

By Senators Dyer and Horne

6-770-98

1 A bill to be entitled
2 An act relating to postsecondary education;
3 providing legislative intent; providing
4 definitions; establishing the Florida Higher
5 Education Savings Trust; providing for
6 participation agreements; establishing the
7 Florida Higher Education Savings Program;
8 providing for administration of the program and
9 the trust by the State Board of Administration;
10 providing for the investment of funds in the
11 trust; providing for the trust to disburse
12 funds for the payment of higher education
13 expenses of designated beneficiaries; providing
14 for the withdrawal of funds in specified
15 circumstances; providing for reports by the
16 state board to the Governor, the Legislature,
17 depositors, and designated beneficiaries;
18 providing for taxation of the trust; pledging
19 that the state will not alter certain rights
20 under this act or contracts with the trust;
21 providing that this act does not guarantee
22 acceptance into any educational institution;
23 excluding moneys invested in the trust from
24 being considered assets for purposes of
25 financial aid needs testing; providing for
26 liberal construction of this act; providing
27 that this program should be considered a
28 "qualified state tuition program" under federal
29 law; providing for the state board to take
30 action to ensure that the trust complies with
31 certain laws, rules, and regulations;

1 prohibiting the state board from receiving fees
2 from the trust, except for services rendered
3 under a contract; providing severability;
4 providing an effective date.
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6 Be It Enacted by the Legislature of the State of Florida:
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8 Section 1. Accessibility of postsecondary education;
9 legislative intent.--The Legislature recognizes that
10 affordability and accessibility of higher education is
11 essential to the welfare and well-being of the residents of
12 this state and is a critical state interest. Promoting and
13 enhancing a variety of opportunities for enrollment in
14 postsecondary institutions serves a legitimate public purpose.
15 Accordingly, as a supplement to existing programs that promote
16 educational opportunities to attend postsecondary
17 institutions, it is the intent of the Legislature to establish
18 a state trust fund that provides for a program to allow
19 persons to make contributions to an account that is
20 established for the purpose of meeting some or all of the
21 qualified higher education expenses of a designated
22 beneficiary, consistent with federal law authorizing such
23 programs. It is the further intent of the Legislature to
24 privatize the overall administration of such a program to
25 allow for the timely, efficient, and cost-effective conduct of
26 the program.

27 Section 2. Definitions.--As used in sections 1-17 of
28 this act, the term:

29 (1) "State board" means the State Board of
30 Administration.
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1 (2) "Depositor" means any person who makes a deposit,
2 payment, contribution, gift, or other donation to the trust
3 pursuant to a participation agreement.

4 (3) "Designated beneficiary" means:

5 (a) Any individual who is:

6 1. A state resident originally designated in the
7 participation agreement;

8 2. Defined in s. 2032A(e)(2) of the Internal Revenue
9 Code; or

10 3. The recipient of a scholarship from interests in
11 the trust purchased by a state or local government or by an
12 organization described in s. 501(c)(3) of the Internal Revenue
13 Code and qualified under s. 529 of the Internal Revenue Code;
14 or

15 (b) Any other designated beneficiary who qualifies
16 under s. 529 of the Internal Revenue Code and is enrolled in
17 the trust.

18 (4) "Eligible educational institution" means an
19 institution of higher education that qualifies under s. 529 of
20 the Internal Revenue Code as an eligible educational
21 institution.

22 (5) "Internal Revenue Code" means the Internal Revenue
23 Code of 1986, or a subsequent internal revenue code of the
24 United States, as amended.

25 (6) "Participation agreements" means agreements
26 between the trust and depositors for participation in a
27 savings plan for a designated beneficiary.

28 (7) "Qualified higher education expenses" means
29 tuition, room and board, fees, books, supplies, and equipment
30 required for the enrollment or attendance of a designated
31 beneficiary at an eligible educational institution, including

1 undergraduate and graduate schools, and any other higher
2 education expenses that are allowed by s. 529 of the Internal
3 Revenue Code.

4 (8) "Trust" means the Florida Higher Education Savings
5 Trust.

6 Section 3. Florida Higher Education Savings Trust;
7 establishment.--

8 (1) There is created and established within the state
9 board the Florida Higher Education Savings Trust to promote
10 and enhance the affordability and accessibility of higher
11 education for residents of this state. The trust is an
12 instrumentality of the state and shall perform essential
13 governmental functions, as provided in this act. The trust
14 shall receive and hold all payments and deposits or
15 contributions intended for the trust, as well as gifts,
16 bequests, endowments, or federal, state, or local grants and
17 contributions from any other public or private source of
18 funds, and all earnings thereon, until disbursed in accordance
19 with this act.

