By Representatives Fasano, Boyd, Wise, K. Pruitt, Edwards, Melvin, Posey, Lawson and Kelly

A bill to be entitled

An act relating to postsecondary education; creating s. 240.555, F.S.; establishing the Florida Higher Education Savings Program; providing intent; providing definitions; providing for establishment and administration of the Florida Higher Education Savings Trust; providing for participation agreements; providing for investment of funds in the trust; providing for payment of higher education expenses from the trust; providing for withdrawals from the fund; providing penalties; requiring annual reporting; providing for exemption from state and local taxes; providing a state pledge; providing applicability with respect to enrollment in institutions of higher education; providing that moneys in the trust are not assets for financial aid needs testing; providing for liberal construction; requiring certain legal opinions prior to implementation; providing for startup funding; providing severability; providing an effective date.

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

Section 1. Section 240.555, Florida Statutes, is created to read:

<u>240.555 Florida Higher Education Savings Program.--</u>

<u>(1) The Legislature recognizes that affordability and accessibility of higher education is essential to the welfare and well-being of the residents of the state and is a critical</u>

state interest. Promoting and enhancing a variety of opportunities to attend postsecondary institutions serves a legitimate public purpose. Accordingly, as a supplement and option to existing programs that promote educational opportunities to attend postsecondary institutions such as the Florida Prepaid Postsecondary Education Expense Program, it is the intent of the Legislature to establish a state higher education trust program to allow persons to make contributions to a trust account that is established for the purpose of meeting some or all of the qualified higher education expenses of a designated beneficiary, consistent with federal law authorizing such programs. It is the intent of the Legislature that this trust program, which does not guarantee tuition to any institution, provide a choice to persons who determine that the overall educational needs of their families are best suited to a savings program, those who may wish to save to meet postsecondary educational needs beyond the traditional 4-year curriculum, or those whose financial planning circumstances may better fit a savings plan. It is further the intent of the Legislature to privatize the overall administration of such a program to allow for the timely, efficient, and cost-effective conduct of the program.

(2) As used in this section:

(a) "Commissioner" means the Commissioner of Education.

(b) "Depositor" means any person making a deposit, payment, contribution, gift, or other expenditure to the trust pursuant to a participation agreement.

(c) "Designated beneficiary" means:

1. Any individual state resident originally designated in the participation agreement;

CODING:Words ~~stricken~~ are deletions; words underlined are additions.

2. Any individual defined in s. 2032A(e)(2) of the Internal Revenue Code;

3. Any individual receiving a scholarship from interests in the trust purchased by a state or local government or an organization described in s. 501(c)(3) of the Internal Revenue Code and qualified under s. 529 of the Internal Revenue Code; or

4. Any other individual enrolled in the trust who qualifies as a designated beneficiary under s. 529 of the Internal Revenue Code.

(d) "Eligible educational institution" means an institution of higher education qualifying under s. 529 of the Internal Revenue Code as an eligible educational institution.

(e) "Internal Revenue Code" means the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

(f) "Participation agreement" means an agreement between the trust and a depositor for participation in a savings plan for a designated beneficiary.

(g) "Program" means the Florida Higher Education Savings Program.

(h) "Qualified higher education expenses" means tuition, room and board, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, including undergraduate and graduate schools, and any other higher education expenses that may be permitted under s. 529 of the Internal Revenue Code.

(i) "Trust" means the Florida Higher Education Savings Trust.

(3)(a) There is created and established within the Office of the Commissioner of Education the Florida Higher Education Savings Trust to promote and enhance the affordability and accessibility of higher education in the state. The trust shall constitute an instrumentality of the state and shall perform essential governmental functions, as provided in this section. The trust shall receive and hold all payments, deposits, and contributions intended for the trust, as well as gifts, bequests, endowments, and federal, state, or local grants and any other public or private source of funds and all earnings, until disbursed in accordance with subsection (7) or subsection (8).

(b) The amounts on deposit in the trust shall not constitute property of the state, and the trust shall not be construed to be a department, institution, or agency of the state. Amounts on deposit in the trust shall not be commingled with state funds, and the state shall have no claim to or against, or interest in, such funds, except as provided by contract as set forth in subsection (16). Any contract entered into by or any obligation of the trust shall not constitute a debt or obligation of the state. The state shall have no obligation to any designated beneficiary or any other person on account of the trust, and all amounts obligated to be paid from the trust shall be limited to amounts available for such obligation on deposit in the trust. The amounts on deposit in the trust may only be disbursed in accordance with the provisions of this section. Each participation agreement shall clearly state that the contract is not a debt or obligation of the state, the Department of Education, or any eligible educational institution.

