

House Bill 3900
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

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

(6) "Prepaid tuition contract" means a contract under which a person purchases from the board on behalf of a beneficiary one or more tuition units that the beneficiary is entitled to apply to the payment of the beneficiary's undergraduate tuition and required fees at a general

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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.

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

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

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

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

(11) "Two-year institution of higher education" means a public junior college, a public state college, and a public 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

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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.

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

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

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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

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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;

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employees and agents of the board; and
(12) establish other policies, procedures, and eligibility
criteria to implement this subchapter.

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(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;

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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 institution, two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education by entering into a prepaid tuition contract with the board to purchase one or more tuition units of a type described by this section at the applicable price established by the board for that type of unit for the year in which the unit is purchased. The portion of the beneficiary's undergraduate tuition and required fees for which a tuition unit may be redeemed at a particular general academic teaching institution or two-year institution of higher education is assigned to the tuition unit at the time of purchase, and the tuition unit may be redeemed to pay that portion of the tuition and fees at the general academic teaching institution or two-year institution of higher education in any academic year in which the unit is redeemed in accordance with this subchapter. The purchaser may purchase one type of unit or a

(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 institution, two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education by entering into a prepaid tuition contract with the board to purchase one or more tuition units of a type described by this section at the applicable price established by the board for that type of unit for the year in which the unit is purchased. The portion of the beneficiary's undergraduate tuition and required fees for which a tuition unit may be redeemed at a particular general academic teaching institution or two-year institution of higher education is assigned to the tuition unit at the time of purchase, and the tuition unit may be redeemed to pay that portion of the tuition and fees at the general academic teaching institution or two-year institution of higher education in any academic year in which the unit is redeemed in accordance with this subchapter. The purchaser may purchase one type of unit or a

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combination of two or three types of units.

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

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

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

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

(c) Each year, the board shall establish the price at which each type of tuition unit may be purchased during the next sales period and the percentage of the total cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours for which each type of tuition unit may be redeemed at each general academic teaching institution and two-year

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combination of two or three types of units.

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

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

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

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

(c) Each year, the board shall establish the price at which each type of tuition unit may be purchased during the next sales period and the percentage of the total cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours for which each type of tuition unit may be redeemed at each general academic teaching institution and two-year

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institution. The percentage shall be based on the total cost of required tuition and fees at a particular general academic teaching institution or two-year institution of higher education in relation to the amount determined for the institution with the highest cost or weighted average cost, as applicable. The purchase price established for each type of unit must be equal to the applicable cost of tuition and required fees as determined under this section for the most recent academic year that began before the beginning of the sales period. The sales period to which those prices apply expires on the first anniversary of the date the units become available for purchase at the prices established for that year.

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

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

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

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institution. The percentage shall be based on the total cost of required tuition and fees at a particular general academic teaching institution or two-year institution of higher education in relation to the amount determined for the institution with the highest cost or weighted average cost, as applicable. The purchase price established for each type of unit must be equal to the applicable cost of tuition and required fees as determined under this section for the most recent academic year that began before the beginning of the sales period. The sales period to which those prices apply expires on the first anniversary of the date the units become available for purchase at the prices established for that year.

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

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

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

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

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

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

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

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

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

(g) The total amount paid under a prepaid tuition contract on behalf of a single beneficiary may not exceed any limit established on the amount by Section 529.

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

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

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

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

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

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Internal Revenue Code of 1986. The board shall establish, in compliance with Section 529, Internal Revenue Code of 1986, the minimum amount that the purchaser is required to pay under the contract on behalf of a single beneficiary.

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

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

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Internal Revenue Code of 1986. The board shall establish, in compliance with Section 529, Internal Revenue Code of 1986, the minimum amount that the purchaser is required to pay under the contract on behalf of a single beneficiary.

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amount transferred to the institution under Section 54.765(c) when the unit or units are redeemed as payment for all or the applicable portion of the beneficiary's tuition and required fees.

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

- (1) in proportion to the amount that the cost of tuition and required fees at that institution is higher or lower than the amount determined for the institution with the highest cost or weighted average cost, as applicable; or
- (2) if a more or less valuable type of tuition unit is redeemed.

(c) To assist purchasers in determining the number of tuition units a beneficiary must redeem to cover the costs

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transferred to the institution under Section 54.765(c) when the unit or units are redeemed as payment for all or the applicable portion of the beneficiary's tuition and required fees.

