

By: Morrison

H.B. No. 3900

Substitute the following for H.B. No. 3900:

By: Brown of Brazos

C.S.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 comply with Section 54.704. In monitoring
16 the manager's investments, the board shall ensure that investments
17 are made according to the standard of investment provided by this
18 section. The plan manager has the same duties imposed on a plan
19 manager by Section 54.705. The board shall pay the plan manager a
20 fund management fee in an amount determined by the board, not to
21 exceed an annual amount equal to one-half of one percent of the
22 average value of the fund during the year.

23 (c) The board shall develop written objectives concerning
24 the investment of the assets of the fund. The objectives may
25 address desired rates of return, risks involved, investment time
26 frames, and any other relevant considerations.

27 (d) The board may specify in a contract under this section

1 that the plan manager is required to establish and maintain an
2 Internet website through which a purchaser may monitor the account
3 to which the purchaser's prepaid tuition contract money is
4 assigned.

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

7 (1) pay the costs of program administration and
8 operations;

9 (2) make payments to general academic teaching
10 institutions, two-year institutions of higher education, private
11 or independent institutions of higher education, and accredited
12 out-of-state institutions of higher education on behalf of
13 beneficiaries; and

14 (3) make refunds under prepaid tuition contracts.

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

20 Sec. 54.769. EXEMPTION FROM CREDITORS' CLAIMS. (a) Money
21 in the fund is exempt from claims of creditors, including claims of
22 creditors of a purchaser, a beneficiary, or a successor in interest
23 of a purchaser or beneficiary.

24 (b) The rights of a purchaser, beneficiary, or successor in
25 interest of a purchaser or beneficiary in and under a prepaid
26 tuition contract and the payment of tuition and required fees for a
27 beneficiary under a prepaid tuition contract to a general academic

1 teaching institution, two-year institution of higher education,
2 private or independent institution of higher education, or
3 accredited out-of-state institution of higher education under this
4 chapter are exempt from attachment, levy, garnishment, execution,
5 and seizure for the satisfaction of any debt, judgment, or claim
6 against a purchaser, beneficiary, or successor in interest of a
7 purchaser or beneficiary.

8 (c) A claim or judgment against a purchaser, beneficiary, or
9 successor in interest of a purchaser or beneficiary does not impair
10 or entitle the claim or judgment holder to assert or enforce a lien
11 against:

12 (1) the rights of a purchaser, beneficiary, or
13 successor in interest of a purchaser or beneficiary in and under a
14 prepaid tuition contract; or

15 (2) the right of a beneficiary to the payment of
16 tuition and required fees to 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 under a prepaid
20 tuition contract.

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

25 (b) The board shall annually evaluate the actuarial
26 soundness of the fund.

27 (c) The board may adjust the terms of subsequent prepaid

1 tuition contracts as necessary to ensure the actuarial soundness of
2 the fund.

3 Sec. 54.771. COMPLIANCE WITH LIMITS ON CONTRIBUTIONS AND
4 WITHDRAWALS. The board shall monitor contributions to and
5 withdrawals from the fund and any account within the fund to ensure
6 that any applicable limits on contributions or withdrawals are not
7 exceeded.

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

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

15 (c) The board shall maintain a separate accounting for each
16 beneficiary.

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

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

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

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

25 Sec. 54.773. SUSPENSION OF NEW ENROLLMENT; PROGRAM
26 MODIFICATION OR TERMINATION. (a) On the request of the comptroller
27 as the comptroller considers necessary to ensure the actuarial

1 soundness of the fund, the board may temporarily suspend new
2 enrollment in the program.

3 (b) If the comptroller determines that the program is
4 financially infeasible, the comptroller shall notify the governor
5 and the legislature and recommend that the program be modified or
6 terminated.

7 Sec. 54.774. EFFECT OF PROGRAM TERMINATION ON CONTRACT.

8 (a) A prepaid tuition contract remains in effect after the program
9 is terminated if, when the program is terminated, the beneficiary:

10 (1) has been accepted by or is enrolled at a general
11 academic teaching institution, two-year institution of higher
12 education, private or independent institution of higher education,
13 or accredited out-of-state institution of higher education; or

14 (2) is projected to graduate from high school not
15 later than the third anniversary of the date the program is
16 terminated.

17 (b) A prepaid tuition contract terminates when the program
18 is terminated if the contract does not remain in effect under
19 Subsection (a).

20 Sec. 54.775. CONFIDENTIALITY. (a) Records in the custody
21 of the board relating to the participation of specific purchasers
22 and beneficiaries in the program are confidential.

23 (b) Notwithstanding Subsection (a), the board may release
24 information described by that subsection to a general academic
25 teaching institution, two-year institution of higher education,
26 private or independent institution of higher education, or
27 accredited out-of-state institution of higher education at which a

1 beneficiary may enroll or is enrolled. The institution shall keep
2 the information confidential.

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

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

9 (1) the amount paid by the purchaser under the prepaid
10 tuition contract;

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

13 (3) the number of each type of tuition unit remaining
14 under the contract;

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

20 (5) any other information the board determines by rule
21 is necessary or appropriate.

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

27 (1) the fiscal transactions of the board and the plan

1 manager under this subchapter during the preceding fiscal year;

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

4 (3) the asset allocations of the fund expressed in
5 percentages of stocks, fixed income, cash, or other financial
6 investments;

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

9 (5) an actuarial valuation of the assets and
10 liabilities of the program, including the extent to which the
11 program's liabilities are unfunded.

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

14 (c) Not later than December 1 of each year, the board shall
15 provide to the coordinating board complete prepaid tuition contract
16 sales information, including projected enrollments of
17 beneficiaries at general academic teaching institutions and
18 two-year institutions of higher education.

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

24 SECTION 3. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

C.S.H.B. No. 3900

1 Act takes effect September 1, 2007.