

1-1 By: Morrison, et al. (Senate Sponsor - Shapiro) H.B. No. 3900  
1-2 (In the Senate - Received from the House May 1, 2007;  
1-3 May 2, 2007, read first time and referred to Subcommittee on Higher  
1-4 Education; May 11, 2007, reported adversely, with favorable  
1-5 Committee Substitute from Committee on Education by the following  
1-6 vote: Yeas 6, Nays 0; May 11, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3900 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the Texas tomorrow fund II prepaid tuition unit  
1-11 undergraduate education program.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 54, Education Code, is amended by adding  
1-14 Subchapter H to read as follows:

1-15 SUBCHAPTER H. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION

1-16 PROGRAM: TEXAS TOMORROW FUND II

1-17 Sec. 54.751. DEFINITIONS. In this subchapter:

1-18 (1) "Accredited out-of-state institution of higher  
1-19 education" means a public or private institution of higher  
1-20 education that:

1-21 (A) is located outside this state; and

1-22 (B) is accredited by a recognized accrediting  
1-23 agency.

1-24 (2) "Beneficiary" means the person designated under a  
1-25 prepaid tuition contract as the person entitled to apply one or more  
1-26 tuition units purchased under the contract to the payment of the  
1-27 person's undergraduate tuition and required fees at a general  
1-28 academic teaching institution, two-year institution of higher  
1-29 education, private or independent institution of higher education,  
1-30 or accredited out-of-state institution of higher education.

1-31 (3) "Board" means the Prepaid Higher Education Tuition  
1-32 Board.

1-33 (4) "Fund" means the Texas tomorrow fund II.

1-34 (5) "General academic teaching institution" has the  
1-35 meaning assigned by Section 61.003, except that the term does not  
1-36 include a public state college.

1-37 (6) "Prepaid tuition contract" means a contract under  
1-38 which a person purchases from the board on behalf of a beneficiary  
1-39 one or more tuition units that the beneficiary is entitled to apply  
1-40 to the payment of the beneficiary's undergraduate tuition and  
1-41 required fees at a general academic teaching institution, two-year  
1-42 institution of higher education, private or independent  
1-43 institution of higher education, or accredited out-of-state  
1-44 institution of higher education.

1-45 (7) "Private or independent institution of higher  
1-46 education," "public junior college," "public state college,"  
1-47 "public technical institute," and "recognized accrediting agency"  
1-48 have the meanings assigned by Section 61.003.

1-49 (8) "Program" means the prepaid tuition unit  
1-50 undergraduate education program.

1-51 (9) "Purchaser" means a person who enters into a  
1-52 prepaid tuition contract with the board on behalf of a beneficiary  
1-53 for the purchase of one or more tuition units.

1-54 (10) "Required fee" means a fee, other than a  
1-55 laboratory fee for a specific course, that is charged by a public or  
1-56 private institution of higher education to all students at the  
1-57 institution who are not exempt from the fee. For purposes of this  
1-58 subdivision, a fee is a required fee only to the extent that the fee  
1-59 is considered a qualified higher education expense under Internal  
1-60 Revenue Code provisions applicable to the program.

1-61 (11) "Two-year institution of higher education" means  
1-62 a public junior college, a public state college, and a public  
1-63 technical institute.

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

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

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

(1) adopt rules to implement this subchapter;  
 (2) sue and be sued;  
 (3) enter into contracts and other necessary instruments;

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

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

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

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

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

(9) impose administrative fees;

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

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

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

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

(1) the program is marketed across the state in a manner that promotes the participation goals and targets of the most recent revision of "Closing the Gaps," the state's master plan for higher education; and

(2) any marketing plan for the program includes a specific strategy to promote enrollment in the program by persons likely to qualify for federal earned income tax credits.

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

(1) contributions made by any person to the Texas Save and Match program and used to purchase additional tuition units on behalf of beneficiaries selected as provided by board rule; and

(2) money appropriated by the legislature for the Texas Save and Match program and used to purchase additional tuition units on behalf of beneficiaries:

(A) whose annual household income is below the state median family income, adjusted for household size;

(B) whose enrollment in the program would, as determined by the board, promote the participation goals and targets of the most recent revision of "Closing the Gaps," the state's master plan for higher education; or

(C) who meet other criteria established by board rule.

