

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2088

SPONSOR: Education Committee and Senator Rossin

SUBJECT: Prepaid College Tuition Scholarships

DATE: April 20, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Joseph</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute allows a nonprofit corporation that is exempt from federal taxation under s. 501(c)(3) of the Internal Revenue Code to purchase advanced payment contracts for a scholarship program under the Prepaid College Program. The scholarship program will be approved by the Prepaid College Board and operated by the nonprofit corporation.

This bill amends section 240.551, Florida Statutes.

**II. Present Situation:**

**Florida Prepaid College Program**

Section 240.551, F.S., creates the Florida Prepaid College Program (Prepaid Program), which allows the purchase of an advance payment contract for a student's postsecondary education that locks in the cost of registration fees, local fees, and housing at the time the contract is purchased. The Prepaid Program was created in 1987 to help Florida families save for college. To qualify, the child must be a Florida resident, newborn through the 11th grade. Enrollment in the Prepaid Program takes place from October through January each year.

The program offers the following plans:

- a 2-year community college plan,
- a 4-year university plan,
- a "2 + 2" community college/university plan,
- a dormitory plan, and
- a local fee plan.

A plan can be used at any of Florida's 10 state universities, 28 community colleges, and 41 public technical centers. The value of a plan may be transferred to an accredited independent college or university that is located and chartered in Florida, that is not for profit, and that confers certain degrees. The value of a plan may also be transferred to an accredited out-of-state college or university that is not for profit and that confers degrees.

If a beneficiary enrolls in a state postsecondary institution, the Prepaid Program pays for registration fees, local fees, or housing costs as covered in the beneficiary's advance payment contract. If a beneficiary enrolls in an eligible Florida independent institution, the Prepaid Program transfers to that institution an amount not to exceed the redemption value of the advance payment contract at a state postsecondary institution. If a beneficiary enrolls in an eligible out-of-state college or university, the Prepaid Program transfers to that institution an amount not to exceed the redemption value of the advance payment contract or the original purchase price plus 5 percent compounded interest, whichever is less.

Current law is very inclusive when defining who may purchase an advance payment contract. Section 240.551(2)(e), F.S., defines "purchaser" to mean "a person who makes or is obligated to make advance registration or dormitory residence payments in accordance with an advance payment contract." In the absence of any language restricting the definition of the term "person" as used in the definition of the term "purchaser," the definition of the term "person" is that set forth in s. 1.01(3), F.S., which provides that the term "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. According to the Florida Prepaid College Board (Prepaid Board), there are more than 600,000 existing contracts with a wide spectrum of purchasers – parents, grandparents, corporations, partnerships, trusts, guardianships, and estates.

Section 240.551(11)(e), F.S., provides that except for an advance payment contract entered into pursuant to s. 240.551(22), F.S., the name of the qualified beneficiary and terms under which the beneficiary may be changed must be set forth at the inception of the contract. Section 240.551(22), F.S., authorizes the Prepaid Board to establish a direct-support organization. That direct-support organization is the Prepaid College Foundation. The direct-support organization is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the Prepaid Program. One of the duties of the Prepaid Foundation is to administer the Florida Prepaid Tuition Scholarship Program.

### **Qualified State Tuition Program**

Section 240.551(8), F.S., grants the Prepaid Board the authority to adopt rules necessary to enable the program to retain its status as a 'qualified state tuition program' in order to maintain its tax exempt status or other similar status of the program, purchasers, and qualified beneficiaries under the Internal Revenue Code (I.R.C.) of 1986, as defined in s. 220.031(1), F.S.

Section 529 of the I.R.C. defines "qualified State tuition program" to mean "a program established and maintained by a State or agency or instrumentality thereof under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary."

The term “designated beneficiary” is defined in s. 529(e), I.R.C., as:

- the individual designated at the initiation of the contract;
- the new beneficiary if the beneficiary has been changed in accordance with the provisions of s. 529 and s. 240.551, F.S.; and
- the individual receiving the interest, or benefit, as a scholarship.

Section 529(e)(1)(C), I.R.C., provides that the third definition of a “designated beneficiary” is only valid “in the case of an interest in a qualified State tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization.”

Under the guidelines of s. 529, I.R.C., if any other type of organization, other than one described in section 501(c)(3), exempt from taxation under s. 501(a), and operating a scholarship program, purchases an advanced payment contract, the beneficiary must be named at the inception of the contract.

Representatives of the Prepaid Board identify three major tax benefits of being a qualified state tuition program (QSTP) as identified in s. 529 of the I.R.C.:

- the Florida Prepaid College Program is exempt from taxation under s. 529, I.R.C.;
- contributions to a QSTP on behalf of a designated beneficiary receive gift tax treatment under s. 2503(b), I.R.C.; and
- any distribution of a QSTP is taxable for the beneficiary. The tax advantage of this is that the contract earnings are taxed at the tax rate of the beneficiary (the student) rather than the purchaser.

### **Florida Prepaid Tuition Scholarship Program**

Section 240.552, F.S., establishes the Florida Prepaid Scholarship Program with the intent to provide economically disadvantaged youth with prepaid postsecondary tuition scholarships. The direct-support organization established pursuant to s. 240.551, F.S., administers the program with assistance and cooperation of the Department of Education.

The program was initiated to:

- Provide an incentive for economically disadvantaged youth to improve school attendance and academic performance in order to graduate and pursue a postsecondary education.
- Obtain the commitment and involvement of private sector entities by virtue of funding matches with a ratio of 50 percent provided by the private sector and 50 percent provided by the state.
- Purchase prepaid tuition scholarships for students certified by the Department of Education to the direct-support organization who meet minimum economic and school requirements and remain drug free and crime free.

Project STARS, a program under the Prepaid Tuition Scholarship Program, is one such program that raises private money in order to receive matching money to purchase prepaid scholarships through the Prepaid Foundation.

Additionally, any organization may purchase scholarships through the Prepaid Foundation without naming a beneficiary. An organization may donate money to the Prepaid Foundation. The Prepaid Foundation, pursuant to s. 529(e)(1)(C), I.R.C., may purchase advanced contracts and hold them in the name of the organization. The organization may define the scholarship requirements for their recipient if the organization does not wish to seek matching money. Additionally, purchasing scholarships through the Prepaid Foundation allows greater flexibility, as one may purchase from the Prepaid Foundation at any time during the year as opposed to only during open enrollment. If a scholarship is awarded and the recipient is named but then chooses not to go to college, the scholarship stays in the name of the organization.

The recipient of any scholarship must meet the general requirement of an eligible beneficiary as defined in s. 240.551(2)(f), F.S.

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

This committee substitute allows a nonprofit corporation that is exempt from federal taxation under s. 501(c)(3) of the Internal Revenue Code to purchase advanced payment contracts for a scholarship program under the Florida Prepaid College Program. The scholarship program will be approved by the Florida Prepaid College Board and operated by the nonprofit corporation. The contracts will be held for the benefit of students selected by the nonprofit corporation.

This committee substitute provides an effective date of July 1, 2001.

### **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:**

Charitable organizations such as churches could award scholarships under the Florida Prepaid College Program to deserving students who would not otherwise benefit.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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