

STORAGE NAME: h1531a.go

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1531

RELATING TO: Public Records/College Savings Program

SPONSOR(S): Representative Dockery

COMPANION BILL(S): SB 1980 (identical), HB 1411 (compare) and SB 1984 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (2) COLLEGES & UNIVERSITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill provides for the exemption from the public records laws of certain account information relating to the Florida College Savings Program that identifies the benefactor or designated beneficiary. It provides authority for the board to release such information to the institution of higher education in which the designated beneficiary may enroll or is enrolled. Such institutions are required to maintain the confidentiality of such information.

This bill provides a statement of public necessity.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Prepaid College Programs and the I.R.S.

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

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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 are not 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 conferring 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 conferring 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, graduate school instruction, and local fees (activity & service fees, athletic fees, health fees, and laboratory fees). 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.

Some of the provisions contained in section 240.551, Florida Statutes, that make the Florida Prepaid College Program unique include:

- ▶ 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.

B. EFFECT OF PROPOSED CHANGES:

This bill provides for the exemption from the public records laws of certain account information relating to the Florida College Savings Program that identifies the benefactor or designated beneficiary. It provides authority for the board to release such information to the institution of higher education in which the designated beneficiary may enroll or is enrolled. Such institutions are required to maintain the confidentiality of such information.

This bill provides a statement of public necessity. The effective date is contingent upon enactment of a companion bill HB 1411 or similar bill creating the Florida College Savings Program.

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?

N/A

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

The companion bill HB 1411 creates the Florida College Savings Program, under the administration of the Florida Prepaid College Board.

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

Interested individuals may apply for participation in the program to be administered by the Florida Prepaid College Board.

- 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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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?

All administrative expenses will be paid from the interest earnings. No general revenue is required to establish or operate the program.

4. Individual Freedom:

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

By exempting certain identifying information in certain account records, interested persons may be more likely to participate in the program.

- 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:

The bill does not purport to provide a service to families or children, however the companion bill establishes a college savings program which would be of benefit to families.

- (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?

N/A

- 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:

The 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 sec. 240.554. F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 1999, the Committee on Governmental Operations adopted an amendment which referenced the enactment of the companion bill, HB 1411, for the contingent effective date.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Douglas Pile

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