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H.B. No. 3900

A BILL TO BE ENTITLED

AN ACT

relating to the Texas tomorrow fund II prepaid tuition unit  
undergraduate education program.

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

SECTION 1. Chapter 54, Education Code, is amended by adding  
Subchapter H to read as follows:

SUBCHAPTER H. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION

PROGRAM: TEXAS TOMORROW FUND II

Sec. 54.751. DEFINITIONS. In this subchapter:

(1) "Accredited out-of-state institution of higher  
education" means a public or private institution of higher  
education that:

(A) is located outside this state; and

(B) is accredited by a recognized accrediting  
agency.

(2) "Beneficiary" means the person designated under a  
prepaid tuition contract as the person entitled to apply one or more  
tuition units purchased under the contract to the payment of the  
person's undergraduate tuition and required fees at 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.

(3) "Board" means the Prepaid Higher Education Tuition  
Board.

1           (4) "Fund" means the Texas tomorrow fund II.

2           (5) "General academic teaching institution" has the  
3 meaning assigned by Section 61.003, except that the term does not  
4 include a public state college.

5           (6) "Prepaid tuition contract" means a contract under  
6 which a person purchases from the board on behalf of a beneficiary  
7 one or more tuition units that the beneficiary is entitled to apply  
8 to the payment of the beneficiary's undergraduate tuition and  
9 required fees at a general academic teaching institution, two-year  
10 institution of higher education, private or independent  
11 institution of higher education, or accredited out-of-state  
12 institution of higher education.

13           (7) "Private or independent institution of higher  
14 education," "public junior college," "public state college,"  
15 "public technical institute," and "recognized accrediting agency"  
16 have the meanings assigned by Section 61.003.

17           (8) "Program" means the prepaid tuition unit  
18 undergraduate education program.

19           (9) "Purchaser" means a person who enters into a  
20 prepaid tuition contract with the board on behalf of a beneficiary  
21 for the purchase of one or more tuition units.

22           (10) "Required fee" means a fee, other than a  
23 laboratory fee for a specific course, that is charged by a public or  
24 private institution of higher education to all students at the  
25 institution who are not exempt from the fee. For purposes of this  
26 subdivision, a fee is a required fee only to the extent that the fee  
27 is considered a qualified higher education expense under Internal

1 Revenue Code provisions applicable to the program.

2 (11) "Two-year institution of higher education" means  
3 a public junior college, a public state college, and a public  
4 technical institute.

5 Sec. 54.752. POWERS AND DUTIES OF BOARD CONCERNING PROGRAM.

6 (a) In addition to carrying out duties assigned under Subchapters F  
7 and G, the Prepaid Higher Education Tuition Board shall administer  
8 the prepaid tuition unit undergraduate education program  
9 established under this subchapter. The board shall comply with  
10 federal and state law related to the program.

11 (b) In addition to the board's powers assigned under  
12 Subchapters F and G, the board has the powers necessary or proper to  
13 carry out this subchapter, including the power to:

14 (1) adopt rules to implement this subchapter;

15 (2) sue and be sued;

16 (3) enter into contracts and other necessary  
17 instruments;

18 (4) enter into agreements or other transactions with  
19 the United States, state agencies, general academic teaching  
20 institutions, two-year institutions of higher education, and local  
21 governments;

22 (5) appear on its own behalf before governmental  
23 agencies;

24 (6) contract for necessary goods and services,  
25 including specifying in the contract duties to be performed by the  
26 provider of a good or service that are a part of or are in addition  
27 to the person's primary duties under the contract;

1           (7) engage the services of private consultants,  
2 actuaries, trustees, records administrators, managers, legal  
3 counsel, and auditors for administrative or technical assistance;

4           (8) solicit and accept gifts, grants, loans, and other  
5 aid from any source or participate in any other way in any  
6 government program to carry out this subchapter;

7           (9) impose administrative fees;

8           (10) contract with a person to market the program;

9           (11) purchase liability insurance covering the board  
10 and employees and agents of the board; and

11           (12) establish other policies, procedures, and  
12 eligibility criteria to implement this subchapter.