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

- (1) in proportion to the amount that the cost of tuition and required fees at that institution is higher or lower than the amount determined for the institution with the highest cost or weighted average cost, as applicable; or
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(c) To assist purchasers in determining the number of tuition units a beneficiary must redeem to cover the costs

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of tuition and required fees at general academic teaching institutions and two-year institutions of higher education, each year the board shall prepare a tuition unit redemption chart and shall post the chart on an Internet website. The chart must show for each general academic teaching institution and for each two-year institution of higher education the number of each type of units purchased that year that would be required to cover the cost of tuition and required fees, based on an academic year consisting of 30 semester credit hours.

(d) If a beneficiary redeems fewer tuition units of the type or combination of types necessary to pay the total cost of the beneficiary's tuition and required fees at the 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 at which the beneficiary enrolls, the beneficiary is responsible for paying the amount of the difference between the amount of tuition and required fees for which the beneficiary pays through the redemption of one or more tuition units and the total cost of the beneficiary's tuition and required fees at the institution.

(e) If the beneficiary redeems fewer tuition units to pay

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of tuition and required fees at general academic teaching institutions and two-year institutions of higher education, each year the board shall prepare a tuition unit redemption chart and shall post the chart on an Internet website. The chart must show for each general academic teaching institution and for each two-year institution of higher education the number of each type of units purchased that year that would be required to cover the cost of tuition and required fees, based on an academic year consisting of 30 semester credit hours.

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

(e) If the beneficiary redeems fewer tuition units to pay

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the cost of tuition and required fees than the number of units purchased on behalf of the beneficiary under a prepaid tuition contract, other than to defer redemption as permitted in accordance with Section 54.758, the purchaser may:

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

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

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

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

(b) A prepaid tuition contract must:

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

(2) specify the consequences of default;

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

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

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

(c) A prepaid tuition contract may provide for the purchase of additional tuition units in subsequent years at

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the cost of tuition and required fees than the number of units purchased on behalf of the beneficiary under a prepaid tuition contract, other than to defer redemption as permitted in accordance with Section 54.758, the purchaser may:

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

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

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(b) A prepaid tuition contract must:

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

(2) specify the consequences of default;

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

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

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

(c) A prepaid tuition contract may provide for the purchase of additional tuition units in subsequent years at

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the then-current price of the additional units.

Sec. 54.756. PURCHASER; BENEFICIARY. (a) A purchaser may be any person who is permitted to be a purchaser under Section 529, Internal Revenue Code of 1986. The purchaser is not required to be a resident of this state, except as provided by Subsection (c)(2).

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

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

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

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

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

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

Sec. 54.757. CONTRACT PAYMENT. (a) The board may provide for the receipt of payment under prepaid tuition contracts in lump sums or installment payments. If the board allows payments under a contract to be made

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the then-current price of the additional units.

Sec. 54.756. PURCHASER; BENEFICIARY. (a) A purchaser may be any person who is permitted to be a purchaser under Section 529, Internal Revenue Code of 1986. The purchaser is not required to be a resident of this state, except as provided by Subsection (c)(2).

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

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

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

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

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

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

Sec. 54.757. CONTRACT PAYMENT. (a) The board may provide for the receipt of payment under prepaid tuition contracts in lump sums or installment payments. If the board allows payments under a contract to be made

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in installments over a period longer than one year, the board must provide for a plan that permits those payments to be made in single annual installments in addition to any other permitted installment plans.

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

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

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

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

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

Sec. 54.759. CHANGE OF BENEFICIARY. (a) The purchaser of a prepaid tuition contract may designate a

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in installments over a period longer than one year, the board must provide for a plan that permits those payments to be made in single annual installments in addition to any other permitted installment plans.

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

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

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

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

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

Sec. 54.759. CHANGE OF BENEFICIARY. (a) The purchaser of a prepaid tuition contract may designate a

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different beneficiary in place of the original beneficiary if the new beneficiary meets the requirements of a beneficiary on the date the designation is changed. The new beneficiary must meet the requirements of Section 529, Internal Revenue Code of 1986, to prevent the change of beneficiary from being treated as a distribution under that law.

