

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption for the Florida College Savings Program.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida College Savings Program allows individuals to make contributions to an account in order to meet qualified education expenses of a designated beneficiary.¹ The benefactor makes the investment decisions and the contributions and returns are maintained in a specific account for the benefit of the beneficiary.²

Current law provides a public records exemption for information that identifies:

- The benefactors;
- The designated beneficiary of a Florida College Savings Program account; and
- Individual account activities.

Pursuant to the Open Government Sunset Review Act of 1995, the exemption will repeal on October 2, 2005, unless reenacted by the Legislature.³ The Florida Prepaid College Board may release such information to a community college, college or university in which the beneficiary may enroll or is enrolled. The postsecondary institution must maintain the confidential and exempt status of the information received.

Effect of Bill

The bill narrows the public records exemption by only making confidential and exempt information that identifies the benefactors and information that identifies the designated beneficiary of a Florida College Savings Program account. It also removes the October 2, 2005, repeal date.

C. SECTION DIRECTORY:

Section 1 amends s. 1009.981(6), F.S., to narrow the public records exemption and removes the repeal date.

Section 2 provides an October 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

¹ Federal law authorizes such accounts under s. 529 of the Internal Revenue Code.

² Section 1009.981, F.S.

³ Section 1009.981(6), F.S.

2. Expenditures:

The bill may create a minimal non-recurring increase in state expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass or if the exemption is amended, as employees would have to be informed that formerly exempt records are now open or additional information is either now made public or is made exempt from public disclosure. Because the bill narrows the public records exemption, employee training activities will be required thus causing a minimal nonrecurring increase in expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which

⁴ Section 119.15, F.S.

administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.