13           Sec. 54.753. PREPAID TUITION UNITS: PURCHASE; ASSIGNED  
14 VALUE; TYPES; PRICE. (a) Under the program, a purchaser may prepay  
15 the costs of all or a portion of a beneficiary's undergraduate  
16 tuition and required fees at a general academic teaching  
17 institution, two-year institution of higher education, private or  
18 independent institution of higher education, or accredited  
19 out-of-state institution of higher education by entering into a  
20 prepaid tuition contract with the board to purchase one or more  
21 tuition units of a type described by this section at the applicable  
22 price established by the board for that type of unit for the year in  
23 which the unit is purchased. The portion of the beneficiary's  
24 undergraduate tuition and required fees for which a tuition unit  
25 may be redeemed at a particular general academic teaching  
26 institution or two-year institution of higher education is assigned  
27 to the tuition unit at the time of purchase, and the tuition unit

1 may be redeemed to pay that portion of the tuition and fees at the  
2 general academic teaching institution or two-year institution of  
3 higher education in any academic year in which the unit is redeemed  
4 in accordance with this subchapter. The purchaser may purchase one  
5 type of unit or a combination of two or three types of units.

6 (b) The assigned value of a tuition unit, purchased as  
7 provided by this section, when used to pay the cost of tuition and  
8 required fees at a general academic teaching institution or  
9 two-year institution of higher education, is equal to one percent  
10 of the amount necessary for the academic year in which the unit is  
11 redeemed to cover the applicable cost of undergraduate resident  
12 tuition and required fees for one academic year consisting of 30  
13 semester credit hours as follows:

14 (1) for a Type I tuition unit, the cost of  
15 undergraduate resident tuition and required fees charged by the  
16 general academic teaching institution with the highest such tuition  
17 and fee costs, determined as provided by Subsection (d);

18 (2) for a Type II tuition unit, the weighted average  
19 undergraduate resident tuition and required fees charged by general  
20 academic teaching institutions, determined as provided by  
21 Subsection (e); and

22 (3) for a Type III tuition unit, the weighted average  
23 undergraduate resident tuition and required fees of two-year  
24 institutions of higher education, determined as provided by  
25 Subsection (f).

26 (c) Each year, the board shall establish the price at which  
27 each type of tuition unit may be purchased during the next sales

1 period and the percentage of the total cost of undergraduate  
2 resident tuition and required fees for one academic year consisting  
3 of 30 semester credit hours for which each type of tuition unit may  
4 be redeemed at each general academic teaching institution and  
5 two-year institution. The percentage shall be based on the total  
6 cost of required tuition and fees at a particular general academic  
7 teaching institution or two-year institution of higher education in  
8 relation to the amount determined for the institution with the  
9 highest cost or weighted average cost, as applicable. The purchase  
10 price established for each type of unit must be equal to the  
11 applicable cost of tuition and required fees as determined under  
12 this section for the most recent academic year that began before the  
13 beginning of the sales period. The sales period to which those  
14 prices apply expires on the first anniversary of the date the units  
15 become available for purchase at the prices established for that  
16 year.

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

22 (e) The board shall base the purchase price of a Type II  
23 tuition unit on one percent of the cost of the weighted average  
24 general academic teaching institution undergraduate resident  
25 tuition and required fees for the applicable academic year. That  
26 cost is determined by:

27 (1) for each general academic teaching institution,

1 multiplying the average amount of the institution's undergraduate  
2 resident tuition and required fees for an academic year consisting  
3 of 30 semester credit hours by the number of full-time equivalent  
4 undergraduate resident students at that institution;

5 (2) adding together the products computed under  
6 Subdivision (1) for each institution; and

7 (3) dividing the sum determined under Subdivision (2)  
8 by the total number of full-time equivalent undergraduate resident  
9 students at all general academic teaching institutions.

