

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1655 CS

Prepaid College Board Programs

**SPONSOR(S):** Arza

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1966

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Colleges &amp; Universities Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Hatfield</u>	<u>Tilton</u>
2) <u>Education Appropriations Committee</u>	<u></u>	<u>Hammock</u>	<u>Hamon</u>
3) <u>Education Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill:

- Authorizes the Florida Prepaid College Board (the Board) to establish a simplified procedure to transfer ownership of an advance payment contract or participation agreement in the event of the death of the purchaser whether or not the purchaser's estate will be formally probated.
- Expands eligibility to Southern Association of Colleges and Schools (SACS) or Accrediting Council for Independent Colleges and Schools (ACICS) accredited, for-profit, degree granting colleges and universities in Florida; and out-of-state colleges or universities that are for-profit, accredited by a regional accrediting association, and confer degrees.
- Requires institutions to allow the Board to review all advertising materials that reference the Florida Prepaid College Program.
- Expands the Florida Prepaid Scholarship Program's (Scholarship Program) mandate and provides that the Scholarship Program may also award scholarships to children of members of the Armed Forces or Coast Guard who died while participating in the combat theater of operations for Iraqi Freedom or Enduring Freedom after June 30, 2005. The bill provides that the children must have been residents of Florida at the time of their parent's death.
- Provides an effective date of July 1, 2005.

The bill appears to have a no fiscal impact on state or local government and a positive fiscal impact on the private sector. See FISCAL COMMENTS section for further details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1655b.EDAS.doc

DATE: 4/12/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill requires an application process for an heir of a deceased purchaser or a deceased benefactor who requires transfer of ownership of a Florida Prepaid College Program advance payment contract or participation agreement. The bill requires the Florida Prepaid College Board to specify by rule what must be included in the applications and to review all applications.

Empower families—The bill provides a process for family members to transfer educational funds that were purchased by persons who die without a will or any direction as to ownership of assets. The bill also provides for the inclusion of children, who have lost or may lose a parent in one of the current military conflicts, as those eligible for scholarships from the Prepaid Scholarship Program, if they are residents of Florida at the time of their parent's death.

#### B. EFFECT OF PROPOSED CHANGES:

### GENERAL BACKGROUND

The Florida Prepaid College Program (Florida Prepaid) is one of many state and federal programs created to encourage families to save for future higher education expenses. It was established in 1987 to allow Florida residents to pay the cost of higher education in advance at a fixed level and with a statutory state guarantee.<sup>1</sup>

The program allows the purchaser to establish an account for a beneficiary (the future college student) and to lock in the future cost of a two-year community college program, a four-year university program, or a combination of two years of each. Account holders may make lump sum or periodic payments, and they may purchase local fee and dormitory plans in addition to the tuition plans. Prices are based on the beneficiary's age and actuarial assumptions about rates of tuition, fee, and dormitory cost inflation and investment return.<sup>2</sup>

Florida Prepaid is the largest in the nation and in January 2005, the program sold its one millionth contract. Florida Prepaid is administered by the Florida Prepaid College Board (the Board), which also administers the new Florida College Investment Plan, which began operations in November 2002.<sup>3</sup> The Board is administratively housed in the State Board of Administration (SBA), which provides administrative and some investment services and approves the Board's Comprehensive Investment Strategy. Otherwise, the Board operates its programs independently.<sup>4</sup>

### ADVANCED PAYMENT CONTRACTS & PARTICIPATION AGREEMENTS

#### Background

Currently, Florida Prepaid advance payment contracts or participation agreements allow a purchaser to make a designation of a co-purchaser on the contract who will become account owner in the event that the original contract purchaser dies.<sup>5</sup> However, according to Florida Prepaid representatives, many people do not take advantage of the opportunity to designate a co-purchaser on their prepaid contracts

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<sup>1</sup> See s. 1009.97, F.S.

<sup>2</sup> See s. 1009.98, F.S.

<sup>3</sup> See s. 1009.981, F.S. and information from the presentation by Florida Prepaid to the House Colleges and Universities Committee, January 11, 2005.

<sup>4</sup> See ss. 1009.971 and 1009.973, F.S.

<sup>5</sup> See ss. 1009.98 and 1009.981, F.S.

and once the original purchaser dies, ownership of the contract is in question. As the Florida Prepaid program gets older, the age of account purchasers increases and the account ownership problem increases exponentially.

Currently, the Board must require that in the event of a contract purchaser's death, a person who wishes to transfer ownership of an advance payment contract or participation agreement must provide a copy of the deceased purchaser's will and letters of administration from an official probate proceeding, pursuant to Florida probate code. There is no procedure set out in statute or rule that allows a person to transfer ownership of an advance payment contract or participation agreement if the deceased purchaser's estate is not probated. Florida Prepaid representatives report that many estates are not probated and it can be cost prohibitive if the prepaid account is the only asset. The cost of probating an estate can range from \$1,000 to \$3,000. When the asset in question only has a cash value of \$3,500, it is not logical to proceed through an official probate proceeding. To add to the problem, many account purchasers die without a will or any direction as to ownership of assets.

