

BILL ANALYSIS

Senate Research Center
80R19720 CAS-D

C.S.H.B. 3900
By: Morrison et al. (Shapiro)
S/C on Higher Education
5/9/2007
Subcommittee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill allows families to lock in today's rates for tuition and required fees for their children's future higher education needs, giving them more certainty about the cost of a college education. An investment in the Texas Tomorrow Fund II would be made by purchasing "units" each of which is worth one percent of one year's tuition and required fees. Once a child enters an institution of higher education, the Texas Tomorrow Fund II pays that institution the money initially invested in the child's account, plus any returns made on that investment. Under this plan, universities will be rewarded for making more judicious decisions regarding tuition and fees. By adopting this legislation, we will give Texas families more predictability regarding the cost of higher education while protecting the state from falling into debt.

C.S.H.B. 3900 creates the Texas Tomorrow Fund II.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Prepaid Higher Education Tuition Board in SECTION 1 (Sections 54.752, 54.7521, and 54.7671, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 54, Education Code, by adding Subchapter H, as follows:

SUBCHAPTER H. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION PROGRAM: TEXAS TOMORROW FUND II

Sec. 54.751. DEFINITIONS. Defines "accredited out-of-state institution of higher education," "beneficiary," "board," "fund," "general academic teaching institution," "prepaid tuition contract," "private or independent institution of higher education," "public junior college," "public state college," "public technical institute," "recognized accrediting agency," "program," "purchaser," "required fee," and "two-year institution of higher education."

Sec. 54.752. POWERS AND DUTIES OF BOARD CONCERNING PROGRAM. (a) Requires the Prepaid Higher Education Tuition Board (board) to administer the prepaid tuition unit undergraduate education program established under this subchapter in addition to carrying out duties assigned under Subchapters F (Prepaid Higher Education Tuition Program) and G (Higher Education Savings Plan) and to comply with federal and state law related to the program.

(b) Provides that the board has the powers necessary or proper to carry out this subchapter, including certain powers set forth in this subsection (to include the power to adopt rules implementing this subchapter), in addition to the board's powers assigned under Subchapters F and G.

(c) Requires the board, in coordination with the Health and Human Services Commission, the Texas Workforce Commission, and the Texas Higher Education Coordinating Board to ensure certain marketing strategies in marketing the program, regardless of whether the board markets the program directly or under contract as authorized by Subsection (b)(10).

Sec. 54.7521. TEXAS SAVE AND MATCH PROGRAM. Requires the board by rule to develop and implement the Texas Save and Match program under which money paid by a purchaser under a prepaid tuition contract may be matched with certain funds.

Sec. 54.753. PREPAID TUITION UNITS: PURCHASE; ASSIGNED VALUE; TYPES; PRICE. (a) Authorizes a purchaser to prepay the costs of all or a portion of a beneficiary's undergraduate tuition and required fees at a general academic teaching institution or two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education (institution) by entering into a contract with the board to purchase one or more tuition units (units) of a type described by this section at the applicable price established by the board for that type of unit for the year in which the unit is purchased under the program. Provides that the portion of the beneficiary's undergraduate tuition and required fees for which a unit is authorized to be redeemed at a particular general academic teaching institution or two-year institution of higher education is assigned to the tuition unit at the time of purchase, and authorizes the unit to be redeemed to pay that portion of the tuition and fees at the general academic teaching institution or two-year institution of higher education in any academic year in which the unit is redeemed in accordance with this subchapter. Authorizes the purchaser to purchase one type of unit or a combination of two or three types of units.

(b) Provides that the assigned value of a unit, purchased as provided by this section, when used to pay the cost of tuition and required fees at a general academic teaching institution or two-year institution of higher education, is equal to one percent of the amount necessary for the academic year in which the unit is redeemed to cover the applicable cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours, as set forth in this subsection.

(c) Requires the board, each year, to establish the price at which each type of unit may be purchased during the next sales period and the percentage of the total cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours for which each type of unit may be redeemed at each institution. Requires this percentage to be based on the total cost of required tuition and fees at a particular general academic teaching institution or two-year institution of higher education in relation to the amount determined for the institution with the highest cost or weighted average cost, as applicable. Requires the purchase price established for each type of unit to be equal to the applicable cost of tuition and required fees as determined under this section for the most recent academic year that began before the beginning of the sales period. Provides that the sales period to which those prices apply expires on the first anniversary of the date the units become available for purchase at the prices established for that year.