10 (f) The board shall base the purchase price of a Type III  
11 tuition unit on one percent of the cost of the weighted average  
12 two-year institution of higher education undergraduate resident  
13 tuition and required fees for the applicable academic year,  
14 disregarding any portion of the tuition charged by a public junior  
15 college to a resident of this state who does not reside within the  
16 taxing jurisdiction of the junior college. That cost is determined  
17 by:

18 (1) for each two-year institution of higher education,  
19 multiplying the average amount of the institution's undergraduate  
20 resident tuition and required fees for an academic year consisting  
21 of 30 semester credit hours by the number of full-time equivalent  
22 undergraduate resident students at that institution;

23 (2) adding together the products computed under  
24 Subdivision (1) for each institution; and

25 (3) dividing the sum determined under Subdivision (2)  
26 by the total number of full-time equivalent undergraduate resident  
27 students at all two-year institutions of higher education.

1       (g) The total amount paid under a prepaid tuition contract  
2 on behalf of a single beneficiary may not exceed any limit  
3 established on the amount by Section 529, Internal Revenue Code of  
4 1986. The board shall establish, in compliance with Section 529,  
5 Internal Revenue Code of 1986, the minimum amount that the  
6 purchaser is required to pay under the contract on behalf of a  
7 single beneficiary.

8       (h) At the time of the establishment of the account to which  
9 a purchaser's prepaid tuition contract money is assigned, the board  
10 may impose an administrative fee not to exceed \$25. Money from that  
11 fee must be used directly in maintaining the actuarial soundness of  
12 the fund as required by Section 54.770. The board may not impose  
13 any other fee or charge in connection with the sale of a tuition  
14 unit.

15       Sec. 54.754. REDEMPTION OF TUITION UNITS. (a) In  
16 accordance with this subchapter, when a beneficiary under a prepaid  
17 tuition contract redeems one or more tuition units to pay costs of  
18 tuition and required fees, the board shall apply money in the fund,  
19 in the amount provided by Section 54.765(c) or (d), as applicable,  
20 to pay all or the applicable portion of the costs of the  
21 beneficiary's tuition and required fees at the general academic  
22 teaching institution, two-year institution of higher education,  
23 private or independent institution of higher education, or  
24 accredited out-of-state institution of higher education in which  
25 the beneficiary enrolls. Subject to Subsection (b)(2) and the other  
26 provisions of this section, a beneficiary may redeem any type of  
27 tuition unit for attendance at an institution described by this



1 section. A general academic teaching institution or two-year  
2 institution of higher education shall accept the amount transferred  
3 to the institution under Section 54.765(c) when the unit or units  
4 are redeemed as payment for all or the applicable portion of the  
5 beneficiary's tuition and required fees.

6 (b) To pay for the entire cost of undergraduate resident  
7 tuition and required fees for an academic year consisting of 30  
8 semester credit hours, redemption of 100 Type I tuition units is  
9 required at the general academic teaching institution with the  
10 highest tuition and fee cost as described by Section 54.753(d),  
11 redemption of 100 Type II tuition units is required at a general  
12 academic teaching institution with the applicable tuition and fee  
13 cost at the weighted average as described by Subsection (e) of that  
14 section, and redemption of 100 Type III units is required at a  
15 two-year institution of higher education with the applicable  
16 tuition and fee cost at the weighted average as described by  
17 Subsection (f) of that section. The number of tuition units that  
18 must be redeemed to pay for the entire cost of tuition and required  
19 fees for an academic year at another general academic teaching  
20 institution or two-year institution of higher education may be  
21 higher or lower:

22 (1) in proportion to the amount that the cost of  
23 tuition and required fees at that institution is higher or lower  
24 than the amount determined for the institution with the highest  
25 cost or weighted average cost, as applicable; or

26 (2) if a more or less valuable type of tuition unit is  
27 redeemed.

1       (c) To assist purchasers in determining the number of  
2 tuition units a beneficiary must redeem to cover the costs of  
3 tuition and required fees at general academic teaching institutions  
4 and two-year institutions of higher education, each year the board  
5 shall prepare a tuition unit redemption chart and shall post the  
6 chart on an Internet website. The chart must show for each general  
7 academic teaching institution and for each two-year institution of  
8 higher education the number of each type of units purchased that  
9 year that would be required to cover the cost of tuition and  
10 required fees, based on an academic year consisting of 30 semester  
11 credit hours.

