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H.B. No. 2173

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Prepaid Higher
3 Education Tuition Board.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 54.603, Education Code, is amended to
6 read as follows:

7 Sec. 54.603. SUNSET PROVISION. The Prepaid Higher
8 Education Tuition Board is subject to Chapter 325, Government Code
9 (Texas Sunset Act). Unless continued in existence as provided by
10 that chapter, the board is abolished and the programs established
11 under this subchapter and under Subchapter G terminate September 1,
12 2019 [~~2007~~].

13 SECTION 2. Sections 54.608(b), (c), and (f), Education
14 Code, are amended to read as follows:

15 (b) A person [~~An officer, employee, or paid consultant of a~~
16 ~~Texas trade association in the field of higher education~~] may not be
17 a member [~~or employee~~] of the board and may not be a board employee
18 employed in a "bona fide executive, administrative, or professional
19 capacity," as that phrase is used for purposes of establishing an
20 exemption to the overtime provisions of the federal Fair Labor
21 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

22 (1) the [~~who is exempt from the state's position~~
23 ~~classification plan or is compensated at or above the amount~~
24 ~~prescribed by the General Appropriations Act for step 1, salary~~

1 ~~group 17, of the position classification salary schedule.~~

2 ~~[(c) A] person [who] is [the spouse of] an officer, employee~~
3 ~~[manager], or paid consultant of a Texas trade association in the~~
4 ~~field of higher education, banking, securities, or investments; or~~

5 ~~(2) the person's spouse is an officer, manager, or paid~~
6 ~~consultant of a Texas trade association in the field of higher~~
7 ~~education, banking, securities, or investments [may not be a board~~
8 ~~member and may not be a board employee who is exempt from the~~
9 ~~state's position classification plan or is compensated at or above~~
10 ~~the amount prescribed by the General Appropriations Act for step 1,~~
11 ~~salary group 17, of the position classification salary schedule].~~

12 (f) ~~In [For the purposes of] this section, "~~ [a] Texas trade
13 association" ~~means~~ [is] a ~~[nonprofit,~~ cooperative~~]~~ and
14 voluntarily joined statewide association of business or
15 professional competitors in this state designed to assist its
16 members and its industry or profession in dealing with mutual
17 business or professional problems and in promoting their common
18 interest.

19 SECTION 3. Subchapter F, Chapter 54, Education Code, is
20 amended by adding Section 54.6085 to read as follows:

21 Sec. 54.6085. PREPAID HIGHER EDUCATION TUITION BOARD ETHICS
22 POLICY. (a) In addition to any other requirements provided by law,
23 the board shall adopt and enforce an ethics policy that provides
24 standards of conduct relating to the management and investment
25 decisions of the board. The ethics policy must include provisions
26 that address the following issues as they apply to the management
27 and investment decisions of the board:

- 1 (1) general ethical standards;
2 (2) conflicts of interest, including disclosure and
3 recusal requirements;
4 (3) the acceptance of gifts and entertainment; and
5 (4) compliance with and enforcement of the ethics
6 policy.

7 (b) The ethics policy must include provisions applicable
8 to:

- 9 (1) members of the board;
10 (2) the comptroller; and
11 (3) employees of the board.

12 SECTION 4. Section 54.609, Education Code, is amended by
13 amending Subsection (a) and adding Subsection (c) to read as
14 follows:

15 (a) It is a ground for removal from the board if a member:

16 (1) does not have at the time of taking office the
17 applicable qualifications required by Section 54.606(b);

18 (2) is ineligible for membership under [~~violates a~~
19 ~~prohibition established by~~] Section 54.608;

20 (3) [~~(2)~~] cannot because of illness or disability
21 discharge the member's duties for a substantial part of the term for
22 which the member is appointed; or

23 (4) [~~(3)~~] is absent from more than half of the
24 regularly scheduled board meetings that the member is eligible to
25 attend during a calendar year unless the absence is excused by
26 majority vote of the board.

