

STORAGE NAME: h1617a.go

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1617

RELATING TO: Public Records/Florida College Savings Program

SPONSOR(S): Representative Melvin and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COLLEGES & UNIVERSITIES YEAS 6 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates s. 240.554, F.S., which provides an exemption from the public records laws for certain account information relating to the Florida College Savings Program that identifies the benefactor or designated beneficiary. However, the bill authorizes the Florida Prepaid College Board to release this information to the institution of higher education in which the designated beneficiary may enroll or is enrolled, but the institution is required to maintain the confidentiality of the information.

The public records exemption created by this bill will be repealed on October 2, 2005, under the Open Government Sunset Review Act of 1995, unless the Legislature reenacts the exemption.

This bill provides a statement of public necessity.

This bill does not appear to have a fiscal impact on state or local governments.

This bill takes effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

FLORIDA COLLEGE SAVINGS PROGRAM

The State Legislature created the Florida College Savings Program in 1999 to allow individuals to contribute funds to an account where the funds are subsequently invested in order to pay for the higher education expenses of designated beneficiaries (ch. 99-220, L.O.F.). The earnings generated from the investments are not taxed while the funds are in the program. Instead, the earnings generated from the investments are taxed once they are used to pay for a beneficiary's higher education expenses. However, the earnings generated are taxed against a beneficiary's gross income and not a contributor's gross income.

The Florida College Savings Program is designed to be classified as a Qualified State Tuition Program. A Qualified State Tuition Program is an additional vehicle for saving for a college or graduate education. The provisions contained in section 529, Internal Revenue Code, outline the criteria a program must meet in order to be classified as a Qualified State Tuition Program. A Qualified State Tuition Program must be established and maintained by a state or state agency, and may permit a person to make contributions to an account that is established for the purpose of paying the qualified higher education expenses of a designated beneficiary of the account. These qualified higher education expenses include tuition, fees, books, supplies, equipment, and room and board. The program allows a person to contribute funds to a special account that are subsequently invested. The earnings generated from the investments are not taxed while the funds are in the program. Instead, the earnings generated from the investments are taxed once they are used to pay for a beneficiary's higher education expenses. However, the earnings generated are taxed against a beneficiary's gross income and not a contributor's gross income.

In order for a state program to be classified as a Qualified State Tuition Program, it must comply with various federal requirements, including:

- funds contributed to the program must be made in cash;
- penalties must be assessed on any refunds of earnings from the program which are not used to pay for qualified higher education expenses;
- penalties may not be assessed on any refunds of earnings from the program if a beneficiary receives a scholarship, dies, or becomes disabled;

- the program must establish a separate account for each beneficiary;
- the program must establish adequate safeguards to prevent contributions that exceed projected higher education expenses;
- contributors and beneficiaries must not be permitted to direct the investment of contributions;
- earnings from the program can not be used to secure a loan; and
- contributions to the program can not be viewed as a taxable gift.

The Florida College Savings Program is administered by the Florida Prepaid College Board. According to the Florida Prepaid College Board, the program should be implemented by the end of the current year.

PUBLIC RECORDS LAWS

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

"Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution."

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

"Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee."

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption to public records laws may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose.

An identifiable public purpose is served if the exemption meets one of the following purposes:

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- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Also, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption.

C. EFFECT OF PROPOSED CHANGES:

This bill provides an exemption from the public records laws for certain account information relating to the Florida College Savings Program that identifies the benefactor or designated beneficiary. However, the bill authorizes the Florida Prepaid College Board to release this information to the institution of higher education in which the designated beneficiary may enroll or is enrolled, but the institution is required to maintain the confidentiality of the information.

The public records exemption created by this bill is subject to the Open Government Sunset Review Act of 1995, s. 119.15, F.S., and will be repealed on October 2, 2005, unless the Legislature reenacts the exemption.

This bill provides a statement of public necessity.

This bill becomes effective on July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Creates section 240.554, F.S., to (1) provide an exemption from the public records laws for certain account information relating to the Florida College Savings Program that identifies the benefactor or designated beneficiary; (2) authorize the Florida Prepaid College Board to release this information to the institution of higher education in which the designated beneficiary may enroll or is enrolled; (3) require the institution to maintain the confidentiality of the information; and (4) stipulate that the public records exemption must be repealed on October 2, 2005, unless the Legislature reenacts the exemption.

SECTION 2: Includes a statement of public necessity.

SECTION 3: Establishes an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact.

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 action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

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