12       (d) If a beneficiary redeems fewer tuition units of the type  
13 or combination of types necessary to pay the total cost of the  
14 beneficiary's tuition and required fees at the general academic  
15 teaching institution, two-year institution of higher education,  
16 private or independent institution of higher education, or  
17 accredited out-of-state institution of higher education at which  
18 the beneficiary enrolls, the beneficiary is responsible for paying  
19 the amount of the difference between the amount of tuition and  
20 required fees for which the beneficiary pays through the redemption  
21 of one or more tuition units and the total cost of the beneficiary's  
22 tuition and required fees at the institution.

23       (e) If the beneficiary redeems fewer tuition units to pay  
24 the cost of tuition and required fees than the number of units  
25 purchased on behalf of the beneficiary under a prepaid tuition  
26 contract, other than to defer redemption as permitted in accordance  
27 with Section 54.758, the purchaser may:

1           (1) redeem for cash the amount of the purchase price of  
2 the excess units, plus annual interest earned on that money,  
3 accrued at a rate set by the board not to exceed five percent  
4 annually; or

5           (2) transfer the remaining units to another  
6 beneficiary in accordance with this subchapter.

7           (f) A beneficiary or purchaser may not redeem a tuition unit  
8 earlier than the third anniversary of the date the unit was  
9 purchased.

10           Sec. 54.755. PREPAID TUITION CONTRACT. (a) The board shall  
11 adopt a form for a prepaid tuition contract to be used by the board  
12 and purchasers.

13           (b) A prepaid tuition contract must:

14           (1) specify the terms under which the purchaser must  
15 pay any amounts owed under the contract;

16           (2) specify the consequences of default;

17           (3) specify the name and date of birth of the  
18 beneficiary under the contract and the terms under which another  
19 person may be substituted as the beneficiary;

20           (4) specify the date the beneficiary is projected to  
21 graduate from high school; and

22           (5) contain any other provisions the board considers  
23 necessary or appropriate.

24           (c) A prepaid tuition contract may provide for the purchase  
25 of additional tuition units in subsequent years at the then-current  
26 price of the additional units.

27           Sec. 54.756. PURCHASER; BENEFICIARY. (a) A purchaser may

1 be any person who is permitted to be a purchaser under Section 529,  
2 Internal Revenue Code of 1986. The purchaser is not required to be  
3 a resident of this state, except as provided by Subsection (c)(2).

4 (b) In accordance with applicable provisions of Section  
5 529, Internal Revenue Code of 1986, a purchaser is the owner of the  
6 account to which the purchaser's prepaid tuition contract money is  
7 assigned.

8 (c) At the time the purchaser enters into a prepaid tuition  
9 contract, the beneficiary of the contract must be:

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

12 (2) a nonresident who is the child of a parent who is a  
13 resident of this state at the time that parent enters into the  
14 contract.

15 (d) For purposes of Subsection (c), the board may require a  
16 reasonable period of residence in this state for a beneficiary or  
17 the parent of a beneficiary.

18 (e) Notwithstanding any provision of Subchapter B, the  
19 tuition and required fees charged by a general academic teaching  
20 institution or two-year institution of higher education that are  
21 paid for with tuition units shall be determined as if the  
22 beneficiary of that contract were a resident student.

23 Sec. 54.757. CONTRACT PAYMENT. (a) The board may provide  
24 for the receipt of payment under prepaid tuition contracts in lump  
25 sums or installment payments. If the board allows payments under a  
26 contract to be made in installments over a period longer than one  
27 year, the board must provide for a plan that permits those payments

1 to be made in single annual installments in addition to any other  
2 permitted installment plans.

3 (b) A purchaser may make payments under a prepaid tuition  
4 contract by an electronic funds transfer.

5 (c) An employee of this state or a political subdivision of  
6 this state may make payments under a prepaid tuition contract by  
7 payroll deductions made by the appropriate officer of the state or  
8 political subdivision. The board shall implement procedures to  
9 facilitate payments under this subsection.

10 (d) The board may impose a fee for a late payment under a  
11 prepaid tuition contract.