(d) Requires the board to base the purchase price of a Type I unit on one percent of the cost of the undergraduate resident tuition and required fees for the applicable academic year at the general academic teaching institution with the highest such tuition and fee cost for that year.

(e) Requires the board to base the purchase price of a Type II unit on one percent of the cost of the weighted average general academic teaching institution undergraduate resident tuition and required fees for the applicable academic year. Sets forth the manner by which that cost is determined.

(f) Requires the board to base the purchase price of a Type III unit on one percent of the cost of the weighted average two-year institution of higher education undergraduate resident tuition and required fees for the applicable academic year, disregarding any portion of the tuition charged by a public junior college to a resident of this state who does not reside within the taxing jurisdiction of the junior college. Sets forth the manner by which that cost is determined.

(g) Prohibits the total amount paid under a contract on behalf of a single beneficiary from exceeding any limit established on the amount by Section 529 (Qualified Tuition Programs), Internal Revenue Code of 1986. Requires the board, in compliance with that section, to establish the minimum amount that the purchaser is required to pay under the contract on behalf of a single beneficiary.

(h) Authorizes the board to impose an administrative fee not to exceed \$25 at the time of the establishment of the account to which a purchaser's prepaid tuition contract money is assigned. Requires money from that fee to be used directly in maintaining the actuarial soundness of the fund as required by Section 54.770. Prohibits the board from imposing any other fee or charge in connection with the sale of a tuition unit.

Sec. 54.754. REDEMPTION OF TUITION UNITS. (a) Requires the board, when a beneficiary under a contract redeems one or more units to pay costs of tuition and required fees, to apply money in the fund, in the amount provided by Section 54.765 to pay all or the applicable portion of those costs at the institution in which the beneficiary enrolls in accordance with this subchapter. Authorizes a beneficiary to redeem any type of unit for assistance at an institution described by this section, subject to Subsection (b)(2) and the other provisions of this section. Requires a general academic teaching institution or two-year institution of higher education to accept the amount transferred to the institution under Section 54.765(c) when the unit or units are redeemed as payment for all or the applicable portion of the beneficiary's tuition and required fees.

(b) Requires the redemption of 100 Type I units at the general academic teaching institution with the highest tuition and fee cost as described by Section 54.753(d), 100 Type II tuition units at a general academic teaching institution with the applicable tuition and fee cost at the weighted average as described by Subsection (e) of that section, or 100 Type III units at a two-year institution of higher education with the applicable tuition and fee cost at the weighted average as described by Subsection (f) of that section in order to pay for the entire cost of undergraduate resident tuition and required fees for an academic year consisting of 30 semester credit hours at the appropriate institution. Authorizes the number of units that are required to be redeemed to pay for the entire cost of tuition and required fees for an academic year at another institution to be higher or lower as set forth in this subsection.

(c) Requires the board to prepare a unit redemption chart and post the chart on an Internet website each year in order to assist purchasers in determining the number of units a beneficiary is required to redeem to cover the costs of tuition and required fees at an institution. Requires the chart to show for each institution the number of each type of units purchased that year that would be required to cover the cost of tuition and required fees, based on an academic year consisting of 30 semester credit hours.

(d) Provides that a beneficiary is responsible for paying the amount of the difference between the amount of tuition and required fees for which the beneficiary pays through the redemption of one or more tuition units and the total cost of the beneficiary's tuition and required fees at the institution if a beneficiary redeems fewer tuition units of the type or combination of types necessary to pay the total cost of the beneficiary's tuition and required fees at the general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education at which the beneficiary enrolls.

(d-1) Provides that a beneficiary who redeems one or more Type III tuition units to attend a public junior college and who does not reside within the taxing jurisdiction of the junior college is responsible for paying any portion of the tuition charged by the junior college to persons who do not reside within that taxing jurisdiction.

(e) Authorizes the purchaser, if the beneficiary redeems fewer tuition units to pay the cost of tuition and required fees than the number of units purchased on behalf of the beneficiary under a contract (other than to defer redemption as permitted in accordance with Section 54.758), to redeem for cash the amount of the purchase price of the excess units, plus interest, or transfer such units to another beneficiary as set forth in this subsection.

(f) Prohibits a beneficiary or purchaser from redeeming a unit earlier than the third anniversary of the date the unit was purchased.

Sec. 54.755. PREPAID TUITION CONTRACT. (a) Requires the board to adopt a form for a contract to be used by the board and purchasers.