In order to deal with these types of accounts, currently the Board and the Board's General Counsel create, for each individual account where ownership of the account is in question, a Joint Stipulation and Release document for the possible beneficiaries and heirs of the deceased contract purchaser. If all beneficiaries and heirs agree to execute the document, a refund of the contract may be made; however, this is a time consuming and expensive process.

### **Effects of Proposed Changes**

The bill amends sections of Part IV of ch. 1009, F.S. relating to Florida Prepaid.

The bill authorizes the Board to establish a simplified procedure to transfer ownership of an advance payment contract or participation agreement in the event of the death of the purchaser whether or not the purchaser's estate will be formally probated.

The bill provides for an heir of a deceased purchaser or a deceased benefactor to make an application to the Board under oath for a change in the purchaser or benefactor and, upon receipt of a completed application, the Board may change the ownership of the advance payment contract or participation agreement, as appropriate, to the heir.

The bill requires the Board to specify by rule the information that must be included in the application. When the application is made by an heir of a deceased purchaser or deceased benefactor who died intestate, it is not necessary to accompany the application with an order of a probate court if the heir files with the Board an affidavit stating that the estate is not indebted and the surviving spouse and the heirs, if any, have amicably agreed among themselves upon a division of the estate. If the deceased purchaser or deceased benefactor died testate, the application must be accompanied by a certified copy of the will, if probated, and an affidavit stating that the estate is solvent with sufficient assets to pay all just claims or, if the will is not being probated, by a sworn copy of the will and an affidavit stating that the estate is not indebted.

Upon the approval by the Board of an application from an heir, the heir will become the purchaser of the advance payment contract or the benefactor of the participation agreement.

The bill provides that this provision does not apply when a purchaser or benefactor has designated in writing to the Board the person who will succeed to the ownership of the advance payment contract or participation agreement in the event of the purchaser's or benefactor's death, and that person survives the purchaser or benefactor.

According to Florida Prepaid representatives, by instituting this new procedure for transfer of account ownership, the Board will be able to create a standardized form for the heir (or heirs) of an account owner to complete and send back to effectuate the change in account ownership. The Board will be

able to process changes in account ownership whether account owners died testate or intestate and the required documents and procedure will be clearly set out in statute and rule. The procedure set out in this bill will save the Board both time and money.

The procedure authorized by this bill is similar to one used by the Department of Motor Vehicles for change in title of vehicles when the vehicle's owner is deceased.<sup>6</sup>

## **INSTITUTIONS THAT MAY RECEIVE PREPAID PLANS**

### **Background**

Currently, a qualified beneficiary may apply the benefits of an advanced payment contract toward:

- An independent college or university that is located and chartered in Florida, that is not-for-profit, that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS) or the Accrediting Council for Independent Colleges and Schools (ACICS), and that confers degrees as defined in s. 1005.02, F.S.
- An out-of-state college or university that is not-for-profit and is accredited by a regional accrediting association, and that confers degrees.
- An applied technology diploma program or career certificate program conducted by a community college listed in s. 1004.02(2), F.S., or career center operated by a district school board.

### **Effects of Proposed Changes**

The bill removes the requirement that an institution be not-for-profit, expanding those institutions eligible to receive Florida Prepaid plans to for-profit institutions that are:

- SACS or ACICS accredited, degree granting colleges and universities in Florida; and
- Out-of-state colleges or universities that are accredited by a regional accrediting association and confer degrees.

According to Florida Prepaid representatives, by providing for-profit institutions the ability to receive Florida Prepaid plans, 3 additional institutions will be eligible.

The bill also allows the Board to refuse to transfer the benefits of advance payment contracts to an otherwise eligible educational institution if the institution distributes materials describing the transfer of the benefits of advance payment contracts that have not been approved by the Board.

## **FLORIDA PREPAID TUITION SCHOLARSHIP PROGRAM**

### **Background**

The Florida Prepaid College Foundation (Foundation) was established in 1990 as a direct-support organization of the Board.<sup>7</sup> The Foundation is a 501(c)(3) corporation and the charitable arm of the Board. The Foundation established Project STARS, which, pursuant to s. 1009.984, F.S., provides scholarships for economically disadvantaged youth who remain drug and crime free.

According to Florida Prepaid representatives, each year, a number of Florida Prepaid advance payment contracts and participation agreements are terminated or cancelled by the Board for various reasons enumerated by law.<sup>8</sup> After 7 years, unclaimed refunds for terminated accounts and unclaimed credit balances left in accounts revert to the Florida Prepaid College Trust Fund (Trust Fund) and may

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<sup>6</sup> See s. 319.28, F.S.

<sup>7</sup> See s. 1009.983, F.S.

