STORAGE NAME: h1411.ed
DATE: April 19, 1999

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
EDUCATION APPROPRIATIONS
ANALYSIS

BILL #: HB 1411

RELATING TO: Postsecondary Education

SPONSOR(S): Representative Paula Dockery

COMPANION BILL(S): SB 1984(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COLLEGES & UNIVERSITIES YEAS 9 NAYS 0
(2) FINANCE & TAXATION (W/D)
(3) EDUCATION APPROPRIATIONS
(4)
(5)

I. SUMMARY:

In recognition that affordability and accessibility of postsecondary education are essential to the welfare and well-being of the residents of the state and are critical to the state’s interests, this bill establishes the Florida College Savings Program. The bill establishes this program as a supplement and alternative to existing programs that provide incentives for the planning and saving for postsecondary education. The program is designed to allow individuals to contribute funds to an account that are subsequently invested in order to pay for the higher education expenses of designated beneficiaries.

The Florida College Savings Program is designed to be classified as a Qualified State Tuition Program. The provisions of the bill include the following requirements that must be met, pursuant to federal law, in order for a state program to be classified as a Qualified State Tuition Program:

- the Florida Prepaid College Board may only receive cash contributions;
- contributors and beneficiaries are not permitted to direct the investment of contributions;
- contributions and earnings from the program can not be used to secure a loan;
- the Florida Prepaid College Board must establish safeguards in order to prevent contributions that exceed projected higher education expenses;
- the Florida Prepaid College Board must maintain separate accounts for each designated beneficiary;
- penalties may not be assessed on any refunds of earnings from the program if a beneficiary receives a scholarship, dies, becomes disabled, or receives payments that are in accordance with federal law; and
- a penalty equal to 10% of earnings from the program must be assessed on a refund that is provided for reasons that do not include a beneficiary receiving a scholarship, dying, becoming disabled, or receiving payments that are in accordance with federal law.

The earnings generated from the investments are not taxed while the funds are in the Florida College Savings Program. Instead, the earnings generated from the investments are taxed once they are used to pay for a beneficiary’s higher education expenses. However, the earnings generated are taxed against a beneficiary’s gross income and not a contributor’s gross income. Furthermore, the Florida College Savings Program covers the costs associated with tuition, fees, books, supplies, equipment, and room and board.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Please see SECTION-BY-SECTION ANALYSIS.

B. EFFECT OF PROPOSED CHANGES:

Please see SECTION-BY-SECTION ANALYSIS.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The Florida Prepaid College Board must prescribe by rule the methodology and information sources that will be used to determine the projected costs of qualified higher education expenses for designated beneficiaries of prescribed ages. The board is also required to establish requirements and procedures relating to the distribution of the benefits of participation agreements.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. With regard to the Florida College Savings Program, the Florida Prepaid College Board is authorized to (1) create, establish, and administer the program; (2) appoint an executive director to serve as the chief administrative and operational officer of the board; (3) receive and hold all payments, deposits, and contributions intended for the program; (4) invest the contributions in a reasonable and appropriate manner in order to achieve the objectives of the program; (5) solicit proposals and hire a trustee-services firm to maintain the board's assets; (6) solicit proposals and hire at least one investment consultant for the purpose of advising the board on investment management and performance; (7) solicit proposals and hire product providers to develop investment portfolios on behalf of the board; (8) establish an investment plan subject to the approval of the State Board of Administration; (9) establish adequate safeguards to prevent contributions that exceed projected higher education expenses; (10) maintain separate accounts for each designated beneficiary; (11) establish consistent provisions that must be included in each participation agreement; (12) specify the duration of a participation agreement before considering it terminated; and (13) prepare a report describing the financial condition of the program at the end of each fiscal year.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The Florida College Savings Program enables individuals to contribute funds that are subsequently invested in order to pay for the costs associated with the higher education of designated beneficiaries.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The Florida College Savings Program provides individuals with the additional option of contributing funds that are invested in order to pay for the costs associated with the higher education of designated beneficiaries.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

Creates section 240.553, Florida Statutes. Amends sections 222.22 and 732.402, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Creates section 240.553, Florida Statutes, in order to (1) create, establish, and administer the Florida College Savings Program; (2) specify the duties of the Florida Prepaid College Board; (3) specify the powers of the Florida Prepaid College Board; (4) identify provisions relating to participation agreements; (5) establish procedures for the distribution of higher education expenses; (6) identify instances when a benefactor may request a refund; (7) establish penalties for the misrepresentation of information; (8) specify the order in which assets of a fund may be expended; (9) provide that earnings from the program are exempt from the claims of creditors; (10) permit certain public sector employers to remit payments on behalf of employees to the program through payroll deductions; (11) clarify that participation in the program does not assure a beneficiary admission to a postsecondary education institution; (12) establish procedures for the termination of the program; (13) direct the Florida Prepaid College Board to prepare a report relating to the financial condition of the program; and (14) specify the conditions that must be met before implementing the program.

