

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 836

SPONSOR: Senator Horne

SUBJECT: Public Records/College Savings Program

DATE: January 27, 2000 REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR   | REFERENCE | ACTION           |
|----|--------------|------------------|-----------|------------------|
| 1. | <u>White</u> | <u>O'Farrell</u> | <u>ED</u> | <u>Favorable</u> |
| 2. | _____        | _____            | <u>RC</u> | _____            |
| 3. | _____        | _____            | _____     | _____            |
| 4. | _____        | _____            | _____     | _____            |
| 5. | _____        | _____            | _____     | _____            |

## I. Summary:

This bill authorizes an exemption from public records laws for information that identifies a benefactor, a designated beneficiary, or any details about their individual accounts in the Florida College Savings Program. The Florida Prepaid College Board may release the information to the institution of higher education in which the designated beneficiary may enroll or is enrolled, but the institution must maintain the confidentiality of the information.

This bill creates section 240.554, Florida Statutes, and provides a statement of public necessity.

## II. Present Situation:

### Florida College Savings Program

The 1999 Legislature created s. 240.553, F.S., the Florida College Savings Program, to authorize tax deductible investments to pay for the cost of higher education for a designated beneficiary (SB 1984, ch 99-220, L.O.F.). A companion bill, SB 1980, would have created an exemption from Florida's public records laws for contributions made to the College Savings Program, but that bill did not become a law. Without the authority to protect the records, the administrators of the program must make available to the public the identities of beneficiaries and donors and the amounts of contributions, along with other personal information included in the records.

### Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides the right to access any public records in connection with official state business, unless the records are specifically exempted. This section provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a law 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 public access to public records. Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption 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 three criteria and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government. The exemption is justified if it:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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
3. 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.

#### **Prepaid College Programs and the I.R.S.**

Section 529, Internal Revenue Code, establishes the Qualified State Tuition Program, which is a vehicle for saving for a college or graduate education. 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 to pay the qualified higher education expenses of a designated beneficiary of the account.

These accounts will provide records relating to a benefactor's confidential financial investments and personal information that identifies the benefactor and the beneficiary. If the records were available to the public, it would be a disincentive to participation. Therefore, an exemption from the public records laws for these records is justified by the first criterion above, because the program could not be conducted without participants.

### **III. Effect of Proposed Changes:**

This bill authorizes an exemption from public records laws for information that identifies a benefactor, a designated beneficiary, or any details about their individual accounts in the Florida College Savings Program. The Florida Prepaid College Board may release the information to the institution of higher education in which the designated beneficiary may enroll or is enrolled, but the institution must maintain the confidentiality of the information.

The exemption is repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.