(c) The depositor retains ownership of all amounts on deposit in his or her account with the trust up to the date of distribution to a designated beneficiary. Earnings derived from investment of the contributions are considered to be held in trust in the same manner as contributions, except as applied for purposes of the designated beneficiary and for purposes of maintaining and administering the trust and the program and repaying any advancement of funds as provided in this section. Nothing in this paragraph or in any other provision of this section shall permit any interest in the trust to be used as security for a loan by a designated beneficiary or depositor.

(d) All amounts attributable to penalties shall be used for purposes of the trust, and other amounts received other than contributions shall be considered properties of the trust. Proceeds from penalties shall remain with the trust and may be used for any costs or purposes of the trust.

(e) The trust may not receive deposits in any form other than cash. No depositor or designated beneficiary may direct the investment of any contributions or amounts held in the trust other than the specific fund options provided for by the trust, if any.

(f) The trust shall continue in existence as long as it holds any deposits or has any obligations and until its existence is terminated by law. Upon termination of the trust, any unclaimed assets in the trust shall revert to the state in accordance with general law regarding unclaimed property.

(4)(a) A depositor must designate the name, address, date of birth, and social security number for the depositor and the designated beneficiary who will attend an eligible educational institution. For newborns, the social security number must be provided within 6 months after the date the participation agreement is submitted. Distributions from accounts that lack a valid social security number may be subject to penalties and withholding taxes at the time of distribution.

(b) Participation agreements may be freely amended throughout their terms in order to enable depositors to increase or decrease the level of participation, change designated beneficiaries, and carry out similar matters permitted by this section and the Internal Revenue Code.

(c) Deposits to the trust by depositors may only be in cash. Depositors may contribute in a lump sum, in installments, or, when and if available, through electronic funds transfer or employer payroll deductions.

(d) Depositors shall be required to demonstrate to the trust the need for account contributions in excess of the projected costs of higher education for a designated beneficiary of that age for an average national private college.

(e) If it is determined that the depositor or the designated beneficiary has made any material misrepresentation in the application for a participation agreement or in any communication with the trust regarding the program, especially withdrawal or distribution of funds therefrom, then the account may be involuntarily liquidated by the trust. If the account is so liquidated, the depositor shall be entitled to a refund, subject to a 15-percent penalty or such lower amount as provided by the Internal Revenue Code.

(5)(a) To provide for regulation and administration of the trust, there is established the Florida Higher Education Savings Program. The program shall be administered by the

Commissioner of Education; however, the commissioner shall, to the maximum extent possible, let one or more contracts for the promotion, management, administration, maintenance, accounting, investment, receipt, and disbursement of amounts in the trust. Such contract or contracts shall be competitively procured, unless the commissioner finds that in order to facilitate the startup of the trust and program it is in the best interests of the state to negotiate directly with one or more providers of such services. Such contract or contracts shall be for a term determined by the commissioner. It is the intent of the Legislature that the administration of the program be self-funded, self-sustaining, and privatized to the maximum extent possible.

(b) The commissioner, on behalf and for the benefit of the trust, may:

1. Receive and invest moneys in the trust in any instruments, obligations, securities, or property in accordance with subsection (6).

2. Establish consistent provisions for each participation agreement, bulk deposit, coupon, or installment payment, including, but not limited to:

a. The method of payment into the trust by payroll deduction, transfer from a bank account, or other means.

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

c. Penalties for distributions not used or made in accordance with s. 529 of the Internal Revenue Code.

d. The requirements for changing the identity of the designated beneficiary.

e. Any charges or fees in connection with the administration of the trust.

f. Adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

3. Enter into one or more contractual agreements, including, but not limited to, contracts for legal, actuarial, accounting, financial, custodial, advisory, management, administrative, advertising, marketing, and consulting services for the trust, and pay for such services from the gains and earnings of the trust or from funds advanced as described in subsection (16). Any such contractual agreement shall be with an entity or entities experienced in managing or providing the services called for in the contract.

4. Procure insurance in connection with the trust's property, assets, or activities or in connection with deposits in or contributions to the trust.

5. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable the trust to carry out its objectives.

6. Adopt rules in accordance with chapter 120 for purposes of this section.

7. Sue and be sued.

8. Maintain separate accounts for each designated beneficiary and establish other accounts within the trust as necessary to appropriately account for all funds held in the trust.

9. Hire necessary staff and lease or purchase necessary office space or equipment and other services

necessary to carry out the purposes of this program, the costs of which are to be paid as provided in subsection (16).

10. Take any other action necessary to carry out the purposes of this section and incidental to the duties imposed on the commissioner.

