SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1984

SPONSOR: Senator Dyer

SUBJECT: College Savings Plan

DATE: April 14, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	O'Farrell	ED	Fav/1 Amendment
2.			GO	
3.			FP	
4.				
5.				

I. Summary:

This bill establishes the Florida College Savings Program to be operated by the Florida Prepaid College Board. The program is designed to meet the requirements of 26 USCS sec. 529 of the Internal Revenue Code, established by the 1996 Congress (P.L. 104-188). By establishing this qualified state tuition program, Florida will authorize tax deductible investments to pay for the cost of higher education for a designated beneficiary.

This bill creates section 240.553, Florida Statutes and amends sections 222.22 and 732.402 of the Florida Statutes.

II. Present Situation:

When Florida created the Prepaid College Program in 1987, only three other states provided a tax-deductible college savings plan. Now 43 states provide such a plan. Florida's Prepaid College Program is unusual among them because it guarantees that the investments will cover the cost of the tuition, even if the tuition increases above the value of the investment.

In 1996, the United States Congress established in section 529, Internal Revenue Code, the Qualified State Tuition Program, to provide tax deferred savings for educational expenses. The savings may be used for "qualified higher education expenses" including tuition, fees, books, supplies, equipment, and room and board. The funds may be used for both undergraduate and graduate-level education. Most state programs created since that time have used the new guidelines, rather than being modeled after Florida's Prepaid College Program.

To be eligible for a Qualified State Tuition Program, states must assure that the following requirements are met:

State's role: The program must be established and maintained by the state. This establishment does not mean backed up by the full faith and credit of the state, as is the case with the Prepaid College Program, but it must be created in law and maintained by a state office.

Residency: Federal law does not require a beneficiary or benefactor to be a resident of the state that sponsors the program, although some states have established residency requirements. Florida residents may participate in the plans of many other states.

No guarantee of tuition: The program may not provide contribution plans that, if maintained, will guarantee to pay the tuition of specified institutions when the beneficiary reaches college-age.

Taxation: Disbursements for allowable education expenses are taxable at the rate of the beneficiary, not the contributor.

Contributions:
- Accounts must be tracked separately, and investment income must accrue to the contributor, not to the program.
- The contributor is eligible for the specific income (or loss) generated by the investment of his or her contribution by the private organization.
- A contributor may not direct the investment of his or her contributions.
- A contributor may transfer beneficiaries only among family members.

Disbursements:
- Disbursements from the accounts must be for qualified higher education expenses -- tuition, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.
- Expenses for room and board may be paid out of the account only if documented, and these payments may not exceed the institution's standard room and board fees.
- Tuition and room and board provided by the institution are paid to the institution; the beneficiary collects other expenses as reimbursements for documented payments.

Withdrawals: Withdrawals from the accounts for any other purpose are subject to "substantial penalty" -- usually interpreted to mean at least 10 percent of earnings. The penalty may be waived for death or disability of the beneficiary or the award of a scholarship that covers tuition and other expenses.

Assets: The only way for the program to accumulate assets is for accounts to earn more than students need; then the remaining funds are withdrawn with a 15 percent penalty.

HOPE tax benefits and Scholarships: These benefits do not affect the disbursement. The value of the account is counted in any calculation of income or "expected family contribution" for need-based aid.

Eligible Postsecondary Education Institutions: There is no restriction on what type of institution a beneficiary may attend and pay for under the program. Any postsecondary education institution eligible under s. 529 of the Internal Revenue Code is eligible.

III. Effect of Proposed Changes:

This bill establishes the Florida College Savings 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 both the College Savings Program and the Prepaid College Program. The following analysis by section gives details:

SECTION 1. Creates s. 240.553, F.S., to create, establish, and administer the Florida College Savings Program, which is to be a Qualified State Tuition Program. To that end, the bill includes the following requirements:

- The Florida Prepaid College Board may receive contributions in cash only;
- Contributors and beneficiaries are not permitted to direct the investment of contributions;
- Contributions and earnings from the program may not be used to secure a loan;
- The Florida Prepaid College Board must establish safeguards 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 program but are taxed against a beneficiary's gross income when withdrawn to pay for education expenses. If investments are sufficient, the program covers the costs for tuition, fees, books, supplies, equipment, and room and board.

This section also includes the following administrative requirements:

- Specifies the powers and duties of the Florida Prepaid College Board, including the duty to appoint an executive director; receive and invest contributions; contract with a trustee-services firm to hold and maintain assets; contract with investment consultants; contract with product providers to develop investment portfolios; contract with a records administrator; contract for the marketing of the program; and engage the services of private consultants, actuaries, managers, legal counsel, and auditors.
- Identifies provisions relating to participation agreements.
- Establishes procedures for the distribution of higher education expenses.
- Identifies instances when a benefactor may request a refund.
- Establishes penalties for the misrepresentation of information. Specifies the order in which assets of a fund may be expended.
- Provides that earnings from the program are exempt from the claims of creditors.
- Permits payroll deduction agreements with public sector employers.
- Clarifies that participation in the program does not assure a beneficiary admission to a postsecondary education institution.

- Establishes procedures for the termination of the program.
- Directs the Florida Prepaid College Board to prepare a report relating to the financial condition of the program.
- Specifies the conditions that must be met before implementing the program.

SECTION 2: Amends section 222.22, F.S., to exempt from the claims of creditors contributions and earnings from the Florida College Savings Program. This statute 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.

SECTION 3: Amends section 732.402, F.S., to include Florida College Savings agreements as property exempt from the probate claims of creditors, as are contracts purchased under the Florida Prepaid College Program.

SECTION 4: Provides a severability clause.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Floridians and others will have the additional option of contributing tax deferred funds to pay for the higher education expenses of others, who will also benefit. Withdrawals used to pay for higher education costs will be taxed at the beneficiary's taxation rate.

C. Government Sector Impact:

According to the Florida Prepaid College Board, a state appropriation will not be required for the creation and administration of the Florida College Savings Program. Initial start-up costs will be funded from the Florida Prepaid College Trust Fund. Recurring administrative costs will be paid from the earnings generated from 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pending Litigation:
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.

The bill includes an attempt to safeguard the new program against the effects of this pending litigation. 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.

Comparison to Prepaid College Program:

- The state guarantees to cover the increase in fees if the funds in the Prepaid Program are not sufficient, but the College Savings Program does not include any guarantees.
- A qualified beneficiary in the Prepaid College 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. None of these requirements apply to a beneficiary of the proposed College Savings Program.
- A qualified beneficiary of the Prepaid College Program may pursue only an undergraduate education, while a qualified beneficiary of the proposed College Savings Program may use the funds for graduate school if they are sufficient.

- A qualified beneficiary of the Prepaid College Program must attend a state postsecondary education institution except under limited conditions, while a qualified beneficiary of the proposed College Savings Program may attend any institution.
- 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 ch. 717, F.S.

VIII. Amendments:

#1 by Education:
Corrects an error in grammar.