PRESENT SITUATION-

The provisions contained in section 529, Internal Revenue Code, establish the Qualified State Tuition Program, which is an additional vehicle for saving for a college or graduate education. A Qualified State Tuition Program must be established and maintained by a state or state agency and may permit a person to make contributions to an account that is established for the purpose of paying the qualified higher education expenses of a designated beneficiary of the account. These qualified higher education expenses include tuition, fees, books, supplies, equipment, and room and board. The program allows a person to contribute funds to a special account that are subsequently invested. The earnings generated from the investments are not taxed while the funds are in the program. Instead, the earnings generated from the investments are taxed once they are used to pay for a beneficiary's higher education expenses. However, the earnings generated are taxed against a beneficiary's gross income and not a contributor's gross income.

In order for a state program to be classified as a Qualified State Tuition Program (QSTP), it must comply with various federal requirements, including:

- funds contributed to the program must be made in cash;
- penalties must be assessed on any refunds of earnings from the program which are not used to pay for qualified higher education expenses;
- penalties may not be assessed on any refunds of earnings from the program if a beneficiary receives a scholarship, dies, or becomes disabled;
- the program must establish a separate account for each beneficiary;
- the program must establish adequate safeguards to prevent contributions that exceed projected higher education expenses;
- contributors and beneficiaries must not be permitted to direct the investment of contributions;
- earnings from the program can not be used to secure a loan; and
- contributions to the program can not be viewed as a taxable gift.

In 1987, the Florida Legislature established the Florida Prepaid College Program where much of the costs associated with attending a postsecondary education institution can be paid in advance at a fixed and guaranteed rate for the duration of a student's undergraduate enrollment. According to section 240.551, Florida Statutes, the program provides a medium through which the cost of registration and dormitory residence can be paid prior to a student's enrollment at a state postsecondary education institution at a rate which is lower than the projected corresponding rate that is expected at the time a student actually enrolls at an institution. The advance payments must be combined and invested in a manner that yields, at a minimum, sufficient interest to generate the difference between the prepaid amount and the cost of registration and dormitory residence at the time a student actually enrolls at an institution.

The Florida Prepaid College Board is responsible for administering the Florida Prepaid College Program. The board provides advance payment contracts for two independent plans known as the community college plan and the university plan. The Board may also provide advance payment contracts for a dormitory residence plan.

Through the community college plan, the advance payment contract provides for prepaid registration fees at a specified number of undergraduate semester credit hours that do not exceed the average number of hours required for the conference of an associate degree. The cost of participating in the community college plan is based primarily on the average current and projected registration fees within the State Community College System and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by a beneficiary.

Through the university plan, the advance payment contract provides for prepaid registration fees at a specified number of undergraduate semester credit hours that do not exceed the average number of hours required for the conference of a baccalaureate degree. The cost of participating in the university plan is based primarily on the current and projected registration fees within the State University System and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by a beneficiary.

Through the dormitory residence plan, the advance payment contract provides for prepaid housing fees for a maximum of 10 semesters of full-time undergraduate enrollment at a state university. Dormitory residence plans are purchased in increments of two semesters. The cost of participating in the dormitory residence plan is based primarily on the average current and projected housing fees within the State University System and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by a beneficiary.

The aforementioned contracts do not cover the fees and costs associated with books, meals, transportation, and graduate school instruction. Additionally, a qualified beneficiary of an advance payment contract must be a Florida resident for at least 12 months, must be less than 21 years of age, and must not complete the 11th grade prior to the purchase of the contract. The benefits of an advance payment contract may be received by the beneficiary for a period not to exceed 10 years after the beneficiary’s matriculation date.

