

CHAMBER ACTION

1 The Colleges & Universities Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

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6 A bill to be entitled

7 An act relating to prepaid college board programs;
8 amending s. 1009.971, F.S.; providing that the Florida
9 Prepaid College Board shall have the power to provide for
10 the transfer of ownership of an advance payment contract
11 under the Florida Prepaid College Program or a
12 participation agreement under the Florida College Savings
13 Program upon inheritance, devise, or bequest; providing
14 procedures and requirements with respect to such transfer
15 of ownership; providing for specification of application
16 contents by rule; providing applicability; amending ss.
17 1009.972, 1009.98, and 1009.981, F.S.; authorizing the
18 transfer of funds retained from terminated advance payment
19 contracts, canceled contracts, and terminated
20 participation agreements to the direct-support
21 organization established under pt. IV of ch. 1009, F.S.,
22 for use by the Florida Prepaid Tuition Scholarship Program
23 and for children of specified members of the armed forces

HB 1655

2005
CS

24 of the United States who die while participating in the
 25 combat theater of operations for Operation Iraqi Freedom
 26 or Operation Enduring Freedom; deleting the requirement
 27 that an independent college or university be a not-for-
 28 profit institution to be eligible for transfer of
 29 benefits; providing a restriction on transfer of benefits;
 30 providing an effective date.

31

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

33

34 Section 1. Paragraph (z) is added to subsection (4) of
 35 section 1009.971, Florida Statutes, to read:

36 1009.971 Florida Prepaid College Board.--

37 (4) FLORIDA PREPAID COLLEGE BOARD; POWERS AND DUTIES.--The
 38 board shall have the powers and duties necessary or proper to
 39 carry out the provisions of ss. 1009.97-1009.984, including, but
 40 not limited to, the power and duty to:

41 (z) Provide for the transfer of ownership of an advance
 42 payment contract or a participation agreement by operation of
 43 law upon inheritance, devise, or bequest. An heir of a deceased
 44 purchaser or a deceased benefactor may make an application to
 45 the board under oath for a change in the purchaser or benefactor
 46 and, upon receipt of a completed application, the board may
 47 change the ownership of the advance payment contract or
 48 participation agreement, as appropriate, to the heir. The board
 49 shall specify by rule the information that must be included in
 50 the application. When the application is made by an heir of a
 51 deceased purchaser or deceased benefactor who died intestate, it

52 shall not be necessary to accompany the application with an
 53 order of a probate court if the heir files with the board an
 54 affidavit stating that the estate is not indebted and the
 55 surviving spouse, if any, and the heirs, if any, have amicably
 56 agreed among themselves upon a division of the estate. If the
 57 deceased purchaser or deceased benefactor died testate, the
 58 application shall be accompanied by a certified copy of the
 59 will, if probated, and an affidavit stating that the estate is
 60 solvent with sufficient assets to pay all just claims or, if the
 61 will is not being probated, by a sworn copy of the will and an
 62 affidavit stating that the estate is not indebted. Upon the
 63 approval by the board of an application from an heir, the heir
 64 shall become the purchaser of the advance payment contract or
 65 the benefactor of the participation agreement. This subsection
 66 does not apply when a purchaser or benefactor has designated in
 67 writing to the board the person who will succeed to the
 68 ownership of the advance payment contract or participation
 69 agreement in the event of the purchaser's or benefactor's death,
 70 and that person survives the purchaser or benefactor.

71 Section 2. Subsection (5) of section 1009.972, Florida
 72 Statutes, is amended to read:

73 1009.972 Florida Prepaid College Trust Fund.--

74 (5) Notwithstanding the provisions of chapter 717, funds
 75 associated with terminated advance payment contracts pursuant to
 76 s. 1009.98(4)(k) and canceled contracts for which no refunds
 77 have been claimed shall be retained by the board. The board
 78 shall establish procedures for notifying purchasers who
 79 subsequently cancel their advance payment contracts of any

HB 1655

2005
CS

80 unclaimed refund and shall establish a time period after which
 81 no refund may be claimed by a purchaser who canceled a contract.
 82 The board may transfer funds retained from such terminated
 83 advance payment contracts and canceled contracts to the direct-
 84 support organization established pursuant to s. 1009.983 for the
 85 Florida Prepaid Tuition Scholarship Program to provide matching
 86 funds for prepaid tuition scholarships for economically
 87 disadvantaged youth who remain drug free and crime free and for
 88 children of members of the armed forces and Coast Guard of the
 89 United States who die while participating in the combat theater
 90 of operations for Operation Iraqi Freedom or Operation Enduring
 91 Freedom on or after the date on which this act becomes a law and
 92 were Florida residents at the time of their death or have listed
 93 Florida as their domicile at the time of their death.

94 Section 3. Subsection (3) and paragraph (k) of subsection
 95 (4) of section 1009.98, Florida Statutes, are amended to read:

96 1009.98 Florida Prepaid College Program.--

97 (3) TRANSFER OF BENEFITS TO PRIVATE AND OUT-OF-STATE
 98 COLLEGES AND UNIVERSITIES AND TO CAREER CENTERS.--A qualified
 99 beneficiary may apply the benefits of an advance payment
 100 contract toward:

101 (a) An independent college or university that is located
 102 and chartered in Florida, ~~that is not for profit,~~ that is
 103 accredited by the Commission on Colleges of the Southern
 104 Association of Colleges and Schools or the Accrediting Council
 105 for Independent Colleges and Schools, and that confers degrees
 106 as defined in s. 1005.02.

HB 1655

2005
CS

107 (b) An out-of-state college or university that ~~is not for~~
 108 ~~profit and~~ is accredited by a regional accrediting association,
 109 and that confers degrees.