Sec. 54.753. PREPAID TUITION UNITS: PURCHASE; ASSIGNED VALUE; TYPES; PRICE. (a) Under the program, a purchaser may prepay the costs of all or a portion of a beneficiary's undergraduate tuition and required fees at a general academic teaching

3-1 institution, two-year institution of higher education, private or  
 3-2 independent institution of higher education, or accredited  
 3-3 out-of-state institution of higher education by entering into a  
 3-4 prepaid tuition contract with the board to purchase one or more  
 3-5 tuition units of a type described by this section at the applicable  
 3-6 price established by the board for that type of unit for the year in  
 3-7 which the unit is purchased. The portion of the beneficiary's  
 3-8 undergraduate tuition and required fees for which a tuition unit  
 3-9 may be redeemed at a particular general academic teaching  
 3-10 institution or two-year institution of higher education is assigned  
 3-11 to the tuition unit at the time of purchase, and the tuition unit  
 3-12 may be redeemed to pay that portion of the tuition and fees at the  
 3-13 general academic teaching institution or two-year institution of  
 3-14 higher education in any academic year in which the unit is redeemed  
 3-15 in accordance with this subchapter. The purchaser may purchase one  
 3-16 type of unit or a combination of two or three types of units.

3-17 (b) The assigned value of a tuition unit, purchased as  
 3-18 provided by this section, when used to pay the cost of tuition and  
 3-19 required fees at a general academic teaching institution or  
 3-20 two-year institution of higher education, is equal to one percent  
 3-21 of the amount necessary for the academic year in which the unit is  
 3-22 redeemed to cover the applicable cost of undergraduate resident  
 3-23 tuition and required fees for one academic year consisting of 30  
 3-24 semester credit hours as follows:

3-25 (1) for a Type I tuition unit, the cost of  
 3-26 undergraduate resident tuition and required fees charged by the  
 3-27 general academic teaching institution with the highest such tuition  
 3-28 and fee costs, determined as provided by Subsection (d);

3-29 (2) for a Type II tuition unit, the weighted average  
 3-30 undergraduate resident tuition and required fees charged by general  
 3-31 academic teaching institutions, determined as provided by  
 3-32 Subsection (e); and

3-33 (3) for a Type III tuition unit, the weighted average  
 3-34 undergraduate resident tuition and required fees of two-year  
 3-35 institutions of higher education, determined as provided by  
 3-36 Subsection (f).

3-37 (c) Each year, the board shall establish the price at which  
 3-38 each type of tuition unit may be purchased during the next sales  
 3-39 period and the percentage of the total cost of undergraduate  
 3-40 resident tuition and required fees for one academic year consisting  
 3-41 of 30 semester credit hours for which each type of tuition unit may  
 3-42 be redeemed at each general academic teaching institution and  
 3-43 two-year institution. The percentage shall be based on the total  
 3-44 cost of required tuition and fees at a particular general academic  
 3-45 teaching institution or two-year institution of higher education in  
 3-46 relation to the amount determined for the institution with the  
 3-47 highest cost or weighted average cost, as applicable. The purchase  
 3-48 price established for each type of unit must be equal to the  
 3-49 applicable cost of tuition and required fees as determined under  
 3-50 this section for the most recent academic year that began before the  
 3-51 beginning of the sales period. The sales period to which those  
 3-52 prices apply expires on the first anniversary of the date the units  
 3-53 become available for purchase at the prices established for that  
 3-54 year.

3-55 (d) The board shall base the purchase price of a Type I  
 3-56 tuition unit on one percent of the cost of the undergraduate  
 3-57 resident tuition and required fees for the applicable academic year  
 3-58 at the general academic teaching institution with the highest such  
 3-59 tuition and fee cost for that academic year.

3-60 (e) The board shall base the purchase price of a Type II  
 3-61 tuition unit on one percent of the cost of the weighted average  
 3-62 general academic teaching institution undergraduate resident  
 3-63 tuition and required fees for the applicable academic year. That  
 3-64 cost is determined by:

3-65 (1) for each general academic teaching institution,  
 3-66 multiplying the average amount of the institution's undergraduate  
 3-67 resident tuition and required fees for an academic year consisting  
 3-68 of 30 semester credit hours by the number of full-time equivalent  
 3-69 undergraduate resident students at that institution;

4-1                   (2) adding together the products computed under  
 4-2 Subdivision (1) for each institution; and  
 4-3                   (3) dividing the sum determined under Subdivision (2)  
 4-4 by the total number of full-time equivalent undergraduate resident  
 4-5 students at all general academic teaching institutions.