(6)(a) The commissioner shall invest the amounts on deposit in the trust in a manner reasonable and appropriate to achieve the objectives of the trust, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. The commissioner shall give due consideration to rate of return, risk, term of maturity, diversification of total portfolio within the trust, liquidity, projected disbursements and expenditures, and expected payments, deposits, contributions, and gifts to be received. Moneys in the trust are exempt from the investment requirements of s. 18.10, but are subject to the investment restrictions contained in s. 215.472. Consistent with the legislative intent to privatize the administration of the program and the trust, the commissioner shall, to the maximum extent possible, contract with one or more qualified, experienced entities to make these investment decisions, and such entities shall be required to exercise the same degree of discretion, care, and consideration described in this paragraph. The commissioner shall not require the trust to invest directly in obligations of the state or any political subdivision of the state or in any investment or other fund administered by the state. The assets of the trust shall be continuously invested and reinvested in a manner consistent with the purposes of the trust, expended on expenses incurred by the operation and management of the trust and program, or refunded to the depositor or designated beneficiary on the conditions provided in the participation agreement.

(b) Participation in the trust and the offering and solicitation of the trust are exempt from state securities law. In addition, implementation of this program shall not begin until the commissioner has obtained, in addition to the opinion required in subsection (15), written advice of counsel that the trust and the offering of participation in the trust are not subject to federal securities laws.

(7)(a) Before authorizing the withdrawal of any moneys from the trust for the payment of qualified higher education expenses of a designated beneficiary, the trust must be advised of the qualified educational institution the designated beneficiary will attend and the anticipated date of enrollment. The trust shall then require information from the selected institution reflecting the designated beneficiary's enrollment at such institution.

(b) Upon receipt of all required documentation, the trust shall make distributions by check to the specified institution and the designated beneficiary jointly.

(c) Before authorizing withdrawals from the trust for payment of off-campus room and board and other allowed qualified higher education expenses, the trust shall require information from the designated beneficiary reflecting the expenses being submitted. If a designated beneficiary resides off campus, the trust shall pay directly to the designated beneficiary an amount equal to the cost of lodging and meal tickets for an academic period as established by such institution for on-campus students; provided, however, that in no event may any disbursement exceed any maximum amount established by the Internal Revenue Code. Funds may only be disbursed to a designated beneficiary for room and board if the designated beneficiary is enrolled at an eligible educational institution at least half time, or such other enrollment requirement as may be imposed by the Internal Revenue Code or Internal Revenue Service regulations.

(d) Each distribution shall consist of a pro rata distribution of contributions and earnings and shall be in the manner prescribed by the commissioner, consistent with the regulations of the United States Treasury Department or Internal Revenue Service.

(e) All distributions made during a taxable year shall be treated as one distribution.

(8)(a) A depositor may withdraw funds from the trust. The depositor shall be entitled to the return of the principal amount of all contributions made by the depositor, plus actual investment earnings or minus actual investment losses on the contributions, less a penalty set forth in paragraph (c).

(b) Notwithstanding paragraph (a), a penalty may not be levied if a depositor requests a withdrawal of funds from the trust due to any of the following circumstances:

1. Death of the beneficiary.

2. Permanent disability or mental incapacity of the beneficiary.

3. Scholarship, allowance, or payment received by the beneficiary to the extent that the amount of the refund does not exceed the amount of the scholarship, allowance, or payment in accordance with federal law.

4. Other circumstances permitted by the Internal Revenue Code or Internal Revenue Service regulations.

(c) If a depositor requests a withdrawal or refund of funds contributed to the trust for any cause other than one listed in paragraph (b), there shall be imposed a penalty of 15 percent of the earnings of the account and any applicable taxes, or such lower penalty as may be prescribed by the Internal Revenue Code or Internal Revenue Service regulations. Earnings shall be calculated as the total account value less the aggregate contributions.

(d) If an account of a designated beneficiary remains unused for a period of 5 consecutive years after the designated beneficiary first becomes eligible to attend an eligible educational institution, the balance of the account, after notice to the depositor, shall be declared unclaimed and abandoned property and subject to disposition as such under chapter 717. Time expended by a designated beneficiary as an active duty member of any of the Armed Services of the United States shall be added to this period.

(9) On or before September 30 each year, the commissioner shall cause to be published a report on the operations of the trust in the form of an audited financial statement, including the receipts, disbursements, assets, investments, liabilities, and administrative costs of the trust for the prior fiscal year. The first report shall be due September 30, 1999. The commissioner shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the House and Senate and shall make the report available to each depositor and designated beneficiary. In addition, the accounts of the trust shall be subject to annual audit by the Auditor General at no cost to the trust or program.

