

Senate Bill No. 130

An act relating to postsecondary education; amending s. 240.551, F.S.; providing for the transfer of Florida Prepaid College Program benefits to certain applied technology diploma programs and vocational certificate programs; requiring the direct-support organization to operate under written contract with the board; providing contract requirements; requiring an annual financial and compliance audit; allowing the Florida Prepaid College Board to permit direct-support organizations established under this section to use the property, facilities, and personal services of the board; providing for such direct-support organizations to invest funds with the moneys invested under the Florida Prepaid College Trust Fund; amending s. 240.553(20), F.S.; modifying the type of legal counsel required prior to implementing the program; providing an effective date.

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

Section 1. Subsections (10) and (22) of section 240.551, Florida Statutes, are amended to read:

240.551 Florida Prepaid College Program.—

(10) TRANSFER OF BENEFITS TO PRIVATE AND OUT-OF-STATE COLLEGES AND UNIVERSITIES AND TO AREA TECHNICAL CENTERS.—A qualified beneficiary may apply the benefits of an advance payment contract toward:

(a) ~~A qualified beneficiary may apply a community college plan, university plan, or dormitory residence plan toward~~ Any eligible independent college or university. An independent college or university ~~that which~~ 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 or the Accrediting Commission of the Association of Independent Colleges and Schools, and ~~that which~~ confers degrees as defined in s. 246.021, ~~is shall~~ be eligible for such application. The board shall transfer, or cause to have transferred, to the eligible independent college or university designated by the qualified beneficiary an amount not to exceed the redemption value of the advance payment contract within a state postsecondary institution. ~~If~~ ~~In the event that~~ the cost of registration or housing fees at the independent college or university is less than the corresponding fees at a state postsecondary institution, the amount transferred shall not exceed the actual cost of registration or housing fees. ~~A No~~ transfer authorized under ~~pursuant to~~ this paragraph ~~may not shall~~ exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary.

(b) ~~A qualified beneficiary may apply the benefits of an advance payment contract toward~~ An eligible out-of-state college or university. An out-of-state college or university ~~that which~~ is not for profit and is accredited by a

regional accrediting association, and ~~that which~~ confers baccalaureate degrees, ~~is shall be~~ eligible for such application. The board shall transfer, or cause to have transferred, 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, after assessment of a reasonable transfer fee. ~~If in the event that~~ the cost of registration or housing fees charged the qualified beneficiary at the eligible out-of-state college or university is less than this calculated amount, the amount transferred shall not exceed the actual cost of registration or housing fees. Any remaining amount shall be transferred in subsequent semesters until the transfer value is depleted. A No transfer authorized under pursuant to this paragraph may not shall exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary.

(c) An applied technology diploma program or vocational certificate program conducted by a community college listed in s. 240.3031 or an area technical center operated by a district school board. The board shall transfer or cause to be transferred to the community college or area technical center designated by the qualified beneficiary an amount not to exceed the redemption value of the advance payment contract within a state postsecondary institution. If the cost of the fees charged by the college or center, as authorized in s. 239.117, is less than the corresponding fees at a state postsecondary institution, the amount transferred may not exceed the actual cost of the fees. A transfer authorized under this paragraph may not exceed the number of semester credit hours contracted on behalf of a qualified beneficiary.

Notwithstanding any other provision in this section, an institution must be an "eligible educational institution" under section 529 of the Internal Revenue Code to be eligible for the transfer of advance payment contract benefits.

(22) DIRECT-SUPPORT ORGANIZATION; AUTHORITY.—

(a) The board may establish a direct-support organization which is:

1. A Florida corporation, not for profit, incorporated under the provisions of chapter 617 and approved by the Secretary of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the program.

3. An organization which the board, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state. Unless so certified, the organization may not use the name of the program.

~~4. Subject to an annual postaudit by an independent certified public accountant in accordance with rules promulgated by the board. The annual audit shall be submitted to the State Board of Administration and the Auditor General for review. The State Board of Administration and Auditor General shall have the authority to require and receive from the organization or its independent auditor any detail or supplemental data relative to the operation of the organization.~~

(b) The direct-support organization shall operate under written contract with the board. The contract must provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the board.

2. Submission of an annual budget for the approval of the board. The budget must comply with rules adopted by the board.

3. An annual financial and compliance audit of its financial accounts and records by an independent certified public accountant in accordance with rules adopted by the board.

4. Certification by the board that the direct-support organization is complying with the terms of the contract and in a manner consistent with the goals and purposes of the board and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the board.

5. The reversion to the board, or to the state if the board ceases to exist, of moneys and property held in trust by the direct-support organization for the benefit of the board or program if the direct-support organization is no longer approved to operate for the board or if the board ceases to exist.

6. The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

7. The disclosure of material provisions of the contract and of the distinction between the board and the direct-support organization to donors of gifts, contributions, or bequests, and such disclosure on all promotional and fundraising publications.

(c) An annual financial and compliance audit of the financial accounts and records of the direct-support organization must be performed by an independent certified public accountant. The audit must be submitted to the board for review and approval. Upon approval, the board shall certify the audit report to the Auditor General for review. The board and Auditor General shall have the authority to require and receive from the organization or its independent auditor any detail or supplemental data relative to the operation of the organization.

(d) The identity of donors who desire to remain anonymous shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and such anonymity shall be maintained in the auditor's report. Information received by the organization that is otherwise confidential or exempt by law shall retain such status. Any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e)~~(b)~~ The chair and the executive director of the board shall be directors of the direct-support organization and shall jointly name three other individuals to serve as directors of the organization.

(f) The board may authorize the direct-support organization established in this subsection to use program property, except money, and use facilities and personal services subject to the provisions of this section. If the direct-support organization does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin, it may not use the property, facilities, or personal services of the board. For the purposes of this subsection, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing as prescribed by rule of the board. The board shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which such a direct-support organization must comply to use property, facilities, or personal services of the board.

(g) The board may invest funds of the direct-support organization which have been allocated for the purchase of advance payment contracts for scholarships with receipts for advance payment contracts.

Section 2. Subsection (20) of section 240.553, Florida Statutes, is amended to read:

240.553 Florida College Savings Program.—

(20) PROGRAM IMPLEMENTATION RESTRICTIONS.—Implementation of the program may not begin until the board has received the following:

(a) ~~A favorable written and unqualified~~ opinion from counsel specializing in federal tax matters indicating that the program constitutes a qualified state tuition program under s. 529 of the Internal Revenue Code;

(b) A written ~~and unqualified~~ opinion from a qualified member of the United States Patent Bar indicating that the implementation of the program or the operation of the program will not knowingly infringe upon any patent or copyright specifically related to the financing of higher education expenses;

(c) A written ~~and unqualified~~ opinion of qualified counsel specializing in federal securities law that the program and the offering of participation in the program does are not violate ~~subject to~~ federal securities law; and

(d) A written ~~and unqualified~~ opinion from the board's litigation counsel indicating that the implementation or operation of the program will not adversely impact any pending litigation against the board.

Section 3. This act shall take effect July 1, 2000.

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.