20 (2) The amounts on deposit in the trust are not the
21 property of the state, and the trust is not a department, an
22 institution, or an agency of the state. Amounts on deposit in
23 the trust must not be commingled with state funds, and the
24 state has no claim to or against, or interest in, such funds.
25 Any contract entered into by, or any obligation of, the trust
26 is not a debt or obligation of the state. The state has no
27 obligation to any designated beneficiary or any other person
28 on account of the trust, and all amounts obligated to be paid
29 from the trust are limited to amounts available for such
30 obligation and on deposit in the trust. The amounts on deposit
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1 in the trust may be disbursed only in accordance with this
2 act.

3 (3) The depositor retains ownership of all
4 contributions made to the trust until the date of distribution
5 to a designated beneficiary. Earnings derived from investment
6 of the contributions are considered to be held in trust for
7 the benefit of the designated beneficiary, except as applied
8 for purposes of maintaining and administering the trust. An
9 interest in the trust may not be used as security for a loan
10 by a designated beneficiary or depositor.

11 (4) All amounts attributable to penalties are to be
12 used for purposes of the trust, and amounts other than
13 contributions which are received by the trust are objects of
14 the trust. Proceeds from penalties must remain with the trust
15 to offset any costs associated with raising cash to make
16 refunds.

17 (5) The trust may not receive deposits in any form
18 other than cash. A depositor or designated beneficiary may
19 direct the investment of any contributions or amounts held in
20 the trust only in accordance with the specific fund options
21 provided for by the trust.

22 (6) The trust shall continue in existence as long as
23 it holds any deposits or has any obligations and until its
24 existence is terminated by law. Upon termination of the trust,
25 any unclaimed assets of the trust revert to the state.

26 Section 4. Participation agreements.--

27 (1) A depositor must designate the name, address,
28 birth date, and social security number of the depositor and of
29 the designated beneficiary who will attend an eligible
30 educational institution. For newborns, the social security
31 number must be provided within 6 months after the date the

1 participation agreement is submitted. Distributions from
2 accounts for which a valid social security number has not been
3 provided may be subject to penalties and withholding taxes at
4 the time of distribution.

5 (2) Participation agreements may be freely amended
6 throughout their terms in order to enable participants to
7 increase or decrease the level of participation, change
8 designated beneficiaries, and carry out similar matters
9 permitted by this act and the Internal Revenue Code.

10 (3) Deposits made to the trust by participants may be
11 in the form of cash only. Depositors may contribute in the
12 form of a lump sum, installments, or, if and when available,
13 electronic funds transfers or employer payroll deductions.

14 (4) Depositors shall demonstrate to the trust the need
15 for any account contributions that are in excess of the
16 projected costs of higher education for a designated
17 beneficiary of that age for an average private college in the
18 United States.

19 (5) If it is determined that the depositor or the
20 designated beneficiary have made any material
21 misrepresentations in the application for a participation
22 agreement or in communication with the trust regarding the
23 program or regarding withdrawal or distribution of funds, the
24 account may be involuntarily liquidated by the trust. If the
25 account is so liquidated, the participant is entitled to a
26 refund less a 15-percent penalty on earnings.

27 Section 5. Florida Higher Education Savings Program;
28 establishment; administration of program and trust.--

29 (1) There is established the Florida Higher Education
30 Savings Program. The state board shall administer the program;
31 however, the state board shall let one or more contracts for

1 the promotion, administration, maintenance, investment,
2 receipt, and disbursement of amounts in the trust. The
3 contract or contracts must be competitively procured, unless
4 the executive director of the state board finds that, in order
5 to facilitate the startup of the trust and the program, it is
6 in the best interests of the state to negotiate directly with
7 one or more providers of such services. It is the intent of
8 the Legislature that the administration of the program be
9 self-funded and self-sustaining and privatized to the maximum
10 extent possible.

11 (2) The state board, on behalf of and for the benefit
12 of the trust, may:

13 (a) Receive and invest moneys in the trust in any
14 instruments, obligations, securities, or property in
15 accordance with section 6 of this act.