4-6                   (f) The board shall base the purchase price of a Type III  
 4-7 tuition unit on one percent of the cost of the weighted average  
 4-8 two-year institution of higher education undergraduate resident  
 4-9 tuition and required fees for the applicable academic year,  
 4-10 disregarding any portion of the tuition charged by a public junior  
 4-11 college to a resident of this state who does not reside within the  
 4-12 taxing jurisdiction of the junior college. That cost is determined  
 4-13 by:

4-14                   (1) for each two-year institution of higher education,  
 4-15 multiplying the average amount of the institution's undergraduate  
 4-16 resident tuition and required fees for an academic year consisting  
 4-17 of 30 semester credit hours by the number of full-time equivalent  
 4-18 undergraduate resident students at that institution;

4-19                   (2) adding together the products computed under  
 4-20 Subdivision (1) for each institution; and

4-21                   (3) dividing the sum determined under Subdivision (2)  
 4-22 by the total number of full-time equivalent undergraduate resident  
 4-23 students at all two-year institutions of higher education.

4-24                   (g) The total amount paid under a prepaid tuition contract  
 4-25 on behalf of a single beneficiary may not exceed any limit  
 4-26 established on the amount by Section 529, Internal Revenue Code of  
 4-27 1986. The board shall establish, in compliance with Section 529,  
 4-28 Internal Revenue Code of 1986, the minimum amount that the  
 4-29 purchaser is required to pay under the contract on behalf of a  
 4-30 single beneficiary.

4-31                   (h) At the time of the establishment of the account to which  
 4-32 a purchaser's prepaid tuition contract money is assigned, the board  
 4-33 may impose an administrative fee not to exceed \$25. Money from that  
 4-34 fee must be used directly in maintaining the actuarial soundness of  
 4-35 the fund as required by Section 54.770. The board may not impose  
 4-36 any other fee or charge in connection with the sale of a tuition  
 4-37 unit.

4-38                   Sec. 54.754. REDEMPTION OF TUITION UNITS. (a) In  
 4-39 accordance with this subchapter, when a beneficiary under a prepaid  
 4-40 tuition contract redeems one or more tuition units to pay costs of  
 4-41 tuition and required fees, the board shall apply money in the fund,  
 4-42 in the amount provided by Section 54.765 to pay all or the  
 4-43 applicable portion of the costs of the beneficiary's tuition and  
 4-44 required fees at the general academic teaching institution,  
 4-45 two-year institution of higher education, private or independent  
 4-46 institution of higher education, or accredited out-of-state  
 4-47 institution of higher education in which the beneficiary enrolls.  
 4-48 Subject to Subsection (b)(2) and the other provisions of this  
 4-49 section, a beneficiary may redeem any type of tuition unit for  
 4-50 attendance at an institution described by this section. A general  
 4-51 academic teaching institution or two-year institution of higher  
 4-52 education shall accept the amount transferred to the institution  
 4-53 under Section 54.765(c) when the unit or units are redeemed as  
 4-54 payment for all or the applicable portion of the beneficiary's  
 4-55 tuition and required fees.

4-56                   (b) To pay for the entire cost of undergraduate resident  
 4-57 tuition and required fees for an academic year consisting of 30  
 4-58 semester credit hours, redemption of 100 Type I tuition units is  
 4-59 required at the general academic teaching institution with the  
 4-60 highest tuition and fee cost as described by Section 54.753(d),  
 4-61 redemption of 100 Type II tuition units is required at a general  
 4-62 academic teaching institution with the applicable tuition and fee  
 4-63 cost at the weighted average as described by Subsection (e) of that  
 4-64 section, and redemption of 100 Type III units is required at a  
 4-65 two-year institution of higher education with the applicable  
 4-66 tuition and fee cost at the weighted average as described by  
 4-67 Subsection (f) of that section. The number of tuition units that  
 4-68 must be redeemed to pay for the entire cost of tuition and required  
 4-69 fees for an academic year at another general academic teaching

5-1 institution or two-year institution of higher education may be  
 5-2 higher or lower:

5-3 (1) in proportion to the amount that the cost of  
 5-4 tuition and required fees at that institution is higher or lower  
 5-5 than the amount determined for the institution with the highest  
 5-6 cost or weighted average cost, as applicable; or

5-7 (2) if a more or less valuable type of tuition unit is  
 5-8 redeemed.

5-9 (c) To assist purchasers in determining the number of  
 5-10 tuition units a beneficiary must redeem to cover the costs of  
 5-11 tuition and required fees at general academic teaching institutions  
 5-12 and two-year institutions of higher education, each year the board  
 5-13 shall prepare a tuition unit redemption chart and shall post the  
 5-14 chart on an Internet website. The chart must show for each general  
 5-15 academic teaching institution and for each two-year institution of  
 5-16 higher education the number of each type of units purchased that  
 5-17 year that would be required to cover the cost of tuition and  
 5-18 required fees, based on an academic year consisting of 30 semester  
 5-19 credit hours.