27 (c) If the staff of the board has knowledge that a potential

1 ground for removal exists, the staff shall notify the presiding
2 officer of the board of the potential ground. The presiding officer
3 shall then notify the governor and the attorney general that a
4 potential ground for removal exists. If the potential ground for
5 removal involves the presiding officer, the staff of the board
6 shall notify the next highest ranking officer of the board, who
7 shall then notify the governor and the attorney general that a
8 potential ground for removal exists.

9 SECTION 5. Section 54.610, Education Code, is amended by
10 amending Subsection (a) and adding Subsection (c) to read as
11 follows:

12 (a) A person who is appointed to and qualifies for office as
13 ~~[Before]~~ a member of the board may not vote, deliberate, or be
14 counted as a member in attendance at a meeting of the board until
15 the person completes a ~~[assume the member's duties and before an~~
16 ~~appointed member may be confirmed by the senate, the member must~~
17 ~~complete at least one course of the]~~ training program that complies
18 with ~~[established under]~~ this section.

19 (c) A person appointed to the board is entitled to
20 reimbursement, as provided by the General Appropriations Act, for
21 the travel expenses incurred in attending the training program
22 regardless of whether the attendance at the program occurs before
23 or after the person qualifies for office.

24 SECTION 6. Section 54.617, Education Code, is amended by
25 amending Subsections (c) and (d) and adding Subsection (e) to read
26 as follows:

27 (c) The board shall maintain a system to promptly and

1 efficiently act on complaints filed with the board. The board shall
2 maintain information about parties to the complaint, the subject
3 matter of the complaint, a summary of the results of the review or
4 investigation of the complaint, and its disposition [~~keep~~
5 ~~information about each complaint filed with the board. The~~
6 ~~information shall include:~~

7 [~~(1) the date the complaint is received;~~

8 [~~(2) the name of the complainant;~~

9 [~~(3) the subject matter of the complaint;~~

10 [~~(4) a record of all persons contacted in relation to~~
11 ~~the complaint;~~

12 [~~(5) a summary of the results of the review or~~
13 ~~investigation of the complaint; and~~

14 [~~(6) for complaints for which the board took no~~
15 ~~action, an explanation of the reason the complaint was closed~~
16 ~~without action].~~

17 (d) The board shall make information available describing
18 its procedures for complaint investigation and resolution [~~keep a~~
19 ~~file for each written complaint filed with the board that the board~~
20 ~~has authority to resolve. The board shall provide to the person~~
21 ~~filing the complaint and the persons or entities complained about~~
22 ~~the board's policies and procedures pertaining to complaint~~
23 ~~investigation and resolution. The board, at least quarterly and~~
24 ~~until final disposition of the complaint, shall notify the person~~
25 ~~filing the complaint and the persons or entities complained about~~
26 ~~of the status of the complaint unless the notice would jeopardize an~~
27 ~~undercover investigation].~~

1 (e) The board shall periodically notify the complaint
2 parties of the status of the complaint until final disposition.

3 SECTION 7. Subchapter F, Chapter 54, Education Code, is
4 amended by adding Section 54.6175 to read as follows:

5 Sec. 54.6175. USE OF TECHNOLOGY. The board shall implement
6 a policy requiring the board to use appropriate technological
7 solutions to improve the board's ability to perform its functions.
8 The policy must ensure that the public is able to interact with the
9 staff of the board on the Internet.

10 SECTION 8. Section 54.619, Education Code, is amended by
11 adding Subsections (c-1) and (k) to read as follows:

12 (c-1) If the beneficiary of a prepaid tuition contract
13 entered into after December 31, 2003, under Section 54.623, 54.624,
14 or 54.625 enrolls in an institution of higher education, the board:

15 (1) shall pay to the institution the tuition and
16 required fees of the institution; and

17 (2) may pay to the purchaser all or part of any amount
18 paid or accrued under the contract that exceeds the tuition and
19 required fees of the institution if the board determines that it may
20 do so in a manner consistent with the actuarial soundness of the
21 program.

