

By Representative Dockery

1 A bill to be entitled
2 An act relating to postsecondary education;
3 amending s. 240.551, F.S., relating to the
4 Florida Prepaid Postsecondary Education Expense
5 Program; restricting direction of investment;
6 authorizing the purchase of advance payment
7 contracts by members and employees of the
8 Prepaid Postsecondary Education Expense Board;
9 authorizing rules for maintenance of tax exempt
10 status; providing technical revisions;
11 authorizing the board to construct contracts
12 for dormitory residence; providing for
13 exemption from securities transactions laws;
14 providing for refunds associated with the
15 conversion of registration plans; restricting
16 the use of funds; repealing s. 42, ch. 91-201,
17 Laws of Florida; abrogating the repeal of the
18 Florida Prepaid Tuition Scholarship Program;
19 providing an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Paragraphs (e), (h), and (j) of subsection
24 (5), paragraphs (a) and (e) of subsection (6), and subsections
25 (7) and (11) of section 240.551, Florida Statutes, 1996
26 Supplement, are amended to read:

27 240.551 Florida Prepaid Postsecondary Education
28 Expense Program.--

29 (5) The Florida Prepaid Postsecondary Education
30 Expense Program shall be administered by the Prepaid
31 Postsecondary Education Expense Board as an agency of the

1 state. The Prepaid Postsecondary Education Expense Board is
2 hereby created as a body corporate with all the powers of a
3 body corporate for the purposes delineated in this section.
4 For the purposes of s. 6, Art. IV of the State Constitution,
5 the board shall be assigned to and administratively housed
6 within the State Board of Administration, but it shall
7 independently exercise the powers and duties specified in this
8 section. The board shall consist of seven members to be
9 composed of the Insurance Commissioner and Treasurer, the
10 Comptroller, the Chancellor of the Board of Regents, the
11 Executive Director of the State Board of Community Colleges,
12 and three members appointed by the Governor and subject to
13 confirmation by the Senate. Each member appointed by the
14 Governor shall possess knowledge, skill, and experience in the
15 areas of accounting, actuary, risk management, or investment
16 management. Each member of the board not appointed by the
17 Governor may name a designee to serve the board on behalf of
18 the member; however, any designee so named shall meet the
19 qualifications required of gubernatorial appointees to the
20 board. Members appointed by the Governor shall serve terms of
21 3 years except that, in making the initial appointments, the
22 Governor shall appoint one member to serve for 1 year, one
23 member to serve for 2 years, and one member to serve for 3
24 years. Any person appointed to fill a vacancy on the board
25 shall be appointed in a like manner and shall serve for only
26 the unexpired term. Any member shall be eligible for
27 reappointment and shall serve until a successor qualifies.
28 Members of the board shall serve without compensation but
29 shall be reimbursed for per diem and travel in accordance with
30 s. 112.061. Each member of the board shall file a full and
31 public disclosure of his or her financial interests pursuant

1 to s. 8, Art. II of the State Constitution and corresponding
2 statute.

3 (e) The board, acting with the approval of the State
4 Board of Administration, shall establish a comprehensive
5 investment plan for the purposes of this section. The
6 comprehensive investment plan shall specify the investment
7 policies to be utilized by the board in its administration of
8 the fund. The board may place assets of the fund in savings
9 accounts or use the same to purchase fixed or variable life
10 insurance or annuity contracts, securities, evidence of
11 indebtedness, or other investment products pursuant to the
12 comprehensive investment plan and in such proportions as may
13 be designated or approved under that plan. Such insurance,
14 annuity, savings, or investment products shall be underwritten
15 and offered in compliance with the applicable federal and
16 state laws, regulations, and rules by persons who are duly
17 authorized by applicable federal and state authorities.
18 Within the comprehensive investment plan, the board may
19 authorize investment vehicles, or products incident thereto,
20 as may be available or offered by qualified companies or
21 persons. No contract purchaser or beneficiary may direct the
22 investment of his or her contribution to the fund or the
23 contribution made on his or her behalf to the fund,
24 respectively. Board members and employees of the board are
25 not prohibited from purchasing advance payment contracts by
26 virtue of their fiduciary responsibilities as members of the
27 board or official duties as employees of the board.