16 (b) Establish consistent terms for each participation
17 agreement and bulk deposit and for coupon or installment
18 payments, including, but not limited to:

19 1. The method of payment into the trust by payroll
20 deduction, transfer from bank accounts, or otherwise;

21 2. The termination, withdrawal, or transfer of
22 payments under the trust, including transfers to or from a
23 qualified tuition program established by another state
24 pursuant to s. 529 of the Internal Revenue Code;

25 3. Penalties for distributions not used or made in
26 accordance with s. 529(b)(3) of the Internal Revenue Code;

27 4. Procedures for changing the designated beneficiary;

28 5. Any charges or fees imposed in connection with the
29 administration of the trust; and

30 6. Safeguards that are adequate to prevent
31 contributions on behalf of a designated beneficiary which are

1 in excess of those necessary to provide for the qualified
2 higher education expenses of the beneficiary.

3 (c) Enter into one or more contractual agreements,
4 including, but not limited to, contracts for legal, actuarial,
5 accounting, financial, custodial, advisory, management,
6 administrative, advertising, marketing, and consulting
7 services for the trust, and may pay for such services from the
8 gains and earnings of the trust.

9 (d) Procure insurance in connection with property,
10 assets, activities, or deposits of the trust or contributions
11 to the trust.

12 (e) Apply for, accept, and expend gifts, grants, or
13 donations from public or private sources to enable the trust
14 to carry out its objectives.

15 (f) Adopt rules in accordance with chapter 120,
16 Florida Statutes, for purposes of implementing this act.

17 (g) Sue and be sued.

18 (h) Establish one or more funds within the trust and
19 maintain separate accounts for each designated beneficiary.

20 (i) Take any other action necessary to carry out the
21 purposes of this act and incidental to the duties imposed on
22 the Comptroller.

23 Section 6. Investment of funds in the trust.--

24 (1) The state board shall invest the amounts on
25 deposit in the trust in a manner that is reasonable and
26 appropriate for achieving the objectives of the trust and, in
27 doing so, shall exercise the discretion and care of a prudent
28 person in similar circumstances with similar objectives. The
29 state board shall give due consideration to rate of return,
30 risk, term or maturity, and diversification of the total
31 portfolio within the trust; liquidity; the projected

1 disbursements and expenditures; and the expected payments
2 deposits, contributions, and gifts to be received. Consistent
3 with the legislative intent to privatize the administration of
4 the program and the trust, the state board shall, to the
5 maximum extent possible, contract with one or more entities to
6 make these investment decisions, and such entities shall
7 exercise the same degree of discretion, care, and
8 consideration as is required of the state board under this
9 section. The state board may not require the trust to invest
10 directly in obligations of the state or any political
11 subdivision of the state or in any investment or other fund
12 administered by the state. The assets of the trust must be
13 continuously invested and reinvested in a manner consistent
14 with the objectives of the trust until disbursed for qualified
15 educational expenses, expended on costs incurred in the
16 operation and management of the trust, or refunded to the
17 depositor or designated beneficiary on the conditions provided
18 in the participation agreement.

19 (2) Participation in the trust and the offering and
20 solicitation of the trust are exempt from state securities
21 law. The state board shall obtain written advice of counsel or
22 written advice from the Securities Exchange Commission, or
23 both, that the trust and the offering of participation in the
24 trust are not subject to federal securities laws.

25 Section 7. Payment of higher education expenses.--

26 (1) To withdraw moneys from the trust for the payment
27 of qualified higher education expenses, the trust must first
28 be advised as to which institution the designated beneficiary
29 will attend and the beneficiary's anticipated date of
30 enrollment. The trust shall then require information from the
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1 selected institution which verifies the designated
2 beneficiary's enrollment at the institution.

3 (2) Upon receipt of all required documentation, the
4 trust must make distributions by check, jointly to the
5 specified institution and the designated beneficiary.

6 (3) To make withdrawals from the trust for the payment
7 of off-campus room and board and other allowed, qualified
8 higher education expenses, the trust shall require from the
9 designated beneficiary information that documents the expenses
10 being submitted. If a designated beneficiary resides off
11 campus, the trust shall pay directly to the designated
12 beneficiary an amount equal to the cost of lodging and meal
13 tickets for an academic period as established by the
14 institution for on-campus students.

15 (4) Each distribution must consist of a pro-rata
16 distribution of contributions and earnings and must be made in
17 the manner prescribed by the trust consistent with the
18 regulations of the United States Treasury Department or
19 Internal Revenue Service.

20 (5) All distributions made during a taxable year must
21 be treated as one distribution.