5-20 (d) If a beneficiary redeems fewer tuition units of the type  
 5-21 or combination of types necessary to pay the total cost of the  
 5-22 beneficiary's tuition and required fees at the general academic  
 5-23 teaching institution, two-year institution of higher education,  
 5-24 private or independent institution of higher education, or  
 5-25 accredited out-of-state institution of higher education at which  
 5-26 the beneficiary enrolls, the beneficiary is responsible for paying  
 5-27 the amount of the difference between the amount of tuition and  
 5-28 required fees for which the beneficiary pays through the redemption  
 5-29 of one or more tuition units and the total cost of the beneficiary's  
 5-30 tuition and required fees at the institution.

5-31 (d-1) A beneficiary who redeems one or more Type III tuition  
 5-32 units to attend a public junior college and who does not reside  
 5-33 within the taxing jurisdiction of the junior college is responsible  
 5-34 for paying any portion of the tuition charged by the junior college  
 5-35 to persons who do not reside within that taxing jurisdiction.

5-36 (e) If the beneficiary redeems fewer tuition units to pay  
 5-37 the cost of tuition and required fees than the number of units  
 5-38 purchased on behalf of the beneficiary under a prepaid tuition  
 5-39 contract, other than to defer redemption as permitted in accordance  
 5-40 with Section 54.758, the purchaser may:

5-41 (1) redeem for cash the amount of the purchase price of  
 5-42 the excess units, plus annual interest earned on that money,  
 5-43 accrued at a rate set by the board not to exceed five percent  
 5-44 annually; or

5-45 (2) transfer the remaining units to another  
 5-46 beneficiary in accordance with this subchapter.

5-47 (f) A beneficiary or purchaser may not redeem a tuition unit  
 5-48 earlier than the third anniversary of the date the unit was  
 5-49 purchased.

5-50 Sec. 54.755. PREPAID TUITION CONTRACT. (a) The board shall  
 5-51 adopt a form for a prepaid tuition contract to be used by the board  
 5-52 and purchasers.

5-53 (b) A prepaid tuition contract must:

5-54 (1) specify the terms under which the purchaser must  
 5-55 pay any amounts owed under the contract;

5-56 (2) specify the consequences of default;

5-57 (3) specify the name and date of birth of the  
 5-58 beneficiary under the contract and the terms under which another  
 5-59 person may be substituted as the beneficiary;

5-60 (4) specify the date the beneficiary is projected to  
 5-61 graduate from high school; and

5-62 (5) contain any other provisions the board considers  
 5-63 necessary or appropriate.

5-64 (c) A prepaid tuition contract may provide for the purchase  
 5-65 of additional tuition units in subsequent years at the then-current  
 5-66 price of the additional units.

5-67 Sec. 54.756. PURCHASER; BENEFICIARY. (a) A purchaser may  
 5-68 be any person who is permitted to be a purchaser under Section 529,  
 5-69 Internal Revenue Code of 1986. The purchaser is not required to be

6-1 a resident of this state, except as provided by Subsection (c)(2).

6-2 (b) In accordance with applicable provisions of Section  
6-3 529, Internal Revenue Code of 1986, a purchaser is the owner of the  
6-4 account to which the purchaser's prepaid tuition contract money is  
6-5 assigned.

6-6 (c) At the time the purchaser enters into a prepaid tuition  
6-7 contract, the beneficiary of the contract must be:

6-8 (1) a resident of this state at the time the purchaser  
6-9 enters into the contract; or

6-10 (2) a nonresident who is the child of a parent who is a  
6-11 resident of this state at the time that parent enters into the  
6-12 contract.

6-13 (d) For purposes of Subsection (c), the board may require a  
6-14 reasonable period of residence in this state for a beneficiary or  
6-15 the parent of a beneficiary.

6-16 (e) Notwithstanding any provision of Subchapter B, the  
6-17 tuition and required fees charged by a general academic teaching  
6-18 institution or two-year institution of higher education that are  
6-19 paid for with tuition units shall be determined as if the  
6-20 beneficiary of that contract were a resident student.

6-21 Sec. 54.757. CONTRACT PAYMENT. (a) The board may provide  
6-22 for the receipt of payment under prepaid tuition contracts in lump  
6-23 sums or installment payments. If the board allows payments under a  
6-24 contract to be made in installments over a period longer than one  
6-25 year, the board must provide for a plan that permits those payments  
6-26 to be made in single annual installments in addition to any other  
6-27 permitted installment plans.

6-28 (b) A purchaser may make payments under a prepaid tuition  
6-29 contract by an electronic funds transfer.