28 (h) Notwithstanding any other provision of this
29 section, the board may adopt rules necessary to enable the
30 program to retain its status as a "qualified state prepaid
31 program" for the purpose of maintaining the tax exempt or

1 other similar status of the program, purchasers, and qualified
2 beneficiaries under the Internal Revenue Code of 1986, as
3 amended. The board shall inform purchasers of changes to the
4 tax or securities status of contracts purchased through the
5 program.~~The board shall solicit answers to applicable ruling~~
6 ~~requests from the Internal Revenue Service regarding the tax~~
7 ~~status of fees paid pursuant to an advance payment contract to~~
8 ~~the purchaser or qualified beneficiary and from the Securities~~
9 ~~and Exchange Commission regarding the application of federal~~
10 ~~securities laws to the trust. The board shall make the status~~
11 ~~of such requests known before entering into an advance payment~~
12 ~~contract.~~

13 (j) The board may establish a direct-support
14 organization which is:

15 1. A Florida corporation, not for profit, incorporated
16 under the provisions of chapter 617 and approved by the
17 Secretary of State.

18 2. Organized and operated exclusively to receive,
19 hold, invest, and administer property and to make expenditures
20 to or for the benefit of the program.

21 3. An organization which the board, after review, has
22 certified to be operating in a manner consistent with the
23 goals of the program and in the best interests of the state.
24 Unless so certified, the organization may not use the name of
25 the program.

26 4. Subject to an annual postaudit by an independent
27 certified public accountant in accordance with rules
28 promulgated by the board. The annual audit shall be submitted
29 to the State Board of Administration ~~Department of Insurance~~
30 and the Auditor General for review. The State Board of
31 Administration ~~Department of Insurance~~ and Auditor General

1 shall have the authority to require and receive from the
2 organization or its independent auditor any detail or
3 supplemental data relative to the operation of the
4 organization. The identity of donors who desire to remain
5 anonymous shall be confidential and exempt from the provisions
6 of s. 119.07(1) and s. 24(a), Art. I of the State
7 Constitution, and such anonymity shall be maintained in the
8 auditor's report. Information received by the organization
9 that is otherwise confidential or exempt by law shall retain
10 such status. Any sensitive, personal information regarding
11 contract beneficiaries, including their identities, is exempt
12 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
13 the State Constitution.

14
15 The chair of the board and the executive director shall be
16 directors of the direct-support organization and shall jointly
17 name three other individuals to serve as directors of the
18 organization.

19 (6)(a) The board shall construct advance payment
20 contracts for registration and may construct advance payment
21 contracts for dormitory residence in accordance with the
22 provisions of this section. Advance payment contracts
23 constructed for the purposes of this section shall be exempt
24 from the provisions of chapter 517 and the Florida Insurance
25 Code. The board may request assistance from the Department of
26 Legal Affairs in the development of the advance payment
27 contracts. The contents of both such contracts shall include,
28 but not be limited to, the following:

29 1. The amount of the payment or payments and the
30 number of payments required from a purchaser on behalf of a
31 qualified beneficiary.

1 2. The terms and conditions under which purchasers
2 shall remit payments, including, but not limited to, the date
3 or dates upon which each payment shall be due.

4 3. Provisions for late payment charges and for
5 default.

6 4. Provisions for penalty fees for withdrawals from
7 the fund.

8 5. Except for an advance payment contract entered into
9 pursuant to paragraph (5)(j), the name and date of birth of
10 the qualified beneficiary on whose behalf the contract is
11 drawn and the terms and conditions under which another person
12 may be substituted as the qualified beneficiary.

13 6. The name of any person who may terminate the
14 contract. The terms of the contract shall specify whether the
15 contract may be terminated by the purchaser, the qualified
16 beneficiary, a specific designated person, or any combination
17 of these persons.

18 7. The terms and conditions under which a contract may
19 be terminated, modified, or converted, the name of the person
20 entitled to any refund due as a result of termination of the
21 contract pursuant to such terms and conditions, and the amount
22 of refund, if any, due to the person so named.

23 8. The time limitations, if any, within which the
24 qualified beneficiary must claim his or her benefits through
25 the program.

26 9. Other terms and conditions deemed by the board to
27 be necessary or proper.

28 (e)1. No refund provided pursuant to subparagraph
29 (a)7. shall exceed the amount paid into the fund by the
30 purchaser. In the event that an advance payment contract is
31 converted from a university to a community college

1 registration plan, the refund amount shall be reduced by the
2 amount transferred to a community college on behalf of the
3 qualified beneficiary. However, refunds may exceed the amount
4 paid into the fund in the following circumstances:

5 a. If the beneficiary is awarded a scholarship, the
6 terms of which cover the benefits included in the advance
7 payment contracts, moneys paid for the purchase of the advance
8 payment contracts shall be returned to the purchaser in
9 semester installments coinciding with the matriculation by the
10 beneficiary in amounts of either the original purchase price
11 plus 5 percent compounded interest, or the current rates at
12 state postsecondary institutions, whichever is less.