(b) Requires a contract to specify and contain certain items set forth in this subsection.

(c) Authorizes a contract to provide for the purchase of additional units in subsequent years at the then-current price of the additional units.

Sec. 54.756. PURCHASER; BENEFICIARY. (a) Authorizes a purchaser to be any person who is permitted to be a purchaser under Section 529, Internal Revenue Code of 1986. Provides that the purchaser is not required to be a resident of this state, except as provided by Subsection (c)(2).

(b) Provides that a purchaser is the owner of the account to which the purchaser's prepaid tuition contract money is assigned in accordance with applicable provisions of Section 529, Internal Revenue Code of 1986.

(c) Requires such a beneficiary to be a resident of this state at the time the purchaser enters into the contract or a nonresident who is the child of a parent who is a resident of this state at the time that parent enters into the contract.

(d) Authorizes the board to require a reasonable period of residence in this state for a beneficiary or the parent of a beneficiary for the purposes of Subsection (c).

(e) Requires the tuition and required fees charged by an institution that are paid for with units to be determined as if the beneficiary of that contract were a resident student, notwithstanding any provision of Subchapter B.

Sec. 54.757. CONTRACT PAYMENT. (a) Authorizes the board to provide for the receipt of payment under contracts in lump sums or installment payments. Requires the board, if it allows payments under a contract to be made in installments over a period longer than one year, to provide for a plan that permits those payments to be made in single annual installments in addition to any other permitted installment plans.

(b) Authorizes a purchaser to make payments under a contract by an electronic funds transfer.

(c) Authorizes an employee of this state or a political subdivision of this state to make payments under a contract by payroll deductions made by the appropriate officer of the state or political subdivision. Requires the board to implement procedures to facilitate payments under this subsection.

(d) Authorizes the board to impose a fee for a late payment under a contract.

Sec. 54.758. DEFERRED USE OF PREPAID CREDIT HOURS. (a) Requires a contract to permit the beneficiary to elect to pay from a source other than tuition units purchased under the contract the beneficiary's tuition and required fees for some or all of the tuition and required fees to which the beneficiary is entitled to payment under the contract, and to defer to a subsequent semester or other academic term the right to

payment of the beneficiary's tuition and required fees by using tuition units remaining under the contract.

(b) Provides that this section does not affect the date on which a contract terminates under this subchapter and does not give the beneficiary the right to a payment under the contract after its termination.

Sec. 54.759. CHANGE OF BENEFICIARY. (a) Authorizes the purchaser of a contract to designate a different beneficiary in place of the original beneficiary if the new beneficiary meets the requirements of a beneficiary on the date the designation is changed. Requires the new beneficiary to meet the requirements of Section 529, Internal Revenue Code of 1986, to prevent the change of beneficiary from being treated as a distribution under that law.

(b) Authorizes the board to adjust the terms of the contract so that the purchaser is required to pay the amount the purchaser would have been required to pay had the purchaser originally designated the new beneficiary as the beneficiary, taking into account any payments made before the date the designation is changed.

(c) Prohibits the board from imposing a fee in connection with the designation of a new beneficiary.

(d) Prohibits the purchaser of a contract from selling the contract.

Sec. 54.760. VERIFICATION UNDER OATH. Authorizes the board to require a purchaser to verify under oath a request to change a beneficiary or terminate a contract.

Sec. 54.761. PROMISE OR GUARANTEE OF ADMISSION. Provides that this subchapter is not a promise or guarantee that a beneficiary will be granted admission, allowed to continue attending, or graduate from a public or private institution, as set forth in this section.

Sec. 54.762. CONTRACT TERMINATION. (a) Requires a contract to specify the name of any person who may terminate it and the terms under which it is authorized to be terminated.

(b) Provides that a contract terminates on the 10th anniversary of the date the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active duty member of the United States armed services.

Sec. 54.763. REFUND. (a) Requires a contract to specify the name of the person entitled to any refund if it is terminated, the terms under which a person is entitled to a refund, and the method by which the amount of the refund is computed.

(b) Entitles the person named in the contract to a refund following termination of a contract.

(c) Requires the board to determine the method by which the amount of the refund is computed.

Sec. 54.764. FUND. (a) Provides that the Texas tomorrow fund II prepaid tuition unit undergraduate education program fund is established as a trust fund outside of the state treasury.

