educational system are critical for learning and transition.”¹¹ The group also drafted a legislative proposal for consideration by the legislature.¹²

III. Effect of Proposed Changes:

The Services for Children with Developmental Disabilities Task Force

The bill establishes the Services for Children with Developmental Disabilities Task Force (task force) to make recommendations about, and develop a plan for implementation of, the Developmental Disabilities Savings Program (created in Section 2 of the bill).¹³

The task force is to consist of:

- A member of the House of Representatives appointed by the Speaker of the House of Representatives;
- A member of the Senate appointed by the President of the Senate;
- The director of APD;
- The director of the Division of Vocational Rehabilitation;
- The executive director of the State Board of Administration;
- The Commissioner of Education;
- The executive director of The Arc of Florida;
- An Arc of Florida family board member appointed by the executive director of the Arc of Florida;
- The chairperson of the Family Care Council Florida; and

⁸ *Id.*

⁹ At Section 4.

¹⁰ *Prepaid Services Savings Program for Parents of Children with Developmental Disabilities Study Group Final Report 2010*, available at <http://apd.myflorida.com/news/docs/2010/dd-prepaid-2010-access-ver.pdf> (last visited March 16, 2010).

¹¹ *Id.* at 19.

¹² *Id.* at 8-17.

¹³ Pursuant to Chapter 2009-56, the study group was “abolished ... upon submission of [its] final report.” This bill creates a new group with new duties.

- A parent representative from the Family Care Council Florida appointed by the chairperson of the Family Care Council Florida.

Organizational support for the new study group is to be provided by APD. Members of the task force, although serving without compensation, are entitled to reimbursement for per diem and travel expenses.

The task force is to submit its recommendation and plan to the presiding officers of the legislature upon its completion or by April 2, 2012, whichever comes first.

The task force is abolished upon commencement of enrollment in the savings program or June 30, 2013, whichever occurs first.

The Developmental Disabilities Savings Program

Committee Substitute for Senate Bill 2192 creates a prepaid developmental disabilities savings program (savings program). It provides that the legislature intends:

- The creation of such a program can offer accessibility to services regardless of a family's income, insurance or Medicaid eligibility.
- A program that includes a contract plan will allow for advance payment of or saving for the costs associated with developmentally disabled children as they age out of the education system.
- The program is to be conducted to maximize program efficiency and effectiveness.

The bill provides the following definitions:

A *purchaser* is:

- a Florida resident parent or grandparent who enters into a contract plan to make advance payments for his or her child or grandchild, or
- a nonresident, noncustodial parent who enters into a contract plan to make advance payments for his or her child.

The *contract plan* under the savings program allows a purchaser to enter into an advance payment contract to provide for future or other eligible services for a qualified beneficiary.

A *qualified beneficiary* is a Florida resident with a developmental disability who is under age 22 when a purchaser enters into an advance payment contract.

A *developmental disability* is

- A disorder or syndrome attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, that manifests before the age of 18, and that can reasonably be expected to continue indefinitely; **or**
- A severe chronic disability that is attributable to a mental or physical impairment or a combination of those impairments; occurs before the age of 18; is likely to continue indefinitely; results in substantial functional limitation in three or more areas of major life activity, including self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; reflects a need for

individually planned and coordinated services or assistance of lifelong or extended duration; and, for a child younger than 10, is likely to meet the preceding criteria without intervention.

Eligible services may be health-related, housing-related, education-related, employment-related, or other specific services.

The savings program:

- Must provide a contract plan to pay in advance for eligible services for individuals with developmental disabilities.
- Education and training about the savings program and its benefits for persons with developmental disabilities must be provided.
- Purchasers of advance payment contracts under the savings program are to be informed of the potential impact on eligibility for Medicaid and other state or federal programs. The savings program provides no guarantee that a beneficiary will become Medicaid eligible, receive permanent services, be enrolled in the Medicaid waiver program, or receive any other state or federal assistance.

The savings program may not be implemented until it has obtained:

- A written opinion from qualified counsel specializing in securities law that the savings program and offering of participation does not violate federal securities law.
- A private letter ruling from the Internal Revenue Service (IRS) indicating that the monies deposited in and payments made to the contract plan are tax deferred under the Internal Revenue Code. The savings program may rely on the opinion of private counsel specializing in tax law should the IRS decline to issue a ruling.

The effective date is July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parents of children with developmental disabilities may be able to use the savings program to plan for their children's future educational and health related services.

C. Government Sector Impact:

Members of the task force serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.

VI. Technical Deficiencies:

The definition of developmental disability (lines 84-102) differs from and is broader than the definition found in s. 393.063(9), F.S. In addition, the definition as applied to children younger than 10 ("who are likely to meet the criteria") may be overly vague and problematic to administer.

As discussed, below, both sections of the bill work at cross purposes.

VII. Related Issues:

The bill directs the task force to use the administrative support services of the Agency for Persons with Disabilities but the task force itself is not linked to the agency structurally. While this is not a significant matter for the discharge of its advisory purposes, it does pose an impediment for the part of the bill which is not advisory and may be self-executing.

Section 2 of the bill commits to the development of a development disabilities contract services program independent of the duties or recommendations of the task force. This could pose a significant matter should the task force decide to request revenue and tax rulings from the Internal Revenue Service contained in that section. It is unclear whether the IRS would acknowledge the request or rule on the matter since the task force, while associated *with* a state agency, is not *the* state agency.

Various portions of the authorized service contracts indicate that their proceeds will be used for beneficiaries who have aged out of the formal schooling process. Other portions do not make such limiting conditions. If the effect of these contracts are to provide both immediate as well as deferred benefits, then they will have to be priced accordingly but it is unclear what reimbursement parameters will accompany them. Unlike the pre-paid college program, such contracts will have a wider spectrum of services reimbursement and the recipients needs will have been determined very early in life. In a pre-paid tuition or dormitory contract, the recipient may choose to enroll or not in a postsecondary institution as that status is voluntary. Many of the recipients and services affected by the contracts in SB 2192 are entitlements and the voluntariness of the governmental role in providing direct support services is materially different.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 18, 2010

The committee adopted a strike all amendment which established the Services for Children with Developmental Disabilities Task Force and created the Developmental Disabilities Savings Program. The program as now structured will operate independently of the prepaid college plan, which change addresses the concerns raised by the Board of Governors.

- B. **Amendments:**

None.