STORAGE NAME: h1325s1a.ed
DATE: April 16, 1997

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
EDUCATION APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1325

RELATING TO: Postsecondary Education

SPONSOR(S): Colleges & Universities & Casey; Dockery, Argenziano, and Others

STATUTE(S) AFFECTED: Amends s. 240.551, F.S.; repeals s. 42, ch. 91-201, L.O.F.

COMPANION BILL(S): HB 1453 (C); CS/SB 398 (S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COLLEGES & UNIVERSITIES YEAS 10 NAYS 0
(2) EDUCATION APPROPRIATIONS YEAS 15 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

CS/HB 1325 modifies provisions relating to the Florida Prepaid Postsecondary Education Expense Program (Program) to incorporate recommendations intended to bring the Program into compliance with provisions of the Small Business Job Protection Act of 1996 (Act). Under the Act, “qualified state tuition programs” are eligible for tax exempt status. CS/HB 1325 makes the following changes:

1. Makes optional the sale of dormitory contracts.

2. Limits the refund from contract conversions.

3. Prohibits members and staff of the Prepaid Postsecondary Education Expense Board (Board) from segregating their payments for special investment.

4. Prohibits the pledging of moneys paid into the Program or benefits accrued through the Program as security for loans.

In addition, the Board is given the authority to adopt rules necessary to retain the Program’s status as a “qualified state tuition program.”

The Florida Prepaid Tuition Scholarship Program is reenacted without modification.

II. <u>SUBSTANTIVE RESEARCHS</u>:

A. PRESENT SITUATION:

The 1987 Legislature established the Florida Prepaid Postsecondary Education Expense Program (Program), s. 240.551, F.S., to provide a medium through which the cost of registration and dormitory residence could be paid in advance of enrollment in a state postsecondary institution at a rate lower than the projected corresponding cost at the time of actual enrollment. The payments are to 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 of actual enrollment.

The Program is administered by the Prepaid Postsecondary Education Expense Board (Board) as an agency of the state.

Pursuant to the provisions of s. 240.551, F.S., the powers of the Board include the power to invest funds not required for immediate disbursement. The Board is directed to establish a comprehensive investment plan that must specify the investment policies to be utilized by the Board in the administration of the Program funds. Within the investment plan, the Board may authorize investment vehicles, or related products , as may be available or offered by qualified companies or persons. The Board may delegate responsibility for administration of the required investment plan to a person the Board determines to be qualified.

State law requires the Board to make advance payment contracts available for three independent plans -- a community college plan, a university plan, and a dormitory residence plan. State law also provides guidelines for plan conversions -- for example, from a “university plan” to a “community college plan” or a “community college plus university plan” or from a “community college plus university plan” to a “community college plan.” The amount refunded must be the value of the original advance payment contract minus the value of the contract after the conversion.

State law permits the Board to establish a direct-support organization which is subject to an annual audit in accordance with rules promulgated by the Board. Although the Board is assigned to and housed administratively within the State Board of Administration, current law provides that the audit must be submitted to the Department of Insurance and to the Auditor General for review.

The Small Business Job Protection Act of 1996 (Act) provides tax-exempt status for “qualified state tuition programs.” “Qualified state tuition programs” include programs through which persons “ may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary.” Representatives of the Program have identified several of the provisions of s. 240.551, F.S., that do not comply with provisions of the Act. These relate to dormitory contracts, refunds, investments, and use of interest earnings.

1. **<u>Dormitory Contracts</u>**: The Act defines “qualified higher education expenses” as “tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible institution.” Dormitory fees are

not included in the list of qualified expenses. Representatives of the Program have requested that the current **requirement** to offer dormitory contracts be made permissive rather than mandatory.

2. **Refunds**. The Act requires the imposition of a "more than de minimis penalty" on any refund of earnings which are not:

(A) used for qualified higher education expenses of the designated beneficiary;

(B) made on account of the death or disability of the designated beneficiary; or,

(C) made on account of a scholarship (or certain other allowances or payments) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.

Representatives of the Program indicate that purchasers of four-year university contracts who convert the contract to a two-year community college/two-year state university contract or to a two-year community college contract may receive some earnings as a refund for the difference in the price of the contracts. They recommend that current state law be modified to specify that any moneys refunded will equal the difference between the purchase prices of the higher-cost and lower-cost plan based on the purchase price at the time the original contract was purchased.