6-30 (c) An employee of this state or a political subdivision of  
6-31 this state may make payments under a prepaid tuition contract by  
6-32 payroll deductions made by the appropriate officer of the state or  
6-33 political subdivision. The board shall implement procedures to  
6-34 facilitate payments under this subsection.

6-35 (d) The board may impose a fee for a late payment under a  
6-36 prepaid tuition contract.

6-37 Sec. 54.758. DEFERRED USE OF PREPAID CREDIT HOURS. (a) A  
6-38 prepaid tuition contract must permit the beneficiary to elect to  
6-39 pay from a source other than tuition units purchased under the  
6-40 contract the beneficiary's tuition and required fees for some or  
6-41 all of the tuition and required fees to which the beneficiary is  
6-42 entitled to payment under the contract, and to defer to a subsequent  
6-43 semester or other academic term the right to payment of the  
6-44 beneficiary's tuition and required fees by using tuition units  
6-45 remaining under the contract.

6-46 (b) This section does not affect the date on which a prepaid  
6-47 tuition contract terminates under this subchapter and does not give  
6-48 the beneficiary the right to a payment under the contract after  
6-49 termination of the contract.

6-50 Sec. 54.759. CHANGE OF BENEFICIARY. (a) The purchaser of a  
6-51 prepaid tuition contract may designate a different beneficiary in  
6-52 place of the original beneficiary if the new beneficiary meets the  
6-53 requirements of a beneficiary on the date the designation is  
6-54 changed. The new beneficiary must meet the requirements of Section  
6-55 529, Internal Revenue Code of 1986, to prevent the change of  
6-56 beneficiary from being treated as a distribution under that law.

6-57 (b) The board may adjust the terms of the contract so that  
6-58 the purchaser is required to pay the amount the purchaser would have  
6-59 been required to pay had the purchaser originally designated the  
6-60 new beneficiary as the beneficiary, taking into account any  
6-61 payments made before the date the designation is changed.

6-62 (c) The board may not impose a fee in connection with the  
6-63 designation of a new beneficiary.

6-64 (d) The purchaser of a prepaid tuition contract may not sell  
6-65 the contract.

6-66 Sec. 54.760. VERIFICATION UNDER OATH. The board may  
6-67 require a purchaser to verify under oath a request to:

6-68 (1) change a beneficiary; or

6-69 (2) terminate a contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The board shall:

(1) deposit in the fund money paid under prepaid tuition contracts; and

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

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

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

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

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

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

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

(1) the sum of:

(A) the total purchase price of the tuition unit or units the beneficiary redeems for the semester or other academic term; and

(B) the amount determined under Subsection (d);

or

(2) an amount equal to 101 percent of the amount of

8-1 tuition and required fees covered by the tuition units being  
 8-2 redeemed.

8-3 (d) The amount required to be transferred under Subsection  
 8-4 (c)(1)(B) is the greater of:

8-5 (1) an amount equal to the portion of the actual total  
 8-6 return on all investment assets of the fund attributable to the  
 8-7 amount transferred under Subsection (c)(1)(A); or

8-8 (2) an amount equal to the portion of the total return  
 8-9 on all investment assets of the fund attributable to the amount  
 8-10 transferred under Subsection (c)(1)(A) that would result assuming  
 8-11 an annual return on all investment assets of the fund of five  
 8-12 percent, subject to the availability of money in the fund for that  
 8-13 purpose.

8-14 (e) If the amount that would otherwise be transferred under  
 8-15 Subsections (c)(1)(A) and (B) exceeds the amount that may be  
 8-16 transferred under Subsection (c)(2), the excess amount shall be  
 8-17 retained in the fund and used as necessary to provide sufficient  
 8-18 money to meet the minimum transfer requirements under Subsection  
 8-19 (c)(1)(B) as specified by Subsection (d).

8-20 (f) When a beneficiary enrolls at a private or independent  
 8-21 institution of higher education or accredited out-of-state  
 8-22 institution of higher education, on written authorization from the  
 8-23 purchaser of the tuition unit or units for that beneficiary, the  
 8-24 comptroller shall transfer to the institution the lesser of:

8-25 (1) an amount equal to the current cost of the tuition  
 8-26 and required fees that would be covered by redemption of the number  
 8-27 and type of tuition units the beneficiary is redeeming if the  
 8-28 beneficiary were redeeming the unit or units at a general academic  
 8-29 teaching institution or two-year institution of higher education as  
 8-30 follows:

8-31 (A) for a Type I unit, at the general academic  
 8-32 teaching institution that, in the sales year in which the unit was  
 8-33 purchased, had the highest tuition and required fee cost;

8-34 (B) for a Type II unit, at a general academic  
 8-35 teaching institution that, in the sales year in which the unit was  
 8-36 purchased, had tuition and required fee cost at the weighted  
 8-37 average; and

8-38 (C) for a Type III unit, at a two-year  
 8-39 institution of higher education that, in the sales year in which the  
 8-40 unit was purchased, had tuition and required fee cost at the  
 8-41 weighted average; or

8-42 (2) an amount equal to the total purchase price of the  
 8-43 tuition unit or units the beneficiary redeems for the semester or  
 8-44 other academic term plus the portion of the total return on assets  
 8-45 of the fund attributable to that amount.