12 Sec. 54.758. DEFERRED USE OF PREPAID CREDIT HOURS. (a) A  
13 prepaid tuition contract must permit the beneficiary to elect to  
14 pay from a source other than tuition units purchased under the  
15 contract the beneficiary's tuition and required fees for some or  
16 all of the tuition and required fees to which the beneficiary is  
17 entitled to payment under the contract, and to defer to a subsequent  
18 semester or other academic term the right to payment of the  
19 beneficiary's tuition and required fees by using tuition units  
20 remaining under the contract.

21 (b) This section does not affect the date on which a prepaid  
22 tuition contract terminates under this subchapter and does not give  
23 the beneficiary the right to a payment under the contract after  
24 termination of the contract.

25 Sec. 54.759. CHANGE OF BENEFICIARY. (a) The purchaser of a  
26 prepaid tuition contract may designate a different beneficiary in  
27 place of the original beneficiary if the new beneficiary meets the

1 requirements of a beneficiary on the date the designation is  
2 changed. The new beneficiary must meet the requirements of Section  
3 529, Internal Revenue Code of 1986, to prevent the change of  
4 beneficiary from being treated as a distribution under that law.

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

10 (c) The board may not impose a fee in connection with the  
11 designation of a new beneficiary.

12 (d) The purchaser of a prepaid tuition contract may not sell  
13 the contract.

14 Sec. 54.760. VERIFICATION UNDER OATH. The board may  
15 require a purchaser to verify under oath a request to:

16 (1) change a beneficiary; or

17 (2) terminate a contract.

18 Sec. 54.761. PROMISE OR GUARANTEE OF ADMISSION. This  
19 subchapter is not a promise or guarantee that a beneficiary will be:

20 (1) admitted to any public or private institution of  
21 higher education;

22 (2) admitted to a particular public or private  
23 institution of higher education;

24 (3) allowed to continue enrollment at a public or  
25 private institution of higher education; or

26 (4) graduated from a public or private institution of  
27 higher education.

1       Sec. 54.762. CONTRACT TERMINATION. (a) A prepaid tuition  
2 contract shall specify:

3           (1) the name of any person who may terminate the  
4 contract; and

5           (2) the terms under which the contract may be  
6 terminated.

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

11       Sec. 54.763. REFUND. (a) A prepaid tuition contract shall  
12 specify:

13           (1) the name of the person entitled to any refund if  
14 the contract is terminated;

15           (2) the terms under which a person is entitled to a  
16 refund; and

17           (3) the method by which the amount of the refund is  
18 computed.

19       (b) The person named in the contract is entitled to a refund  
20 following termination of a prepaid tuition contract.

21       (c) The board shall determine the method by which the amount  
22 of the refund is computed.

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

26       (b) The board shall:

27           (1) deposit in the fund money paid under prepaid

1 tuition contracts; and

2 (2) credit to the fund income earned on that money.

3 (c) The board shall provide for administering the assets of  
4 the fund and establishing and administering the accounts of  
5 purchasers under prepaid tuition contracts.

6 (d) The board shall provide for assigning payments to the  
7 fund to separate accounts for purchasers and may provide for  
8 assigning payments to other general accounts as otherwise  
9 considered appropriate by the board.

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

14 Sec. 54.765. COMPTROLLER. (a) Except as provided by  
15 Subsection (e), the comptroller is the custodian of the assets of  
16 the fund.

17 (b) The comptroller shall pay money from the fund on a  
18 warrant drawn by the comptroller supported only on a voucher signed  
19 by the comptroller or the comptroller's authorized representative.

20 (c) When a beneficiary enrolls at a general academic  
21 teaching institution or two-year institution of higher education,  
22 on written authorization from the purchaser of the tuition unit or  
23 units for that beneficiary, the comptroller shall transfer to the  
24 institution an amount equal to the total purchase price of the  
25 tuition unit or units the beneficiary redeems for the semester or  
26 other academic term plus the portion of the total return on all  
27 investment assets of the fund attributable to that amount.