(b) Requires the board to deposit in the fund money paid under contracts and credit to the fund income earned on that money.

(c) Requires the board to provide for administering the assets of the fund and establishing and administering the accounts of purchasers under contracts.

(d) Requires the board to provide for assigning payments to the fund to separate accounts for purchasers and authorizes the board to provide for assigning payments to other general accounts as otherwise considered appropriate by the board.

(e) Authorizes the board to provide for acquiring, holding, managing, purchasing, selling, assigning, trading, transferring, or disposing of any security, evidence of indebtedness, or other investment in which the fund's assets may be invested.

Sec. 54.765. COMPTROLLER'S DUTIES; TRANSFERS TO INSTITUTIONS ON REDEMPTION OF TUITION UNITS. (a) Provides that, except as provided by Subsection (e), the comptroller of public accounts (comptroller) is the custodian of the assets of the fund.

(b) Requires the comptroller to pay money from the fund on a warrant drawn by the comptroller supported only on a voucher signed by the comptroller or the comptroller's authorized representative.

(c) Requires the comptroller, when a beneficiary enrolls at a general academic teaching institution or two-year institution of higher education, on written authorization from the purchaser of the unit or units for that beneficiary, to transfer to the institution an amount equal to the lesser of a certain amount.

(d) Provides that the amount required to be transferred under Subsection (c)(1)(B) is the greater of certain amounts.

(e) Requires excess amounts transferred, if the amount that would otherwise be transferred under Subsection (c)(1)(A) and (B) exceeds the amount that may be transferred under Subsection (c)(2), to be retained in the fund and used as necessary to provide sufficient money to meet the minimum transfer requirements under Subsection (c)(1)(B) as specified by Subsection (d).

(f) Requires the comptroller, when a beneficiary enrolls at a private or independent institution of higher education or accredited out-of-state institution of higher education, on written authorization from the purchaser of the unit or units for that beneficiary, to transfer to the institution an amount equal the lesser of a certain amount.

(g) Requires the comptroller annually to provide to the board a sworn statement of the amount of the fund's assets in the comptroller's custody.

(h) Authorizes the board to select one or more commercial banks, depository trust companies, or other entities to serve as custodian of all or part of the fund's assets.

Sec. 54.766. INVESTMENT OF FUND ASSETS. (a) Requires the board to provide for investing the assets of the fund. Provides that, in investing the fund, the board has the same investment authority as that provided by Section 11b (Permanent University Fund; Authorized Investments), Article VII, Texas Constitution, or other law, to the board of regents of The University of Texas System with respect to the investment of the Permanent University Fund.

(b) Requires the board to contract with one or more private professional investment managers to serve as plan manager and to invest the assets of the fund on behalf of the board. Sets forth certain requirements of the board in selecting a manager.

(c) Requires the board, in monitoring the manager's investments, to ensure that investments are made according to the standard of investment provided by this section. Provides that the plan manager has the same duties imposed on a plan manager by Section 54.705 (Duties of Plan Manager).

(d) Requires the board to develop written objectives concerning the investment of the assets of the fund. Authorizes the objectives to address desired rates of return, risks involved, investment time frames, and any other relevant considerations.

(e) Authorizes the board to specify in a contract under this section that the plan manager is required to establish and maintain an Internet website through which a purchaser may monitor the account to which the purchaser's prepaid tuition contract money is assigned.

Sec. 54.767. USE OF FUND ASSETS. Authorizes the assets of the fund to be used only as set forth in this subsection.

Sec. 54.7671. TRANSFERS AMONG 529 PLANS. (a) Requires the board by rule to provide for a purchaser to transfer money between an account under this subchapter and an account under another plan established by this state or by another state or other authorized entity in accordance with Section 529, Internal Revenue Code of 1986, to the extent and in the manner authorized by that section.

(b) Provides that the value of the account at the time of transfer is the lesser of certain amounts for purposes of a transfer of money from an account under this subchapter.

Sec. 54.768. EXEMPTION FROM SECURITIES LAWS. Provides that the registration requirements of The Securities Act (Article 581-1 et seq., V.T.C.S.) do not apply to the sale of a contract by the board or by a registered securities dealer or registered investment adviser.

Sec. 54.769. EXEMPTION FROM CREDITORS' CLAIMS. (a) Provides that money in the fund is exempt from claims of creditors, including claims of creditors of a purchaser, a beneficiary, or a successor in interest of a purchaser or beneficiary.

