

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 315 Florida Prepaid College Program
SPONSOR(S): State Universities & Private Colleges Policy Committee; Van Zant and others
TIED BILLS: IDEN./SIM. BILLS: SB 606

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: State Universities & Private Colleges Policy Committee, 11 Y, 0 N, As CS, Thomas, Tilton. Row 2: State & Community Colleges & Workforce Appropriations Committee, Smith, Trexler.

SUMMARY ANALYSIS

The State of Florida offers the Stanley G. Tate Florida Prepaid College Plan (Prepaid Plan) and the Florida College Investment Plan (Investment Plan) to assist families in planning and saving for a college education.

Current law permits Investment Plans to be used at any "eligible education institution" and defines "eligible education institution" as an institution of higher education that qualifies under s. 529 of the Internal Revenue Code as an eligible educational institution.

Use of the Prepaid Plan is more limited. The Prepaid Plan may be used at any of the 11 institutions in the State University System or 28 institutions in the Florida College System.

- An independent college or university that is located and chartered in Florida, is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and 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.

CS/HB 315 permits the use of a Prepaid Plan at a broader range of institutions. The bill permits a beneficiary of an advance payment contract to transfer the benefits of an advance payment contract to an "eligible education institution as defined in s. 529 of the Internal Revenue Code."

This bill does not appear to have a fiscal impact on state government.

The effective date of this act is July 1, 2009.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/13/2009

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Florida Prepaid College Plan

The State of Florida offers the Stanley G. Tate Florida Prepaid College Plan (Prepaid Plan) and the Florida College Investment Plan (Investment Plan) to assist families in planning and saving for a college education.<sup>1</sup> The Prepaid Plan contracts lock in many of the costs associated with postsecondary attendance at the time the contracts are purchased. These costs depend on the type of plan purchased and may include registration fees, local fees, the tuition differential fee, and dormitory expenses.<sup>2</sup> The Investment Plan allows anyone who is at least 18 years old to open an investment account to be used for qualified higher education expenses at an eligible education institution.<sup>3</sup>

Current law permits the Investment Plans to be used at any "eligible education institution" and defines "eligible education institution" as an institution of higher education that qualifies under s. 529 of the Internal Revenue Code as an eligible educational institution. Section 529 of the Internal Revenue Code defines an "eligible educational institution" as a postsecondary educational institution eligible to participate in federal student financial aid programs under the federal Higher Education Act of 1965, such as the Pell Grant Program and federal student loan programs.<sup>4</sup>

Use of the Prepaid Plan is more limited. The Prepaid Plan may be used at any of the 11 institutions in the State University System or 28 institutions in the Florida College System. Prepaid plans may also be used at the following institutions:<sup>5</sup>

- An independent college or university that is located and chartered in Florida, is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and 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

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<sup>1</sup> Section 1009.98(1), F.S.; Section 1009.981(1)(a), F.S.

<sup>2</sup> Section 1009.98(1), F.S.; <http://www.myfloridaprepaid.com/Plans/FAQ/> (last visited March 3, 2009).

<sup>3</sup> <http://www.myfloridaprepaid.com/Plans/FAQ/> (last visited November 25, 2008); Florida College Investment Plan, Disclosure Statement, 11 (April 1, 2008), available at [http://www.myfloridaprepaid.com/disclosure\\_statement/](http://www.myfloridaprepaid.com/disclosure_statement/) (last visited March 5, 2009).

<sup>4</sup> 26 USC s. 529(5) (2006); Section 1009.97(3)(k), F.S.

<sup>5</sup> Section 1009.98(3), F.S.

- 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.

If a student attends an eligible private or out-of-state institution, Florida Prepaid will transfer to that institution an amount not to exceed the redemption value of the contract at a state postsecondary institution.<sup>6</sup>

Currently, any advertisement disseminated by an eligible for-profit independent college or university that references the Prepaid Plan must state that the Florida Prepaid College Board does not endorse any particular college or university.<sup>7</sup>

### **529 Plans**

Section 529 of the Internal Revenue Code, exempts the contributor and the beneficiary of a qualified tuition program from the payment of federal income tax on the funds contributed to or disbursed from the program.<sup>8</sup> These programs, popularly known as 529 plans, are established by a state or eligible education institution. There are two types of 529 plans: college savings plans and prepaid plans. The Florida Prepaid College Plan is a prepaid tuition 529 plan. Under the federal law, an “eligible educational institution” is a postsecondary educational institution eligible to participate in federal student financial aid programs under the federal Higher Education Act of 1965, such as the Pell Grant Program and federal student loan programs. Thus, the federal law would permit a beneficiary of a 529 plan to transfer the benefits of the plan to a broader range of institutions than would Florida’s Prepaid College Plan.

### **Professional guardian registration**

A guardian is a person who has been appointed by the court to act on behalf of a ward’s person or property, or both.<sup>9</sup> A professional guardian is any guardian who has at any time rendered services to three or more wards as their guardian.<sup>10</sup> A professional guardian must register with the Statewide Public Guardianship Office.<sup>11</sup> Current law authorizes a state college or university or an independent college or university that is located and chartered in Florida, is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and confers degrees to register as a professional guardian.<sup>12</sup> According to the Department of Elder Affairs, Statewide Public Guardianship Office, Barry University is the only institution participating in the professional guardian registration.<sup>13</sup>

### **Effect of Proposed Changes**

CS/HB 315 permits the use of a Prepaid Plan at a broader range of institutions. The bill permits a beneficiary of an advance payment contract to transfer the benefits of an advance payment contract to an “eligible education institution as defined in s. 529 of the Internal Revenue Code.” Section 529 of the Internal Revenue Code defines an “eligible educational institution” as a postsecondary educational institution eligible to participate in federal student financial aid programs under the federal Higher Education Act of 1965, such as the Pell Grant Program and federal student loan programs.<sup>14</sup> The Board will transfer to that institution an amount not to exceed the redemption value of the contract at a state postsecondary institution.<sup>15</sup>

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<sup>6</sup> Section 1009.98(3), F.S.

<sup>7</sup> Section 1009.98(3)(a), F.S.

<sup>8</sup> 26 USC s. 529(c) (2006)

<sup>9</sup> Section 744.102(9), F.S.

<sup>10</sup> Section 744.102(17), F.S.

<sup>11</sup> Section 744.1083(1), F.S.

<sup>12</sup> Section 744.1083(10), F.S.

<sup>13</sup> Telephone conversation with Statewide Public Guardianship Office staff (March 11, 2009).

<sup>14</sup> Section 1009.97(3)(k), F.S.

<sup>15</sup> Section 1009.98(3), F.S.

The bill requires that any advertisement disseminated by an eligible for-profit educational institution that references the Prepaid Plan must state that the Florida Prepaid College Board does not endorse any particular educational institution.

The bill authorizes any eligible educational institution as defined in s. 529 of the Internal Revenue Code to register as a professional guardian.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 1009.98, F.S., revising provisions relating to the transfer of benefits received from the Florida Prepaid College Program to private and out-of-state colleges and universities and to career centers.

Section 2. Amends s. 744.1083, F.S., relating to professional guardians; conforming a cross-reference.

Section 3. Provides an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

**D. FISCAL COMMENTS:**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 10, 2009, the State Universities & Private Colleges Policy Committee adopted one amendment to HB 315 and reported the bill favorably as a committee substitute. The amendment provides that any advertisement disseminated by a for-profit educational institution that references the Florida Prepaid Program must include a statement that the Florida Prepaid College Board does not endorse any particular educational institution.