1       (d) When a beneficiary enrolls at a private or independent  
2 institution of higher education or accredited out-of-state  
3 institution of higher education, on written authorization from the  
4 purchaser of the tuition unit or units for that beneficiary, the  
5 comptroller shall transfer to the institution the lesser of:

6           (1) an amount equal to the current cost of the tuition  
7 and required fees that would be covered by redemption of the number  
8 and type of tuition units the beneficiary is redeeming if the  
9 beneficiary were redeeming the unit or units at a general academic  
10 teaching institution or two-year institution of higher education as  
11 follows:

12           (A) for a Type I unit, at the general academic  
13 teaching institution that, in the sales year in which the unit was  
14 purchased, had the highest tuition and required fee cost;

15           (B) for a Type II unit, at a general academic  
16 teaching institution that, in the sales year in which the unit was  
17 purchased, had tuition and required fee cost at the weighted  
18 average; and

19           (C) for a Type III unit, at a two-year  
20 institution of higher education that, in the sales year in which the  
21 unit was purchased, had tuition and required fee cost at the  
22 weighted average; or

23           (2) an amount equal to the total purchase price of the  
24 tuition unit or units the beneficiary redeems for the semester or  
25 other academic term plus the portion of the total return on assets  
26 of the fund attributable to that amount.

27       (e) The comptroller annually shall provide to the board a

1 sworn statement of the amount of the fund's assets in the  
2 comptroller's custody.

3 (f) The board may select one or more commercial banks,  
4 depository trust companies, or other entities to serve as custodian  
5 of all or part of the fund's assets.

6 Sec. 54.766. INVESTMENT OF FUND ASSETS. (a) The board  
7 shall provide for investing the assets of the fund. In investing the  
8 fund, the board has the same investment authority as that provided  
9 by Section 11b, Article VII, Texas Constitution, or other law, to  
10 the board of regents of The University of Texas System with respect  
11 to the investment of the Permanent University Fund.

12 (b) The board shall contract with one or more private  
13 professional investment managers to serve as plan manager and to  
14 invest the assets of the fund on behalf of the board. In selecting a  
15 manager, the board must:

16 (1) select a person who has served as a professional  
17 investment manager for at least 10 years;

18 (2) evaluate each person considered for the position  
19 based on the historical net returns of the person's professional  
20 investments and the consistency of the person's professional  
21 investment returns over a period of at least five years; and

22 (3) comply with Section 54.704.

23 (c) In monitoring the manager's investments, the board  
24 shall ensure that investments are made according to the standard of  
25 investment provided by this section. The plan manager has the same  
26 duties imposed on a plan manager by Section 54.705.

27 (d) The board shall develop written objectives concerning

1 the investment of the assets of the fund. The objectives may  
2 address desired rates of return, risks involved, investment time  
3 frames, and any other relevant considerations.

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

9 Sec. 54.767. USE OF FUND ASSETS. The assets of the fund may  
10 be used only to:

11 (1) pay the costs of program administration and  
12 operations;

13 (2) make payments to general academic teaching  
14 institutions, two-year institutions of higher education, private  
15 or independent institutions of higher education, and accredited  
16 out-of-state institutions of higher education on behalf of  
17 beneficiaries; and

18 (3) make refunds under prepaid tuition contracts.

19 Sec. 54.7671. TRANSFERS AMONG 529 PLANS. (a) The board by  
20 rule shall provide for a purchaser to transfer money between an  
21 account under this subchapter and an account under another plan  
22 established by this state or by another state or other authorized  
23 entity in accordance with Section 529, Internal Revenue Code of  
24 1986, to the extent and in the manner authorized by that section.

25 (b) For purposes of a transfer of money from an account  
26 under this subchapter, the value of the account at the time of  
27 transfer is the lesser of:

1           (1) an amount equal to the cost, at the time of the  
2 transfer, of the tuition and required fees that would be covered by  
3 redemption of the number and type of tuition units to be transferred  
4 from the account if the beneficiary were redeeming the units at a  
5 general academic teaching institution or two-year institution of  
6 higher education as follows:

7           (A) for a Type I unit, at the general academic  
8 teaching institution that, in the sales year in which the unit was  
9 purchased, had the highest tuition and required fee cost;

10           (B) for a Type II unit, at a general academic  
11 teaching institution that, in the sales year in which the unit was  
12 purchased, had tuition and required fee cost at the weighted  
13 average; and

14           (C) for a Type III unit, at a two-year  
15 institution of higher education that, in the sales year in which the  
16 unit was purchased, had tuition and required fee cost at the  
17 weighted average; or

18           (2) an amount equal to the total purchase price of the  
19 tuition units to be transferred from the account, plus the portion  
20 of the total return on assets of the fund attributable to that  
21 amount.