13 b. In the event of the death or total disability of
14 the beneficiary, moneys paid for the purchase of advance
15 payment contracts shall be returned to the purchaser together
16 with 5 percent compounded interest, or the current rates at
17 state postsecondary institutions, whichever is less.

18 c. If an advance payment contract is converted from a
19 university plan to a community college plan or a community
20 college plus university plan, or is converted from a community
21 college plus university plan to a community college plan, the
22 amount refunded shall not exceed the difference between the
23 amount paid for the original contract and the amount that
24 would have been paid for the contract to which the plan is
25 converted, had the converted plan been purchased under the
26 same payment plan at the time the original advance payment
27 contract was executed ~~be the value of the original advance~~
28 ~~payment contract minus the value of the contract after the~~
29 ~~conversion.~~

30 2. No refund shall be authorized through an advance
31 payment contract for any school year partially attended but

1 not completed. For purposes of this section, a school year
2 partially attended but not completed shall mean any one
3 semester whereby the student is still enrolled at the
4 conclusion of the official drop-add period, but withdraws
5 before the end of such semester. If a beneficiary does not
6 complete a community college plan or university plan for
7 reasons other than specified in subparagraph 1., the purchaser
8 shall receive a refund of the amount paid into the fund for
9 the remaining unattended years of the advance payment contract
10 pursuant to rules promulgated by the board.

11 (7) At a minimum, the board shall make advance payment
12 contracts available for two ~~three~~ independent plans to be
13 known as the community college plan and ~~the~~ university plan,
14 ~~and the dormitory residence plan, respectively.~~ The board may
15 also make advance payment contracts available for a dormitory
16 residence plan.

17 (a) Through the community college plan, the advance
18 payment contract shall provide prepaid registration fees for a
19 specified number of undergraduate semester credit hours not to
20 exceed the average number of hours required for the conference
21 of an associate degree. The cost of participation in the
22 community college plan shall be based primarily on the average
23 current and projected registration fees within the State
24 Community College System and the number of years expected to
25 elapse between the purchase of the plan on behalf of a
26 qualified beneficiary and the exercise of the benefits
27 provided in the plan by such beneficiary. Qualified
28 beneficiaries shall bear the cost of any laboratory fees
29 associated with enrollment in specific courses. Each
30 qualified beneficiary shall be classified as a resident for
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1 tuition purposes pursuant to s. 240.1201 regardless of his or
2 her actual legal residence.

3 (b) Through the university plan, the advance payment
4 contract shall provide prepaid registration fees for a
5 specified number of undergraduate semester credit hours not to
6 exceed the average number of hours required for the conference
7 of a baccalaureate degree. The cost of participation in the
8 university plan shall be based primarily on the current and
9 projected registration fees within the State University System
10 and the number of years expected to elapse between the
11 purchase of the plan on behalf of a qualified beneficiary and
12 the exercise of the benefits provided in the plan by such
13 beneficiary. Qualified beneficiaries shall bear the cost of
14 any laboratory fees associated with enrollment in specific
15 courses. In the event that a qualified beneficiary fails to
16 be admitted to a state university or chooses to attend a
17 community college, the qualified beneficiary may convert the
18 average number of semester credit hours required for the
19 conference of an associate degree from a university plan to a
20 community college plan and may retain the remaining semester
21 credit hours in the university plan or may request a refund
22 for prepaid credit hours in excess of the average number of
23 semester credit hours required for the conference of an
24 associate degree pursuant to subparagraph (6)(a)7. Each
25 qualified beneficiary shall be classified as a resident for
26 tuition purposes pursuant to s. 240.1201 regardless of his or
27 her actual legal residence.