8-46 (g) The comptroller annually shall provide to the board a  
 8-47 sworn statement of the amount of the fund's assets in the  
 8-48 comptroller's custody.

8-49 (h) The board may select one or more commercial banks,  
 8-50 depository trust companies, or other entities to serve as custodian  
 8-51 of all or part of the fund's assets.

8-52 Sec. 54.766. INVESTMENT OF FUND ASSETS. (a) The board  
 8-53 shall provide for investing the assets of the fund. In investing the  
 8-54 fund, the board has the same investment authority as that provided  
 8-55 by Section 11b, Article VII, Texas Constitution, or other law, to  
 8-56 the board of regents of The University of Texas System with respect  
 8-57 to the investment of the Permanent University Fund.

8-58 (b) The board shall contract with one or more private  
 8-59 professional investment managers to serve as plan manager and to  
 8-60 invest the assets of the fund on behalf of the board. In selecting a  
 8-61 manager, the board must:

8-62 (1) select a person who has served as a professional  
 8-63 investment manager for at least 10 years;

8-64 (2) evaluate each person considered for the position  
 8-65 based on the historical net returns of the person's professional  
 8-66 investments and the consistency of the person's professional  
 8-67 investment returns over a period of at least five years; and

8-68 (3) comply with Section 54.704.

8-69 (c) In monitoring the manager's investments, the board



9-1 shall ensure that investments are made according to the standard of  
9-2 investment provided by this section. The plan manager has the same  
9-3 duties imposed on a plan manager by Section 54.705.

9-4 (d) The board shall develop written objectives concerning  
9-5 the investment of the assets of the fund. The objectives may  
9-6 address desired rates of return, risks involved, investment time  
9-7 frames, and any other relevant considerations.

9-8 (e) The board may specify in a contract under this section  
9-9 that the plan manager is required to establish and maintain an  
9-10 Internet website through which a purchaser may monitor the account  
9-11 to which the purchaser's prepaid tuition contract money is  
9-12 assigned.

9-13 Sec. 54.767. USE OF FUND ASSETS. The assets of the fund may  
9-14 be used only to:

9-15 (1) pay the costs of program administration and  
9-16 operations;

9-17 (2) make payments to general academic teaching  
9-18 institutions, two-year institutions of higher education, private  
9-19 or independent institutions of higher education, and accredited  
9-20 out-of-state institutions of higher education on behalf of  
9-21 beneficiaries; and

9-22 (3) make refunds under prepaid tuition contracts.

9-23 Sec. 54.7671. TRANSFERS AMONG 529 PLANS. (a) The board by  
9-24 rule shall provide for a purchaser to transfer money between an  
9-25 account under this subchapter and an account under another plan  
9-26 established by this state or by another state or other authorized  
9-27 entity in accordance with Section 529, Internal Revenue Code of  
9-28 1986, to the extent and in the manner authorized by that section.

9-29 (b) For purposes of a transfer of money from an account  
9-30 under this subchapter, the value of the account at the time of  
9-31 transfer is the lesser of:

9-32 (1) an amount equal to the cost, at the time of the  
9-33 transfer, of the tuition and required fees that would be covered by  
9-34 redemption of the number and type of tuition units to be transferred  
9-35 from the account if the beneficiary were redeeming the units at a  
9-36 general academic teaching institution or two-year institution of  
9-37 higher education as follows:

9-38 (A) for a Type I unit, at the general academic  
9-39 teaching institution that, in the sales year in which the unit was  
9-40 purchased, had the highest tuition and required fee cost;

9-41 (B) for a Type II unit, at a general academic  
9-42 teaching institution that, in the sales year in which the unit was  
9-43 purchased, had tuition and required fee cost at the weighted  
9-44 average; and

9-45 (C) for a Type III unit, at a two-year  
9-46 institution of higher education that, in the sales year in which the  
9-47 unit was purchased, had tuition and required fee cost at the  
9-48 weighted average; or

9-49 (2) an amount equal to the total purchase price of the  
9-50 tuition units to be transferred from the account, plus the portion  
9-51 of the total return on assets of the fund attributable to that  
9-52 amount.