22           Sec. 54.768. EXEMPTION FROM SECURITIES LAWS. The  
23 registration requirements of The Securities Act (Article 581-1 et  
24 seq., Vernon's Texas Civil Statutes) do not apply to the sale of a  
25 prepaid tuition contract by the board or by a registered securities  
26 dealer or registered investment adviser.

27           Sec. 54.769. EXEMPTION FROM CREDITORS' CLAIMS. (a) Money

1 in the fund is exempt from claims of creditors, including claims of  
2 creditors of a purchaser, a beneficiary, or a successor in interest  
3 of a purchaser or beneficiary.

4 (b) The rights of a purchaser, beneficiary, or successor in  
5 interest of a purchaser or beneficiary in and under a prepaid  
6 tuition contract and the payment of tuition and required fees for a  
7 beneficiary under a prepaid tuition contract to a general academic  
8 teaching institution, two-year institution of higher education,  
9 private or independent institution of higher education, or  
10 accredited out-of-state institution of higher education under this  
11 chapter are exempt from attachment, levy, garnishment, execution,  
12 and seizure for the satisfaction of any debt, judgment, or claim  
13 against a purchaser, beneficiary, or successor in interest of a  
14 purchaser or beneficiary.

15 (c) A claim or judgment against a purchaser, beneficiary, or  
16 successor in interest of a purchaser or beneficiary does not impair  
17 or entitle the claim or judgment holder to assert or enforce a lien  
18 against:

19 (1) the rights of a purchaser, beneficiary, or  
20 successor in interest of a purchaser or beneficiary in and under a  
21 prepaid tuition contract; or

22 (2) the right of a beneficiary to the payment of  
23 tuition and required fees to a general academic teaching  
24 institution, two-year institution of higher education, private or  
25 independent institution of higher education, or accredited  
26 out-of-state institution of higher education under a prepaid  
27 tuition contract.

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

5       (b) The board shall annually evaluate the actuarial  
6 soundness of the fund.

7       (c) The board may adjust the terms of subsequent prepaid  
8 tuition contracts as necessary to ensure the actuarial soundness of  
9 the fund.

10       Sec. 54.771. COMPLIANCE WITH LIMITS ON CONTRIBUTIONS AND  
11 WITHDRAWALS. The board shall monitor contributions to and  
12 withdrawals from the fund and any account within the fund to ensure  
13 that any applicable limits on contributions or withdrawals are not  
14 exceeded.

15       Sec. 54.772. TAX EXEMPT STATUS REQUIREMENTS. (a) This  
16 section is intended to meet the requirements of Section 529,  
17 Internal Revenue Code of 1986.

18       (b) A payment of an amount due to the fund for a prepaid  
19 tuition contract must be made in cash or cash equivalent. A person  
20 may not make a payment to the fund in excess of the amounts required  
21 to be paid under a prepaid tuition contract.

22       (c) The board shall maintain a separate accounting for each  
23 beneficiary.

24       (d) The purchaser under a prepaid tuition contract and the  
25 beneficiary under the contract may not:

26               (1) control or direct the investment of payments under  
27 the contract or any earnings of the fund; or

1           (2) use any interest in the contract as security for a  
2 loan or other obligation.

3           (e) The board shall make reports required by the secretary  
4 of the United States Treasury.

5           Sec. 54.773. SUSPENSION OF NEW ENROLLMENT; PROGRAM  
6 MODIFICATION OR TERMINATION. (a) On the request of the comptroller  
7 as the comptroller considers necessary to ensure the actuarial  
8 soundness of the fund, the board may temporarily suspend new  
9 enrollment in the program.