<sup>8</sup> See Part IV of ch. 1009, F.S., that provides for Prepaid College Board Programs.

be transferred to the Florida Prepaid Tuition Scholarship Program (Scholarship Program) to provide scholarships for the economically disadvantaged youth who remain drug and crime free.<sup>9</sup>

The Foundation has also established other initiatives such as the Fallen Soldiers program that honors Florida's soldiers by providing four year university tuition, local fee and 1-year dormitory scholarships to all children of Florida soldiers who have given their lives in Iraq or Afghanistan. To date, the Foundation has provided 44 scholarships to the children of 21 soldiers.<sup>10</sup> However, because the Scholarship Program is statutorily limited to scholarships for economically disadvantaged youth who remain drug and crime free, funds from that program cannot be used to support the Fallen Soldiers program.

### **Effects of Proposed Changes**

The bill amends ss. 1009.972, 1009.98, and 1009.981, F.S., providing that the advance payment contracts and participation agreements that are terminated or canceled by the Board may be transferred to the Foundation (the direct-support organization) for the Scholarship Program.

The bill also amends these sections of law in order to expand scholarship eligibility to children of members of the Armed Forces or Coast Guard who died while participating in the combat theater of operations for Iraqi Freedom or Enduring Freedom on or after the date on which the act becomes law. The bill provides that the children must have been residents of Florida at the time of their parent's death.

The bill provides an effective date of July 1, 2005.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 1009.971, F.S., providing that the Florida Prepaid College Board shall have the power to provide for the transfer of ownership of an advance payment contract under the Florida Prepaid College Program or a participation agreement under the Florida College Savings Program upon inheritance, devise, or bequest; providing procedures and requirements with respect to such transfer of ownership; providing for specification of application contents by rule; and providing applicability.

**Section 2:** Amends subsection (5) of s. 1009.972, F.S., authorizing the transfer of funds retained from terminated advance payment contracts, canceled contracts, and terminated participation agreements to the direct-support organization established under pt. IV of ch. 1009, F.S., for use by the Florida Prepaid Tuition Scholarship Program and for children of specified members of the armed forces of the United States who die while participating in the combat theater of operations for Operation Iraqi Freedom or Operation Enduring Freedom.

**Section 3:** Amends subsection (3) and paragraph (k) of subsection (4) of s. 1009.98, F.S., deleting the requirement that an independent college or university be a not-for-profit institution to be eligible for transfer of benefits; providing a restriction on transfer of benefits; authorizing the transfer of funds retained from terminated advance payment contracts, canceled contracts, and terminated participation agreements to the direct-support organization established under pt. IV of ch. 1009, F.S., for use by the Florida Prepaid Tuition Scholarship Program and for children of specified members of the armed forces of the United States who die while participating in the combat theater of operations for Operation Iraqi Freedom or Operation Enduring Freedom.

**Section 4:** Amends paragraph (b) of subsection (2) of s. 1009.981, F.S., authorizing the transfer of funds retained from terminated advance payment contracts, canceled contracts, and terminated participation agreements to the direct-support organization established under pt. IV of ch. 1009, F.S.,

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<sup>9</sup> See s. 1009.972, F.S.

<sup>10</sup> Information from the presentation by Florida Prepaid to the House Colleges and Universities Committee, January 11, 2005.

for use by the Florida Prepaid Tuition Scholarship Program and for children of specified members of the armed forces of the United States who die while participating in the combat theater of operations for Operation Iraqi Freedom or Operation Enduring Freedom.

**Section 5:** Provides an effective date of July 1, 2005.

## II. 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 government revenues.

#### 2. Expenditures:

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

#### Florida Residents and For-Profit Accredited Educational Institutions:

The bill appears to have a positive fiscal impact on various segments of the private sector.

- Family members who want to transfer an advance payment contract or participation agreement will be provided a less time consuming and a less costly process for transferring ownership.
- The transfer of benefits to a for-profit accredited institution provides contract purchasers with increased flexibility and may increase attendance at such institutions.
- The bill also benefits children who have lost a parent during either the Afghanistan or Iraq conflict by providing them with an education that may have been financially unattainable otherwise.

#### Florida Prepaid College Board and Florida Prepaid College Foundation:

Provisions of the bill that provide for transfer of ownership of an advance payment contract or participation agreement may require minimal expenditures by the Board due to administrative costs that may be incurred in reviewing and approving an application. However, according to Florida Prepaid representatives, the Board will save both time and money with the new procedure set out in the bill compared to the time consuming and expensive process currently used by the Board.

In addition, minimal administrative costs may be incurred in determining eligibility of children of fallen soldiers to participate in the Scholarship Program.

### D. FISCAL COMMENTS:

None

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2005, the Colleges & Universities Committee adopted an amendment to HB 1655. The bill was reported favorable with a Committee Substitute (CS).

The CS expands Florida Prepaid eligibility to:

- Southern Association of Colleges and Schools (SACS) or Accrediting Council for Independent Colleges and Schools (ACICS) accredited, for-profit, degree granting colleges and universities in Florida; and
- Out-of-state colleges or universities that are for-profit, accredited by a regional accrediting association, and confer degrees.

The CS also requires institutions to allow the Board to review all advertising materials that reference the Florida Prepaid

This analysis is drawn to the CS.