

1-1 By: Cook of Navarro, et al. H.B. No. 2173
1-2 (Senate Sponsor - Brimer)
1-3 (In the Senate - Received from the House May 3, 2007;
1-4 May 7, 2007, read first time and referred to Committee on
1-5 Government Organization; May 16, 2007, reported adversely, with
1-6 favorable Committee Substitute by the following vote: Yeas 4,
1-7 Nays 0; May 16, 2007, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 2173 By: Brimer

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to the continuation and functions of the Prepaid Higher
1-12 Education Tuition Board.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 54.603, Education Code, is amended to
1-15 read as follows:

1-16 Sec. 54.603. SUNSET PROVISION. The Prepaid Higher
1-17 Education Tuition Board is subject to Chapter 325, Government Code
1-18 (Texas Sunset Act). Unless continued in existence as provided by
1-19 that chapter, the board is abolished and the programs established
1-20 under this subchapter and under Subchapter G terminate September 1,
1-21 2019 [2007].

1-22 SECTION 2. Sections 54.608(b), (c), and (f), Education
1-23 Code, are amended to read as follows:

1-24 (b) A person [An officer, employee, or paid consultant of a
1-25 Texas trade association in the field of higher education] may not be
1-26 a member [or employee] of the board and may not be a board employee
1-27 employed in a "bona fide executive, administrative, or professional
1-28 capacity," as that phrase is used for purposes of establishing an
1-29 exemption to the overtime provisions of the federal Fair Labor
1-30 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

1-31 (1) the [who is exempt from the state's position
1-32 classification plan or is compensated at or above the amount
1-33 prescribed by the General Appropriations Act for step 1, salary
1-34 group 17, of the position classification salary schedule.

1-35 [(c) A] person [who] is [the spouse of] an officer, employee
1-36 [manager], or paid consultant of a Texas trade association in the
1-37 field of higher education, banking, securities, or investments; or

1-38 (2) the person's spouse is an officer, manager, or paid
1-39 consultant of a Texas trade association in the field of higher
1-40 education, banking, securities, or investments [may not be a board
1-41 member and may not be a board employee who is exempt from the
1-42 state's position classification plan or is compensated at or above
1-43 the amount prescribed by the General Appropriations Act for step 1,
1-44 salary group 17, of the position classification salary schedule].

1-45 (f) In [For the purposes of] this section, "[a] Texas trade
1-46 association" means [is] a [nonprofit,] cooperative[7] and
1-47 voluntarily joined statewide association of business or
1-48 professional competitors in this state designed to assist its
1-49 members and its industry or profession in dealing with mutual
1-50 business or professional problems and in promoting their common
1-51 interest.

1-52 SECTION 3. Subchapter F, Chapter 54, Education Code, is
1-53 amended by adding Section 54.6085 to read as follows:

1-54 Sec. 54.6085. PREPAID HIGHER EDUCATION TUITION BOARD ETHICS
1-55 POLICY. (a) In addition to any other requirements provided by law,
1-56 the board shall adopt and enforce an ethics policy that provides
1-57 standards of conduct relating to the management and investment
1-58 decisions of the board. The ethics policy must include provisions
1-59 that address the following issues as they apply to the management
1-60 and investment decisions of the board:

1-61 (1) general ethical standards;

1-62 (2) conflicts of interest, including disclosure and
1-63 recusal requirements;

2-1 (3) the acceptance of gifts and entertainment; and
2-2 (4) compliance with and enforcement of the ethics
2-3 policy.

2-4 (b) The ethics policy must include provisions applicable
2-5 to:

- 2-6 (1) members of the board;
- 2-7 (2) the comptroller; and
- 2-8 (3) employees of the board.

2-9 SECTION 4. Section 54.609, Education Code, is amended by
2-10 amending Subsection (a) and adding Subsection (c) to read as
2-11 follows:

2-12 (a) It is a ground for removal from the board if a member:
2-13 (1) does not have at the time of taking office the
2-14 applicable qualifications required by Section 54.606(b);

2-15 (2) is ineligible for membership under [violates a
2-16 prohibition established by] Section 54.608;

2-17 (3) [~~(2)~~] cannot because of illness or disability
2-18 discharge the member's duties for a substantial part of the term for
2-19 which the member is appointed; or

2-20 (4) [~~(3)~~] is absent from more than half of the
2-21 regularly scheduled board meetings that the member is eligible to
2-22 attend during a calendar year unless the absence is excused by
2-23 majority vote of the board.

2-24 (c) If the staff of the board has knowledge that a potential
2-25 ground for removal exists, the staff shall notify the presiding
2-26 officer of the board of the potential ground. The presiding officer
2-27 shall then notify the governor and the attorney general that a
2-28 potential ground for removal exists. If the potential ground for
2-29 removal involves the presiding officer, the staff of the board
2-30 shall notify the next highest ranking officer of the board, who
2-31 shall then notify the governor and the attorney general that a
2-32 potential ground for removal exists.