9-53 Sec. 54.768. EXEMPTION FROM SECURITIES LAWS. The  
9-54 registration requirements of The Securities Act (Article 581-1 et  
9-55 seq., Vernon's Texas Civil Statutes) do not apply to the sale of a  
9-56 prepaid tuition contract by the board or by a registered securities  
9-57 dealer or registered investment adviser.

9-58 Sec. 54.769. EXEMPTION FROM CREDITORS' CLAIMS. (a) Money  
9-59 in the fund is exempt from claims of creditors, including claims of  
9-60 creditors of a purchaser, a beneficiary, or a successor in interest  
9-61 of a purchaser or beneficiary.

9-62 (b) The rights of a purchaser, beneficiary, or successor in  
9-63 interest of a purchaser or beneficiary in and under a prepaid  
9-64 tuition contract and the payment of tuition and required fees for a  
9-65 beneficiary under a prepaid tuition contract to a general academic  
9-66 teaching institution, two-year institution of higher education,  
9-67 private or independent institution of higher education, or  
9-68 accredited out-of-state institution of higher education under this  
9-69 chapter are exempt from attachment, levy, garnishment, execution,

10-1 and seizure for the satisfaction of any debt, judgment, or claim  
 10-2 against a purchaser, beneficiary, or successor in interest of a  
 10-3 purchaser or beneficiary.

10-4 (c) A claim or judgment against a purchaser, beneficiary, or  
 10-5 successor in interest of a purchaser or beneficiary does not impair  
 10-6 or entitle the claim or judgment holder to assert or enforce a lien  
 10-7 against:

10-8 (1) the rights of a purchaser, beneficiary, or  
 10-9 successor in interest of a purchaser or beneficiary in and under a  
 10-10 prepaid tuition contract; or

10-11 (2) the right of a beneficiary to the payment of  
 10-12 tuition and required fees to a general academic teaching  
 10-13 institution, two-year institution of higher education, private or  
 10-14 independent institution of higher education, or accredited  
 10-15 out-of-state institution of higher education under a prepaid  
 10-16 tuition contract.

10-17 Sec. 54.770. ACTUARIAL SOUNDNESS OF FUND. (a) The board  
 10-18 shall administer the fund in a manner that is sufficiently  
 10-19 actuarially sound to pay the costs of program administration and  
 10-20 operations and to meet the obligations of the program.

10-21 (b) The board shall annually evaluate the actuarial  
 10-22 soundness of the fund.

10-23 (c) The board may adjust the terms of subsequent prepaid  
 10-24 tuition contracts as necessary to ensure the actuarial soundness of  
 10-25 the fund.

10-26 Sec. 54.771. COMPLIANCE WITH LIMITS ON CONTRIBUTIONS AND  
 10-27 WITHDRAWALS. The board shall monitor contributions to and  
 10-28 withdrawals from the fund and any account within the fund to ensure  
 10-29 that any applicable limits on contributions or withdrawals are not  
 10-30 exceeded.

10-31 Sec. 54.772. TAX EXEMPT STATUS REQUIREMENTS. (a) This  
 10-32 section is intended to meet the requirements of Section 529,  
 10-33 Internal Revenue Code of 1986.

10-34 (b) A payment of an amount due to the fund for a prepaid  
 10-35 tuition contract must be made in cash or cash equivalent. A person  
 10-36 may not make a payment to the fund in excess of the amounts required  
 10-37 to be paid under a prepaid tuition contract.

10-38 (c) The board shall maintain a separate accounting for each  
 10-39 beneficiary.

10-40 (d) The purchaser under a prepaid tuition contract and the  
 10-41 beneficiary under the contract may not:

10-42 (1) control or direct the investment of payments under  
 10-43 the contract or any earnings of the fund; or

10-44 (2) use any interest in the contract as security for a  
 10-45 loan or other obligation.

10-46 (e) The board shall make reports required by the secretary  
 10-47 of the United States Treasury.

10-48 Sec. 54.773. SUSPENSION OF NEW ENROLLMENT; PROGRAM  
 10-49 MODIFICATION OR TERMINATION. (a) On the request of the comptroller  
 10-50 as the comptroller considers necessary to ensure the actuarial  
 10-51 soundness of the fund, the board may temporarily suspend new  
 10-52 enrollment in the program.

10-53 (b) If the comptroller determines that the program is  
 10-54 financially infeasible, the comptroller shall notify the governor  
 10-55 and the legislature and recommend that the program be modified or  
 10-56 terminated.