10           (b) If the comptroller determines that the program is  
11 financially infeasible, the comptroller shall notify the governor  
12 and the legislature and recommend that the program be modified or  
13 terminated.

14           Sec. 54.774. EFFECT OF PROGRAM TERMINATION ON CONTRACT.  
15 (a) A prepaid tuition contract remains in effect after the program  
16 is terminated if, when the program is terminated, the beneficiary:

17           (1) has been accepted by or is enrolled at a general  
18 academic teaching institution, two-year institution of higher  
19 education, private or independent institution of higher education,  
20 or accredited out-of-state institution of higher education; or

21           (2) is projected to graduate from high school not  
22 later than the third anniversary of the date the program is  
23 terminated.

24           (b) A prepaid tuition contract terminates when the program  
25 is terminated if the contract does not remain in effect under  
26 Subsection (a).

27           Sec. 54.775. CONFIDENTIALITY. (a) Records in the custody

1 of the board relating to the participation of specific purchasers  
2 and beneficiaries in the program are confidential.

3 (b) Notwithstanding Subsection (a), the board may release  
4 information described by that subsection to a general academic  
5 teaching institution, two-year institution of higher education,  
6 private or independent institution of higher education, or  
7 accredited out-of-state institution of higher education at which a  
8 beneficiary may enroll or is enrolled. The institution shall keep  
9 the information confidential.

10 (c) Notwithstanding any other provision of this subchapter,  
11 the board may release information to the Internal Revenue Service  
12 and to any state tax agencies as required by applicable tax law.

13 Sec. 54.776. STATEMENT REGARDING STATUS OF PREPAID TUITION  
14 CONTRACT. Not later than January 1 of each year, the board shall  
15 provide without charge to each purchaser a statement of:

16 (1) the amount paid by the purchaser under the prepaid  
17 tuition contract;

18 (2) the total number of each type of tuition unit  
19 covered by the contract at any one time;

20 (3) the number of each type of tuition unit remaining  
21 under the contract;

22 (4) the value of the purchasers' tuition units if  
23 redeemed at any general academic teaching institution or two-year  
24 institution of higher education designated for that year by the  
25 purchaser in the time and manner required by the board, not to  
26 exceed five institutions; and

27 (5) any other information the board determines by rule



1 is necessary or appropriate.

2 Sec. 54.777. REPORTS. (a) Not later than December 1 of  
3 each year, the board shall submit to the governor, lieutenant  
4 governor, speaker of the house of representatives, Legislative  
5 Budget Board, Legislative Audit Committee, state auditor, and Texas  
6 Higher Education Coordinating Board a report including:

7 (1) the fiscal transactions of the board and the plan  
8 manager under this subchapter during the preceding fiscal year;

9 (2) the market and book value of the fund as of the end  
10 of the preceding fiscal year;

11 (3) the asset allocations of the fund expressed in  
12 percentages of stocks, fixed income, cash, or other financial  
13 investments;

14 (4) the rate of return on the investment of the fund's  
15 assets during the preceding fiscal year; and

16 (5) an actuarial valuation of the assets and  
17 liabilities of the program, including the extent to which the  
18 program's liabilities are unfunded.

19 (b) The board shall make the report described by Subsection  
20 (a) available to purchasers of prepaid tuition contracts.

21 (c) Not later than December 1 of each year, the board shall  
22 provide to the coordinating board complete prepaid tuition contract  
23 sales information, including projected enrollments of  
24 beneficiaries at general academic teaching institutions and  
25 two-year institutions of higher education.

26 Sec. 54.778. AUDIT. The fiscal transactions of the board  
27 under this subchapter, including the administration of the fund,

1 are subject to audit by the state auditor in accordance with Chapter  
2 321, Government Code.

3 SECTION 2. Beginning September 1, 2008, the Prepaid Higher  
4 Education Tuition Board may enter into prepaid tuition contracts  
5 with purchasers and begin selling tuition units under those  
6 contracts in accordance with Subchapter H, Chapter 54, Education  
7 Code, as added by this Act.

8 SECTION 3. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2007.