2-33 SECTION 5. Section 54.610, Education Code, is amended by
2-34 amending Subsection (a) and adding Subsection (c) to read as
2-35 follows:

2-36 (a) A person who is appointed to and qualifies for office as
2-37 [Before] a member of the board may not vote, deliberate, or be
2-38 counted as a member in attendance at a meeting of the board until
2-39 the person completes a [assume the member's duties and before an
2-40 appointed member may be confirmed by the senate, the member must
2-41 complete at least one course of the] training program that complies
2-42 with [established under] this section.

2-43 (c) A person appointed to the board is entitled to
2-44 reimbursement, as provided by the General Appropriations Act, for
2-45 the travel expenses incurred in attending the training program
2-46 regardless of whether the attendance at the program occurs before
2-47 or after the person qualifies for office.

2-48 SECTION 6. Section 54.617, Education Code, is amended by
2-49 amending Subsections (c) and (d) and adding Subsection (e) to read
2-50 as follows:

2-51 (c) The board shall maintain a system to promptly and
2-52 efficiently act on complaints filed with the board. The board shall
2-53 maintain information about parties to the complaint, the subject
2-54 matter of the complaint, a summary of the results of the review or
2-55 investigation of the complaint, and its disposition [keep
2-56 information about each complaint filed with the board. The
2-57 information shall include:

- 2-58 [(1) the date the complaint is received,
- 2-59 [(2) the name of the complainant,
- 2-60 [(3) the subject matter of the complaint,
- 2-61 [(4) a record of all persons contacted in relation to
2-62 the complaint,
- 2-63 [(5) a summary of the results of the review or
2-64 investigation of the complaint, and
- 2-65 [(6) for complaints for which the board took no
2-66 action, an explanation of the reason the complaint was closed
2-67 without action].

2-68 (d) The board shall make information available describing
2-69 its procedures for complaint investigation and resolution [keep a

~~file for each written complaint filed with the board that the board has authority to resolve. The board shall provide to the person filing the complaint and the persons or entities complained about the board's policies and procedures pertaining to complaint investigation and resolution. The board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation].~~

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

SECTION 7. Subchapter F, Chapter 54, Education Code, is amended by adding Sections 54.6175 and 54.6185 to read as follows:

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

Sec. 54.6185. COMPLIANCE WITH SUNSET MANAGEMENT RECOMMENDATIONS. (a) The board shall:

(1) comply with and implement the management action recommendations regarding the board adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of the board; and

(2) report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the board's implementation of the recommendations as required by Subdivision (1).

(b) This section expires June 1, 2009.

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

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

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

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

(k) The board by rule shall establish criteria and procedures to guide the board in determining when and under what conditions to reopen new enrollment in the program in the event new enrollment in the program is suspended under Subsection (j). The procedure must require that, each year in which new enrollment in the program is suspended, the board consider the current structure of the program and determine whether any statutory or administrative changes are needed to enable the board to reopen new enrollment in the program in an actuarially sound manner.

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

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

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

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

and

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

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

4-1 follows:

4-2 (a) Except as provided by Subsection (d), the [The]
4-3 beneficiary of a prepaid tuition contract must be younger than 18
4-4 years of age or 18 years of age or older and enrolled in high school
4-5 at the time the purchaser enters into the contract and must be:

4-6 (1) a resident of this state at the time the purchaser
4-7 enters into the contract; or

4-8 (2) a nonresident who is the child of a parent who is a
4-9 resident of this state at the time that parent enters into the
4-10 contract.

4-11 (d) In order to provide sufficient time for program
4-12 investments to mature in an actuarially sound manner with regard to
4-13 the amounts prepaid under a contract entered into after December
4-14 31, 2003, the board may require a maturity period between the time a
4-15 purchaser enters into the contract and the time the board must act
4-16 on its contractual obligation to pay any tuition or fees on behalf
4-17 of the beneficiary.

4-18 SECTION 11. Section 54.624(b), Education Code, is amended
4-19 to read as follows:

4-20 (b) When the beneficiary of a senior college plan prepaid
4-21 tuition contract entered into on or before December 31, 2003,
4-22 enrolls in a public senior college or university, the university
4-23 shall accept as payment in full of the beneficiary's tuition and
4-24 required fees the lesser of:

4-25 (1) the amount of tuition and required fees charged by
4-26 the institution; or

4-27 (2) an amount paid by the board under the contract
4-28 equal to the weighted average amount of tuition and required fees of
4-29 all public senior colleges and universities for that semester or
4-30 other academic period as determined by the board.

4-31 SECTION 12. Section 54.608(e), Education Code, is repealed.

4-32 SECTION 13. Not later than September 1, 2008, the Prepaid
4-33 Higher Education Tuition Board shall conduct a study to determine
4-34 the feasibility of the board and an institution of higher education
4-35 entering into an agreement under which the institution offers
4-36 tuition discounts or other benefits to beneficiaries of prepaid
4-37 tuition contracts who enroll in the institution. The study must
4-38 include an analysis of the benefits of such an agreement to the
4-39 board and to institutions of higher education and an evaluation of
4-40 the level of interest in such agreements on the part of institutions
4-41 of higher education.

4-42 SECTION 14. This Act takes effect immediately if it
4-43 receives a vote of two-thirds of all the members elected to each
4-44 house, as provided by Section 39, Article III, Texas Constitution.
4-45 If this Act does not receive the vote necessary for immediate
4-46 effect, this Act takes effect September 1, 2007.

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