10-57 Sec. 54.774. EFFECT OF PROGRAM TERMINATION ON CONTRACT.  
 10-58 (a) A prepaid tuition contract remains in effect after the program  
 10-59 is terminated if, when the program is terminated, the beneficiary:

10-60 (1) has been accepted by or is enrolled at a general  
 10-61 academic teaching institution, two-year institution of higher  
 10-62 education, private or independent institution of higher education,  
 10-63 or accredited out-of-state institution of higher education; or

10-64 (2) is projected to graduate from high school not  
 10-65 later than the third anniversary of the date the program is  
 10-66 terminated.

10-67 (b) A prepaid tuition contract terminates when the program  
 10-68 is terminated if the contract does not remain in effect under  
 10-69 Subsection (a).

11-1 Sec. 54.775. CONFIDENTIALITY. (a) Records in the custody  
11-2 of the board relating to the participation of specific purchasers  
11-3 and beneficiaries in the program are confidential.

11-4 (b) Notwithstanding Subsection (a), the board may release  
11-5 information described by that subsection to a general academic  
11-6 teaching institution, two-year institution of higher education,  
11-7 private or independent institution of higher education, or  
11-8 accredited out-of-state institution of higher education at which a  
11-9 beneficiary may enroll or is enrolled. The institution shall keep  
11-10 the information confidential.

11-11 (c) Notwithstanding any other provision of this subchapter,  
11-12 the board may release information to the Internal Revenue Service  
11-13 and to any state tax agencies as required by applicable tax law.

11-14 Sec. 54.776. STATEMENT REGARDING STATUS OF PREPAID TUITION  
11-15 CONTRACT. Not later than January 1 of each year, the board shall  
11-16 provide without charge to each purchaser a statement of:

11-17 (1) the amount paid by the purchaser under the prepaid  
11-18 tuition contract;

11-19 (2) the total number of each type of tuition unit  
11-20 covered by the contract at any one time;

11-21 (3) the number of each type of tuition unit remaining  
11-22 under the contract;

11-23 (4) the value of the purchasers' tuition units if  
11-24 redeemed at any general academic teaching institution or two-year  
11-25 institution of higher education designated for that year by the  
11-26 purchaser in the time and manner required by the board, not to  
11-27 exceed five institutions; and

11-28 (5) any other information the board determines by rule  
11-29 is necessary or appropriate.

11-30 Sec. 54.777. REPORTS. (a) Not later than December 1 of  
11-31 each year, the board shall submit to the governor, lieutenant  
11-32 governor, speaker of the house of representatives, Legislative  
11-33 Budget Board, Legislative Audit Committee, state auditor, and Texas  
11-34 Higher Education Coordinating Board a report including:

11-35 (1) the fiscal transactions of the board and the plan  
11-36 manager under this subchapter during the preceding fiscal year;

11-37 (2) the market and book value of the fund as of the end  
11-38 of the preceding fiscal year;

11-39 (3) the asset allocations of the fund expressed in  
11-40 percentages of stocks, fixed income, cash, or other financial  
11-41 investments;

11-42 (4) the rate of return on the investment of the fund's  
11-43 assets during the preceding fiscal year; and

11-44 (5) an actuarial valuation of the assets and  
11-45 liabilities of the program, including the extent to which the  
11-46 program's liabilities are unfunded.

11-47 (b) The board shall make the report described by Subsection  
11-48 (a) available to purchasers of prepaid tuition contracts.

11-49 (c) Not later than December 1 of each year, the board shall  
11-50 provide to the coordinating board complete prepaid tuition contract  
11-51 sales information, including projected enrollments of  
11-52 beneficiaries at general academic teaching institutions and  
11-53 two-year institutions of higher education.

11-54 Sec. 54.778. AUDIT. The fund and the operations of the  
11-55 board are subject to audit by the state auditor in accordance with  
11-56 Chapter 321, Government Code.

11-57 SECTION 2. Beginning September 1, 2008, the Prepaid Higher  
11-58 Education Tuition Board may enter into prepaid tuition contracts  
11-59 with purchasers and begin selling tuition units under those  
11-60 contracts in accordance with Subchapter H, Chapter 54, Education  
11-61 Code, as added by this Act.

11-62 SECTION 3. This Act takes effect immediately if it receives  
11-63 a vote of two-thirds of all the members elected to each house, as  
11-64 provided by Section 39, Article III, Texas Constitution. If this  
11-65 Act does not receive the vote necessary for immediate effect, this  
11-66 Act takes effect September 1, 2007.

11-67 \* \* \* \* \*