110 (c) An applied technology diploma program or career
 111 certificate program conducted by a community college listed in
 112 s. 1004.02(2) or career center operated by a district school
 113 board.

114
 115 The board shall transfer or cause to be transferred to the
 116 institution designated by the qualified beneficiary an amount
 117 not to exceed the redemption value of the advance payment
 118 contract at a state postsecondary institution. If the cost of
 119 registration or housing fees at such institution is less than
 120 the corresponding fees at a state postsecondary institution, the
 121 amount transferred may not exceed the actual cost of
 122 registration and housing fees. A transfer authorized under this
 123 subsection may not exceed the number of semester credit hours or
 124 semesters of dormitory residence contracted on behalf of a
 125 qualified beneficiary. The board may refuse to transfer the
 126 benefits of an advance payment contract to an otherwise eligible
 127 institution if the institution or its representatives distribute
 128 materials, regardless of form, that describe the use or transfer
 129 of the benefits of an advance payment contract and that have not
 130 been approved by the board. Notwithstanding any other provision
 131 in this section, an institution must be an "eligible educational
 132 institution" under s. 529 of the Internal Revenue Code to be
 133 eligible for the transfer of advance payment contract benefits.

HB 1655

2005
CS

134 (4) ADVANCE PAYMENT CONTRACTS.--The board shall develop
 135 advance payment contracts for registration and may develop
 136 advance payment contracts for dormitory residence as provided in
 137 this section. Advance payment contracts shall be exempt from
 138 chapter 517 and the Florida Insurance Code. Such contracts shall
 139 include, but not be limited to, the following:

140 (k) The period of time after which advance payment
 141 contracts that have not been terminated or the benefits used
 142 shall be considered terminated. Time expended by a qualified
 143 beneficiary as an active duty member of any of the armed
 144 services of the United States shall be added to the period of
 145 time specified by the board. No purchaser or qualified
 146 beneficiary whose advance payment contract is terminated
 147 pursuant to this paragraph shall be entitled to a refund.
 148 Notwithstanding chapter 717, the board shall retain any moneys
 149 paid by the purchaser for an advance payment contract that has
 150 been terminated in accordance with this paragraph. Such moneys
 151 may be transferred to the direct-support organization
 152 established pursuant to s. 1009.983 for the Florida Prepaid
 153 Tuition Scholarship Program to provide matching funds for
 154 prepaid tuition scholarships for economically disadvantaged
 155 youths who remain drug free and crime free and for children of
 156 members of the armed forces and Coast Guard of the United States
 157 who die while participating in the combat theater of operations
 158 for Operation Iraqi Freedom or Operation Enduring Freedom on or
 159 after the date on which this act becomes a law and were Florida
 160 residents at the time of their death or have listed Florida as
 161 their domicile at the time of their death.

HB 1655

2005
CS

162 Section 4. Paragraph (b) of subsection (2) of section
163 1009.981, Florida Statutes, is amended to read:

164 1009.981 Florida College Savings Program.--

165 (2) PARTICIPATION AGREEMENTS.--

166 (b) The board shall develop a participation agreement
167 which shall be the agreement between the board and each
168 benefactor, which may include, but is not limited to:

169 1. The name, date of birth, and social security number of
170 the designated beneficiary.

171 2. The amount of the contribution or contributions and
172 number of contributions required from a benefactor on behalf of
173 a designated beneficiary.

174 3. The terms and conditions under which benefactors shall
175 remit contributions, including, but not limited to, the date or
176 dates upon which each contribution is due. Deposits to the
177 savings program by benefactors may only be in cash. Benefactors
178 may contribute in a lump sum, periodically, in installments, or
179 through electronic funds transfer or employer payroll
180 deductions.

181 4. Provisions for late contribution charges and for
182 default.

183 5. Provisions for penalty fees for withdrawals from the
184 program.

185 6. The name of the person who may terminate participation
186 in the program. The participation agreement must specify whether
187 the account may be terminated by the benefactor, the designated
188 beneficiary, a specific designated person, or any combination of
189 these persons.

HB 1655

2005
CS

190 7. The terms and conditions under which an account may be
191 terminated, modified, or converted, the name of the person
192 entitled to any refund due as a result of termination of the
193 account pursuant to such terms and conditions, and the amount of
194 refund, if any, due to the person so named.

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

197 9. Any charges or fees in connection with the
198 administration of the savings fund.

199 10. The period of time after which each participation
200 agreement shall be considered to be terminated. Time expended by
201 a designated beneficiary as an active duty member of any of the
202 armed services of the United States shall be added to the period
203 specified pursuant to this subparagraph. Should a participation
204 agreement be terminated, the balance of the account, after
205 notice to the benefactor, shall be declared unclaimed and
206 abandoned property. The board shall retain any moneys paid by
207 the benefactor for a participation agreement that has been
208 terminated in accordance with this subparagraph. Such moneys may
209 be transferred to the direct-support organization established
210 pursuant to s. 1009.983 for the Florida Prepaid Tuition
211 Scholarship Program to provide matching funds for prepaid
212 tuition scholarships for economically disadvantaged youths who
213 remain drug free and crime free and for children of members of
214 the armed forces and Coast Guard of the United States who die
215 while participating in the combat theater of operations for
216 Operation Iraqi Freedom or Operation Enduring Freedom on or
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HB 1655

2005
CS

218 | residents at the time of their death or have listed Florida as
219 | their domicile at the time of their death.

220 | 11. Other terms and conditions deemed by the board to be
221 | necessary or proper.

222 | Section 5. This act shall take effect July 1, 2005.