28 (c) Through the dormitory residence plan, the advance
29 payment contract may ~~shall~~ provide prepaid housing fees for a
30 maximum of 10 semesters of full-time undergraduate enrollment
31 in a state university. ~~Dormitory residence plans are optional~~

1 ~~and may be purchased only in conjunction with a university~~
2 ~~plan.~~ Dormitory residence plans shall be purchased in
3 increments of 2 semesters. The cost of participation in the
4 dormitory residence plan shall be based primarily on the
5 average current and projected housing fees within the State
6 University System and the number of years expected to elapse
7 between the purchase of the plan on behalf of a qualified
8 beneficiary and the exercise of the benefits provided in the
9 plan by such beneficiary. Qualified beneficiaries shall bear
10 the cost of any additional elective charges such as laundry
11 service or long-distance telephone service. Each state
12 university may specify the residence halls or other
13 university-held residences eligible for inclusion in the plan.
14 In addition, any state university may request immediate
15 termination of a dormitory residence contract based on a
16 violation or multiple violations of rules of the residence
17 hall or other university-held residences. Qualified
18 beneficiaries shall have the highest priority in the
19 assignment of housing within university residence halls. In
20 the event that sufficient housing is not available for all
21 qualified beneficiaries, the board shall refund the purchaser
22 or qualified beneficiary an amount equal to the fees charged
23 for dormitory residence during that semester. If a qualified
24 beneficiary fails to be admitted to a state university or
25 chooses to attend a community college that operates one or
26 more dormitories or residency opportunities, or has one or
27 more dormitories or residency opportunities operated by the
28 community college direct-support organization, the qualified
29 beneficiary may transfer or cause to have transferred to the
30 community college, or community college direct-support
31 organization, the fees associated with dormitory residence.

1 Dormitory fees transferred to the community college or
2 community college direct-support organization may not exceed
3 the maximum fees charged for state university dormitory
4 residence for the purposes of this section, or the fees
5 charged for community college or community college
6 direct-support organization dormitories or residency
7 opportunities, whichever is less.

8 (d) A qualified beneficiary may apply a community
9 college plan, university plan, or dormitory residence plan
10 toward any eligible independent college or university. An
11 independent college or university which is located and
12 chartered in Florida, is not for profit, is accredited by the
13 Commission on Colleges of the Southern Association of Colleges
14 and Schools or the Accrediting Commission of the Association
15 of Independent Colleges and Schools, and which confers degrees
16 as defined in s. 246.021 shall be eligible for such
17 application. The board shall transfer or cause to have
18 transferred to the eligible independent college or university
19 designated by the qualified beneficiary an amount not to
20 exceed the redemption value of the advance payment contract
21 within a state postsecondary institution. In the event that
22 the cost of registration or housing fees at the independent
23 college or university is less than the corresponding fees at a
24 state postsecondary institution, the amount transferred shall
25 not exceed the actual cost of registration or housing fees.
26 No transfer authorized pursuant to this paragraph shall exceed
27 the number of semester credit hours or semesters of dormitory
28 residence contracted on behalf of a qualified beneficiary.

29 (e) A qualified beneficiary may apply the benefits of
30 an advance payment contract toward an eligible out-of-state
31 college or university. An out-of-state college or university

1 which is not for profit, is accredited by a regional
2 accrediting association, and which confers baccalaureate
3 degrees shall be eligible for such application. The board
4 shall transfer, or cause to have transferred, an amount not to
5 exceed the redemption value of the advance payment contract or
6 the original purchase price plus 5 percent compounded
7 interest, whichever is less, after assessment of a reasonable
8 transfer fee. In the event that the cost of registration or
9 housing fees charged the qualified beneficiary at the eligible
10 out-of-state college or university is less than this
11 calculated amount, the amount transferred shall not exceed the
12 actual cost of registration or housing fees. Any remaining
13 amount shall be transferred in subsequent semesters until the
14 transfer value is depleted. No transfer authorized pursuant
15 to this paragraph shall exceed the number of semester credit
16 hours or semesters of dormitory residence contracted on behalf
17 of a qualified beneficiary.

18 (11) Moneys paid into or out of the fund by or on
19 behalf of a purchaser or qualified beneficiary of an advance
20 payment contract made under this section, which contract has
21 not been terminated, are exempt, as provided by s. 222.22,
22 from all claims of creditors of the purchaser or the
23 beneficiary. Neither moneys paid into the program nor
24 benefits accrued through the program may be pledged for the
25 purpose of securing a loan.

26 Section 2. Section 42 of chapter 91-201, Laws of
27 Florida, is repealed.

28 Section 3. This act shall take effect July 1, 1997.
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LEGISLATIVE SUMMARY

Revises provisions relating to the Florida Prepaid Postsecondary Education Expense Program as follows: restricts direction of investment; authorizes purchase of advance payment contracts by board members and employees; authorizes rules for maintenance of tax exempt status; authorizes rather than requires dormitory residence advance payment contracts; provides an exemption from securities transactions requirements; provides for refunds associated with conversion of registration plans; and restricts the use of funds. Provides for continuation of the Florida Prepaid Tuition Scholarship Program.