22 Section 8. Withdrawal of funds.--

23 (1) A participant may withdraw funds from the trust.
24 The depositor is entitled to the return of the principal
25 amount of all contributions made by the depositor plus actual
26 investment earnings or minus actual investment losses on the
27 contributions less an administrative fee that must be
28 sufficient to reasonably compensate for the administrative
29 costs incident to the depositor's account.

30 (2) Notwithstanding subsection (1), upon occurrence of
31 any of the following circumstances, an administrative fee may

1 not be levied if a depositor requests withdrawal of funds from
2 the trust:

3 (a) Death of the beneficiary;

4 (b) Permanent disability or mental incapacity of the
5 beneficiary;

6 (c) Scholarship, allowance, or payment received by the
7 beneficiary to the extent that the amount of the refund does
8 not exceed the amount of the scholarship, allowance, or
9 payment in accordance with federal law; or

10 (d) Other circumstances permitted by the Internal
11 Revenue Code.

12 (3) If a participant requests withdrawal or refund of
13 funds contributed to the trust for any reason other than those
14 listed in subsection (2), there shall be imposed a penalty of
15 15 percent of the earnings of the account and any applicable
16 taxes (total account value less aggregate contributions).

17 (4) If an account of a designated beneficiary remains
18 unused for a period of 6 consecutive years after the
19 beneficiary first becomes eligible to attend an eligible
20 educational institution, the balance must be declared
21 unclaimed property and is subject to chapter 717, Florida
22 Statutes.

23 Section 9. Reporting.--Annually, on or before
24 September 30, the state board shall cause to be published a
25 report on the operations of the trust, which must include the
26 receipts, disbursements, assets, investments, liabilities, and
27 administrative costs of the trust for the preceding fiscal
28 year. The state board shall also submit the report to the
29 Governor, the President of the Senate, the Speaker of the
30 House of Representatives, and the minority leaders of the

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1 House and Senate, and shall make the report available to each
2 depositor and designated beneficiary.

3 Section 10. Taxation of trust.--The property of the
4 trust and the earnings on the trust are exempt from all
5 taxation by the state and all political subdivisions of the
6 state.

7 Section 11. State pledge.--The state pledges to
8 depositors, designated beneficiaries, and any party who enters
9 into contracts with the trust that the state will not limit or
10 alter their rights under this act which are vested in the
11 trust or under contract with the trust until such obligations
12 are fully met and discharged and such contracts are fully
13 performed on the part of the trust; however, this section does
14 not preclude such limitation or alteration if adequate
15 provision is made by law for the protection of such depositors
16 and designated beneficiaries pursuant to the obligations of
17 the trust or parties who entered into such contracts with the
18 trust. The trust, on behalf of the state, may include this
19 pledge and undertaking for the state in participation
20 agreements and such other obligations or contracts.

21 Section 12. Enrollment in institutions.--Neither any
22 provision of this act nor any participation agreement
23 constitutes or may be considered to constitute an agreement,
24 pledge, promise, or guarantee of admission or continued
25 enrollment of any designated beneficiary or any other person
26 to any eligible educational institution in the state or to any
27 other institution of higher education.

28 Section 13. Exclusion from financial aids needs
29 test.--Notwithstanding any other provision of general or
30 special law, moneys invested in the trust may not be

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1 considered an asset for purposes of financial aid needs
2 testing.

3 Section 14. Continued compliance with federal and
4 state law.--This act shall be liberally construed in order to
5 effectuate the purposes and intent of the act. It is the
6 intent of the Legislature that the tuition savings program
7 established in this act be a "qualified state tuition program"
8 under s. 529 of the Internal Revenue Code. The state board and
9 the executive director of the state board shall take any
10 action necessary to ensure that the trust complies with all
11 applicable requirements of federal and state laws, rules, and
12 regulations to the extent necessary for the trust to
13 constitute a qualified state tuition program under s. 529 of
14 the Internal Revenue Code.

15 Section 15. Administrative fee.--The state board is
16 not entitled to receive a fee from the trust; however, the
17 state board may receive a fee for services rendered to the
18 trust pursuant to a contract.

19 Section 16. If any provision of this act or the
20 application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the act which can be given effect without the
23 invalid provision or application, and to this end the
24 provisions of this act are declared severable.

25 Section 17. This act shall take effect upon becoming a
26 law.

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29 SENATE SUMMARY

30 Provides for the creation of the Florida Higher Education
31 Savings Trust and the Florida Higher Education Savings
Program, to be administered by the State Board of
Administration. (See bill for details.)