3. **Investments**. The Act prohibits contributors and beneficiaries from directing the investment of their contributions or earnings. Representatives of the Program report that several members and employees of the Board have purchased plans for children and grandchildren. They recommend that current state law be amended to clarify that Board members and employees cannot direct the investment of their respective contributions to the Program or any contributions made for them, but that such individuals are permitted to purchase contracts.

4. **Interest Earnings**. The Act prohibits the pledge of interest earnings as security for the purpose of securing a loan. Representatives of the Program have recommended that state law be amended to prohibit the pledge of moneys paid into the Program as well as benefits accrued through the Program for this purpose.

Representatives of the Program also recommend that, notwithstanding any other provision of s. 240.551, F.S., the Board be given the authority to adopt those "rules necessary to enable the Program to retain its status as a 'qualified state prepaid program' for the purpose of maintaining the tax exempt or other similar status of the program, purchasers, and qualified beneficiaries under the Internal Revenue Code of 1986, as amended."

The Florida Prepaid Tuition Scholarship Program, s. 240.552, F.S., was created by the 1990 Legislature to provide prepaid postsecondary tuition scholarships to economically disadvantaged youth. This program is scheduled for repeal October 1, 1997, and must be reviewed by the Legislature prior to that time. The House of Representatives Committee on Colleges & Universities has conducted a review of the Florida Prepaid Tuition Scholarship Program and recommended reenactment.

B. EFFECT OF PROPOSED CHANGES:

Provisions relating to the Florida Prepaid Postsecondary Education Expense Program are modified to incorporate recommendations intended to bring the Program into compliance with federal legislation to maintain the Program's status as a "qualified state tuition program." Specifically, the following changes are made:

1. The sale of dormitory contracts becomes optional;

2. The refund from contract conversions is limited;

3. Members and staff of the Board are specifically prohibited from segregating their payments for special investment; and,

4. The pledging of moneys paid into the Program as well as benefits accrued through the Program as security for loans is prohibited.

Representatives of the Program indicate that if the Legislature fails to bring state law into compliance with the new federal law, the Program, Prepaid purchasers, and Prepaid beneficiaries may lose the tax protection currently provided. The Internal Revenue Service will be able to reinitiate rulemaking regarding the tax status of the state programs and their participants who do not meet the federal requirements.

In addition, the Board is given the authority to adopt rules necessary to retain the Program's status as a "qualified state prepaid program."

Annual audits of the Program's direct-support organization will be submitted to the State Board of Administration for review rather than to the Department of Insurance.

The Florida Prepaid Tuition Scholarship Program is reenacted without modification.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

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

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

The Prepaid Postsecondary Education Expense Board is authorized to adopt rules necessary to enable the Program to retain its status as a "qualified state tuition program" for the purpose of maintaining the tax exempt or other similar status of the program, purchasers, and qualified beneficiaries under the Internal Revenue Code of 1986, as defined in s. 220.03(1), F.S.

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

No.

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

No.

b. If an agency or program is 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. <u>Lower Taxes:</u>

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?

N/A.

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

N/A.

4. Individual Freedom:

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

N/A.

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

N/A.

5. Family Empowerment:

a. If the bill purports 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:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 240.551, F.S., relating to the Florida Prepaid Postsecondary Education Expense Program.

Section 2. Repeals section 42 of chapter 91-201, Laws of Florida, to reenact the Florida Prepaid Tuition Scholarship Program without modification.

Section 3. Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See FISCAL COMMENTS.

2. Recurring Effects:

   See FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

   See FISCAL COMMENTS.

4. Total Revenues and Expenditures:

   See FISCAL COMMENTS.

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:

   None.

2. Direct Private Sector Benefits:

   See FISCAL COMMENTS.

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

   None.

D. FISCAL COMMENTS:

Compliance with the requirements of the Small Business Job Protection Act is necessary for the Program to be a "qualified state tuition program" and eligible for the tax exempt status provided by the Act.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Language permitting the Board to adopt rules as necessary to maintain the tax-exempt status of the Program even though such rules could conflict with current statutory provisions regarding the Program is removed.

VII. SIGNATURES:

COMMITTEE ON Colleges & Universities:

Prepared by:	Legislative Research Director:
Betty H. Tilton, Ph.D.	Betty H. Tilton, Ph.D.

AS REVISED BY THE COMMITTEE ON EDUCATION APPROPRIATIONS:

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