(10) Deposits and contributions to the trust, the property of the trust, and the earnings on the trust shall be

exempt from all taxation by the state and all political subdivisions of the state.

(11) The state, a county, a municipality, a political subdivision, the trust, or the program may, by contract or collective bargaining agreement, agree with any employee to remit payments for deposit into the trust through payroll deductions made by the appropriate office or officers of the state, state agency, county, municipality, or political subdivision. Such payments into the trust shall be treated as all other deposits to the trust.

(12) The state pledges to depositors, designated beneficiaries, and other parties who enter into contracts with the trust under this section that the state will not limit or alter the rights under this section vested in the trust or contracts with the trust until such obligations are fully met and discharged and such contracts are fully performed on the part of the trust, provided that nothing in this subsection shall preclude such limitation or alteration if adequate provision is made by law for the protection of such depositors and designated beneficiaries pursuant to the obligations of the trust and other parties who entered into such contracts with the trust. The trust, on behalf of the state, may include this pledge and undertaking for the state in participation agreements and such other obligations or contracts.

(13) Nothing in this section or in any participation agreement shall constitute or be deemed to constitute an agreement, pledge, promise, or guarantee of admission or continued enrollment of any designated beneficiary or any other person to or in any eligible educational institution in the state or any other eligible educational institution. Each participation agreement shall clearly state that participation

in the program and trust does not guarantee admission or continued enrollment at any eligible educational institution.

(14) Each participation agreement shall clearly state that participation in the program and the trust does not guarantee that sufficient funds will be available to cover all qualified higher education expenses for any designated beneficiary.

(15) This section shall be liberally construed in order to effectuate the purposes and intent of this section. It is the intent of the Legislature that the tuition savings program established in this section qualify as a qualified state tuition program under s. 529 of the Internal Revenue Code. The commissioner shall take any action necessary to ensure that the trust complies with all applicable requirements of federal and state laws, rules, and regulations to the extent necessary for the trust to constitute a qualified state tuition program under s. 529 of the Internal Revenue Code. Implementation of the program shall not begin until the commissioner has received, in addition to the advice of counsel required in paragraph (6)(b), a favorable opinion from counsel to the effect that the program constitutes a qualified state tuition program under s. 529 of the Internal Revenue Code. However, upon the effective date of this act, the commissioner may expend program funds to retain legal service to render the required opinions, to be recovered as provided in subsection (16).

(16) In order to pay for startup costs and expenses, including legal fees, associated with the legal opinions required in paragraph (6)(b) and subsection (15) and the cost of issuing a request for proposals to privatize the administration and management of the program as described in

<u>paragraph (5)(a), if any, the commissioner may advance to the trust and program up to $75,000 during the first 12 months after the effective date of this act. Any moneys so advanced, plus interest, must be repaid to the commissioner by the trust and the program no later than 24 months after the trust has begun accepting deposits. Such costs may also be defrayed in whole or in part by fees to be assessed by the commissioner to entities responding to any competitive solicitation for the trust or program. Interest shall be computed on the average monthly balance outstanding at a rate equal to the prime interest rate plus 1 percent. Ongoing administrative costs incurred by the commissioner in monitoring the contract or contracts relating to the trust and the program shall be recovered from the successful contractor or contractors, which funds may come from investment earnings accruing to the trust. The commissioner is not entitled to a fee from the trust; however, this does not preclude the commissioner from receiving a fee for services rendered to the trust pursuant to a contract.</u>

<u>(17) The trust is exempt from the deduction required by s. 215.20(1).</u>

<u>(18) Members and employees of the Office of the Commissioner of Education, the State Board of Education, or the Department of Education are not prohibited from individually becoming depositors or designated beneficiaries by virtue of their fiduciary or other responsibilities with the commissioner.</u>

Section 2. <u>If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the</u>

invalid provision or application, and to this end the provisions of this act are declared severable.

Section 3. This act shall take effect upon becoming a law.

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HOUSE SUMMARY

Establishes the Florida Higher Education Savings Program. Provides intent and definitions. Provides for establishment and administration of the Florida Higher Education Savings Trust. Provides for participation agreements, investment of funds in the trust, payment of higher education expenses from the trust, and withdrawals from the trust, including certain penalties applicable thereto. Requires annual reporting. Provides for exemption from state and local taxes. Provides a state pledge. Provides applicability with respect to enrollment in institutions of higher education. Provides that moneys in the trust are not assets for financial aid needs testing. Provides for liberal construction. Requires certain legal opinions prior to implementation. Provides for startup funding. See bill for details.