The provisions of section 240.551, Florida Statutes, include several features designed to benefit the purchaser and provide accountability to the state:

- funds used to purchase an advance payment contract plus 5 percent interest can be returned to the purchaser if a beneficiary receives a scholarship, dies, or becomes disabled;
- information that identifies a purchaser or beneficiary of an advance payment contract is protected by the public records exemption;
- assets of the Florida Prepaid College Trust Fund must be expended in a specific order (make payments to state postsecondary education institutions, provide refunds, and pay the costs of administering and operating the program);
- contributions and earnings from the program are exempt from the claims of creditors;
- certain public sector employers can remit payments on behalf of employees to the program through payroll deductions;
- participation in the program does not assure a beneficiary admission to a state postsecondary education institution;
- procedures must be established for the termination of the program; and
- the Florida Prepaid College Board must prepare a report relating to the financial condition of the program.

In 1990, the Florida Legislature established the Florida Prepaid Tuition Scholarship Program in order to provide economically disadvantaged students with prepaid postsecondary education tuition scholarships. The Florida Prepaid College Foundation (a direct-support organization), with the assistance and cooperation from the Department of Education, is responsible for administering the program. The program is designed to provide an incentive for economically disadvantaged students to improve their school attendance and academic performance, so they can graduate and pursue a postsecondary education. The program relies on the purchase of advance payment contracts for the purpose of providing prepaid tuition scholarships for students who meet minimum economic and academic requirements. These advance payment contracts are funded on an equal matching basis between the private sector and the state. The advance payment contracts provide for prepaid registration fees for the average number of hours required to obtain an associate or baccalaureate degree, and provide for a maximum of 12 hours of prepaid registration fees associated with any necessary college preparatory instruction.

In early 1995, the College Savings Bank of New Jersey filed a lawsuit against the Florida Prepaid College Board in the Federal District Court for the District of New Jersey for patent infringement. The College Savings Bank of New Jersey currently offers a certificate of deposit known as the "College Sure CD." In the lawsuit, the College Savings Bank alleged that the board infringed its patent for the determination of the future cost of a good or service. In August, 1995, the College Savings Bank filed a second lawsuit against the board alleging unfair competition in violation of the Lanham Act. Both of these lawsuits are currently before the United States Supreme Court.

EFFECT OF PROPOSED CHANGES-
In recognition that affordability and accessibility of postsecondary education are essential to the welfare and well-being of the residents of the state and are critical to the state's interests, this bill establishes the Florida College Savings Program (FCSP). The bill establishes this program as a supplement and alternative to existing programs that provide incentives for the planning and saving for postsecondary education. The Florida Prepaid College Board is responsible for administering the College Savings Program, in addition to the Prepaid College Program. The College Savings Program is designed to allow individuals to contribute funds to an account that are subsequently invested in order to pay for the higher education expenses of designated beneficiaries.

The Florida College Savings Program is designed to be classified as a Qualified State Tuition Program. Provisions of the bill establish the FCSP so as to comply with the following requirements that are stipulated in section 529, Internal Revenue Code, in order for a state program to be classified as a Qualified State Tuition Program:

- the Florida Prepaid College Board may only receive cash contributions;
- contributors and beneficiaries are not permitted to direct the investment of contributions;
- contributions and earnings from the program can not be used to secure a loan;
- the Florida Prepaid College Board must establish safeguards in order to prevent contributions that exceed projected higher education expenses;
- the Florida Prepaid College Board must maintain separate accounts for each designated beneficiary;
- penalties may not be assessed on any refunds of earnings from the program if a beneficiary receives a scholarship, dies, becomes disabled, or receives payments that are in accordance with federal law; and
- a penalty equal to 10% of earnings from the program must be assessed on a refund that is provided for reasons that do not include a beneficiary receiving a scholarship, dying, becoming disabled, or receiving payments that are in accordance with federal law.

As a Qualified State Tuition Program, the earnings generated from the investments are not taxed while the funds are in the Florida College Savings Program. Instead, the earnings generated from the investments are taxed once they are used to pay for a beneficiary's higher education expenses. However, the earnings generated are taxed against a beneficiary's gross income and not a contributor's gross income. Furthermore, the Florida College Savings Program covers the costs associated with tuition, fees, books, supplies, equipment, and room and board. In contrast, the existing Florida Prepaid College Program covers the costs associated with registration fees, local fees, and dormitory residence fees. Other differences that exist between the Prepaid Program and the College Savings Program include:

- the state guarantees to cover the increase in fees if the funds in the Prepaid Program are not sufficient, while the state does not guarantee that investments in the proposed College Savings Program are sufficient to pay for higher education expenses;

- a qualified beneficiary participating in the existing Prepaid Program must be a Florida resident for at least 12 months, must be less than 21 years of age, and must not complete the 11th grade prior to the purchase of the advance payment contract, while a qualified beneficiary participating in the proposed College Savings Program is not subject to such requirements;

- a qualified beneficiary of the existing Prepaid Program can only pursue an undergraduate education, while a qualified beneficiary of the proposed College Savings Program can pursue an undergraduate and graduate education;

- a qualified beneficiary of the existing Prepaid Program must attend a state postsecondary education institution, while a qualified beneficiary of the proposed College Savings Program is not subject to such a requirement; and

- the balance of an account that is terminated under the existing Prepaid Program is reverted to the Florida Prepaid College Board, while the balance of an account that is terminated under the proposed College Savings Program is declared unclaimed and abandoned property as defined in chapter 717, Florida Statutes.

Finally, the proposed College Savings Program includes certain safeguards as a result of the pending litigation filed against the Florida Prepaid College Board. Prior to the implementation of the Florida College Savings Program, the bill requires the Florida Prepaid College Board to obtain a written opinion from the United States Patent Bar indicating that the proposed program does not infringe upon any current patent or copyright. The board must also obtain a written opinion from its legal counsel indicating that the proposed program does not adversely impact any pending litigation against the board.

SECTION 2: Amends section 222.22, Florida Statutes, in order to provide that contributions and earnings from the Florida College Savings Program are exempt from the claims of creditors.

PRESENT SITUATION-
Section 222.22, Florida Statutes, stipulates that contributions and earnings from the Florida Prepaid College Program and a Medical Savings Account "are not liable to attachment, garnishment, or legal process in the state in favor of any creditor" of the beneficiary or contributor.

EFFECT OF PROPOSED CHANGES-
The bill stipulates that contributions and earnings from the Florida College Savings Program are exempt from the claims of creditors.

SECTION 3: Amends section 732.402, Florida Statutes, in order to include Florida College Savings agreements as property exempt from the probate claims of creditors.

PRESENT SITUATION-
Subsection 732.402(2), Florida Statutes, defines property exempt from the probate of creditors of a deceased individual as:

- household furniture, furnishings, and appliances possessing a net value not exceeding $10,000 as of the date of the owner's death;

- automobiles regularly used and registered under the name of the individual who died; and

- contracts purchased under the Florida Prepaid College Program.

EFFECT OF PROPOSED CHANGES-
The bill includes agreements established under the Florida College Savings Program as property exempt from the probate claims of creditors of a deceased individual.

SECTION 4: Provides a severability clause.

SECTION 5: Establishes that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Individuals participating in the Florida College Savings Program must contribute funds that are subsequently invested in order to pay for the costs associated with the higher education of designated beneficiaries.

2. Direct Private Sector Benefits:

The Florida College Savings Program provides individuals with the additional option of contributing funds that are invested in order to pay for the costs associated with the higher education of designated beneficiaries. Funds contributed to the program are tax deferred, while withdrawals used to pay for higher education costs are taxed against a beneficiary's gross income.

3. Effects on Competition, Private Enterprise and Employment Markets:

This bill stimulates competition among private enterprises because it requires the Florida Prepaid College Board to seek competitive bids in order to hire a trustee-services firm, an investment consultant, a product provider, a records administrator, and a marketing firm.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate. Initial start-up costs will be funded from the Florida Prepaid College Trust Fund, and the recurring administrative costs will be paid from the earning generated from the Florida College Savings Program. The total cost for implementation is indeterminate since it is unclear how many individuals will choose to participate in the Florida College Savings Program.

Currently, the administrative costs for state college savings programs across the country range from 65 basis points ($6.50 per $1,000 invested through the program) to 155 basis points ($15.50 per $1,000 invested through the program). Administrative costs are deducted from the accounts of participants. If the account earnings exceed the basis points, participants pay administrative costs from their earnings. If the earnings are less than administrative costs, the basis points are deducted from earnings and any remaining balance is paid from the principal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 31, 1999, the House Committee on Colleges & Universities adopted an amendment that corrects a grammatical error.

VII. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:	Staff Director:
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AS FURTHER REVISED BY THE COMMITTEE ON EDUCATION APPROPRIATIONS:

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