(b) Provides that the rights of a purchaser, beneficiary, or successor in interest of a purchaser or beneficiary in and under a contract and the payment of tuition and required fees for a beneficiary under a contract to a general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education under this chapter are exempt from attachment, levy, garnishment, execution, and seizure for the satisfaction of any debt, judgment, or claim against a purchaser, beneficiary, or successor in interest of a purchaser or beneficiary.

(c) Provides that a claim or judgment against a purchaser, beneficiary, or successor in interest of a purchaser or beneficiary does not impair or entitle the claim or judgment holder to assert or enforce a lien against certain rights as set forth in this subsection.

Sec. 54.770. ACTUARIAL SOUNDNESS OF FUND. (a) Requires the board to administer the fund in a manner that is sufficiently actuarially sound to pay the costs of program administration and operations and to meet the obligations of the program.

(b) Requires the board to evaluate the actuarial soundness of the fund annually.

(c) Authorizes the board to adjust the terms of subsequent contracts as necessary to ensure the actuarial soundness of the fund.

Sec. 54.771. COMPLIANCE WITH LIMITS ON CONTRIBUTIONS AND WITHDRAWALS. Requires the board to monitor contributions to and withdrawals from the fund and any account within the fund to ensure that any applicable limits on contributions or withdrawals are not exceeded.

Sec. 54.772. TAX EXEMPT STATUS REQUIREMENTS. (a) Provides that this section is intended to meet the requirements of Section 529, Internal Revenue Code of 1986.

(b) Requires a payment of an amount due to the fund for a contract to be made in cash or cash equivalent. Prohibits a person from making a payment to the fund in excess of the amounts required to be paid under a contract.

(c) Requires the board to maintain a separate accounting for each beneficiary.

(d) Prohibits the purchaser under a contract and the beneficiary under the contract from controlling or directing the investment of payments under the contract or any earnings of the fund or using any interest in the contract as security for a loan or other obligation.

(e) Requires the board to make reports required by the secretary of the United States Treasury.

Sec. 54.773. SUSPENSION OF NEW ENROLLMENT; PROGRAM MODIFICATION OR TERMINATION. (a) Authorizes the board to temporarily suspend new enrollment in the program on the comptroller's request as the comptroller considers necessary to ensure the actuarial soundness of the fund.

(b) Requires the comptroller to notify the governor and the legislature and recommend that the program be modified or terminated if the comptroller determines that the program is financially infeasible.

Sec. 54.774. EFFECT OF PROGRAM TERMINATION ON CONTRACT. (a) Provides that a contract remains in effect after the program is terminated if, when the program is terminated, the beneficiary meets certain enrollment or graduation requirements as set forth in this subsection.

(b) Provides that a contract terminates when the program is terminated if the contract does not remain in effect under Subsection (a).

Sec. 54.775. CONFIDENTIALITY. (a) Provides that records in the custody of the board relating to the participation of specific purchasers and beneficiaries in the program are confidential.

(b) Authorizes the board to release information described by Subsection (a) to a general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education at in which a beneficiary may enroll or is enrolled, notwithstanding that subsection. Requires the institution to keep the information confidential.

(c) Authorizes the board to release information to the Internal Revenue Service and to any state tax agencies as required by applicable tax law.

Sec. 54.776. STATEMENT REGARDING STATUS OF PREPAID TUITION CONTRACT. Requires the board to provide without charge to each purchaser a statement containing certain information not later than January 1 of each year.

Sec. 54.777. REPORTS. (a) Requires the board to submit to the governor, lieutenant governor, speaker of the house of representatives, Legislative Budget Board, Legislative Audit Committee, state auditor, and Texas Higher Education Coordinating Board (THECB) a report including certain information set forth in this subsection not later than December 1 of each year.

(b) Requires the board to make the report described by Subsection (a) available to purchasers of contracts.

(c) Requires the board to provide to THECB complete contract sales information, including projected enrollments of beneficiaries at institutions not later than December 1 of each year.

Sec. 54.778. AUDIT. Provides that the fiscal transactions of the board under this subchapter, including the administration of the fund, are subject to audit by the state auditor in accordance with Chapter 321 (State Auditor), Government Code.

SECTION 2. Authorizes the board to enter into contracts with purchasers and begin selling tuition units under those contracts in accordance with Subchapter H, Chapter 54, Education Code, as added by this Act, beginning September 1, 2008.

SECTION 3. Effective date: upon passage or September 1, 2007.