22 (k) The board by rule shall establish criteria and
23 procedures to guide the board in determining when and under what
24 conditions to reopen new enrollment in the program in the event new
25 enrollment in the program is suspended under Subsection (j). The
26 procedure must require that, each year in which new enrollment in
27 the program is suspended, the board consider the current structure

1 of the program and determine whether any statutory or
2 administrative changes are needed to enable the board to reopen new
3 enrollment in the program in an actuarially sound manner.

4 SECTION 9. Subchapter F, Chapter 54, Education Code, is
5 amended by adding Section 54.6195 to read as follows:

6 Sec. 54.6195. APPLICATION FOR ENROLLMENT. (a) The board
7 shall adopt a form for an application for enrollment in the program.
8 The form must indicate the information that the applicant is
9 required to provide in order for the application to be considered,
10 including the information required by Subsection (b) and any other
11 information the board considers appropriate.

12 (b) An application for enrollment in the program must
13 include the following information:

- 14 (1) the annual household income of the purchaser;
15 (2) the highest educational level of the purchaser;
16 (3) the race or ethnicity of the beneficiary;
17 (4) how the purchaser first learned about the program;

18 and

19 (5) how the purchaser intends to finance the prepaid
20 tuition contract.

21 SECTION 10. Section 54.621, Education Code, is amended by
22 amending Subsection (a) and adding Subsection (d) to read as
23 follows:

24 (a) Except as provided by Subsection (d), the [The]
25 beneficiary of a prepaid tuition contract must be younger than 18
26 years of age or 18 years of age or older and enrolled in high school
27 at the time the purchaser enters into the contract and must be:

1 (1) a resident of this state at the time the purchaser
2 enters into the contract; or

3 (2) a nonresident who is the child of a parent who is a
4 resident of this state at the time that parent enters into the
5 contract.

6 (d) In order to provide sufficient time for program
7 investments to mature in an actuarially sound manner with regard to
8 the amounts prepaid under a contract entered into after December
9 31, 2003, the board may require a maturity period between the time a
10 purchaser enters into the contract and the time the board must act
11 on its contractual obligation to pay any tuition or fees on behalf
12 of the beneficiary.

13 SECTION 11. Section 54.624(b), Education Code, is amended
14 to read as follows:

15 (b) When the beneficiary of a senior college plan prepaid
16 tuition contract entered into on or before December 31, 2003,
17 enrolls in a public senior college or university, the university
18 shall accept as payment in full of the beneficiary's tuition and
19 required fees the lesser of:

20 (1) the amount of tuition and required fees charged by
21 the institution; or

22 (2) an amount paid by the board under the contract
23 equal to the weighted average amount of tuition and required fees of
24 all public senior colleges and universities for that semester or
25 other academic period as determined by the board.

26 SECTION 12. Section 54.642, Education Code, is amended by
27 adding Subsection (d) to read as follows:

1 (d) Not later than December 1 of each even-numbered year,
2 the board shall submit a report to the governor, lieutenant
3 governor, speaker of the house of representatives, the appropriate
4 committees of each house of the legislature, and the Texas Higher
5 Education Coordinating Board that reflects how the impact of
6 tuition deregulation under Section 54.0513 on tuition rates has
7 affected the program, including enrollment in the program.

8 SECTION 13. Section 54.608(e), Education Code, is repealed.

9 SECTION 14. Not later than September 1, 2008, the Prepaid
10 Higher Education Tuition Board shall conduct a study to determine
11 the feasibility of the board and an institution of higher education
12 entering into an agreement under which the institution offers
13 tuition discounts or other benefits to beneficiaries of prepaid
14 tuition contracts who enroll in the institution. The study must
15 include an analysis of the benefits of such an agreement to the
16 board and to institutions of higher education and an evaluation of
17 the level of interest in such agreements on the part of institutions
18 of higher education.

19 SECTION 15. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2007.