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

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

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

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

(1) change a beneficiary; or

(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

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different beneficiary in place of the original beneficiary if the new beneficiary meets the requirements of a beneficiary on the date the designation is changed. The new beneficiary must meet the requirements of Section 529, Internal Revenue Code of 1986, to prevent the change of beneficiary from being treated as a distribution under that law.

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

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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

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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:

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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. (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

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treasury.

(b) The board shall:

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

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(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

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comptroller shall transfer to the institution an amount equal to the total purchase price of the tuition unit or units the beneficiary redeems for the semester or other academic term plus the portion of the total return on all investment assets of the fund attributable to that amount.

(d) When a beneficiary enrolls at a private or independent institution of higher education or accredited

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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 tuition and required fees covered by the tuition units being redeemed.

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

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

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

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

(f) When a beneficiary enrolls at a private or independent institution of higher education or accredited

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out-of-state 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 the lesser of:

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

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

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

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

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

(e) The comptroller annually shall provide to the board a sworn statement of the amount of the fund's assets in the comptroller's custody.

(f) The board may select one or more commercial banks,

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out-of-state 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 the lesser of:

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

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

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

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

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

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

(h) The board may select one or more commercial

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depository trust companies, or other entities to serve as custodian of all or part of the fund's assets.

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

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

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

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

(3) comply with Section 54.704.

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

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banks, depository trust companies, or other entities to serve as custodian of all or part of the fund's assets.

Sec. 54.766. INVESTMENT OF FUND ASSETS. (a) The board shall provide for investing the assets of the fund. In investing the fund, the board has the same investment authority as that provided by Section 11b, Article VII, Texas Constitution, or other law, to the board of regents of The University of Texas System with respect to the investment of the Permanent University Fund. The board and the board of regents of The University of Texas System may contract for the board of regents to manage and invest the assets of the fund, and for that purpose the board may delegate its duties under this section to the board of regents.

(b) If the board does not contract with the board of regents of The University of Texas System under Subsection (a) to manage and invest the assets of the fund, the board shall contract with one or more private professional investment managers to serve as plan manager and to invest the assets of the fund on behalf of the board. In selecting a manager, the board must:

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

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

(3) comply with Section 54.704.

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

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

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

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

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

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

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

(3) make refunds under prepaid tuition contracts.

Sec. 54.7671. TRANSFERS AMONG 529 PLANS. (a) The board by rule shall provide for a purchaser to transfer money between an account under this subchapter and an account under another plan established by this state or by another state or other authorized entity in accordance with Section 529, Internal Revenue Code of

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

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1986, to the extent and in the manner authorized by that section.

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

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

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

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

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

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

Sec. 54.768. EXEMPTION FROM SECURITIES LAWS. The registration requirements of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes)

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1986, to the extent and in the manner authorized by that section.

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

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

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

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

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

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do not apply to the sale of a prepaid tuition contract by the board or by a registered securities dealer or registered investment adviser.

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

(b) The rights of a purchaser, beneficiary, or successor in interest of a purchaser or beneficiary in and under a prepaid tuition contract and the payment of tuition and required fees for a beneficiary under a prepaid tuition contract to 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 under this chapter are exempt from attachment, levy, garnishment, execution, and seizure for the satisfaction of any debt, judgment, or claim against a purchaser, beneficiary, or successor in interest of a purchaser or beneficiary.

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

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

(2) the right of a beneficiary to the payment of tuition and required fees to a general academic teaching institution, two-year institution of higher education,

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

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

(2) the right of a beneficiary to the payment of tuition and required fees to a general academic teaching institution, two-year institution of higher education,

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private or independent institution of higher education, or accredited out-of-state institution of higher education under a prepaid tuition contract.

Sec. 54.770. ACTUARIAL SOUNDNESS OF FUND.

(a) The board shall administer the fund in a manner that is sufficiently actuarially sound to pay the costs of program administration and operations and to meet the obligations of the program.

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

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

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

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

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

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

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

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

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

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

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

Sec. 54.773. SUSPENSION OF NEW ENROLLMENT; PROGRAM MODIFICATION OR TERMINATION.

(a) On the request of the comptroller as the comptroller considers necessary to ensure the actuarial soundness of the fund, the board may temporarily suspend new enrollment in the program.

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

Sec. 54.774. EFFECT OF PROGRAM TERMINATION ON CONTRACT.

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

(1) has been accepted by or is enrolled 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; or

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

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

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

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

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

(b) Notwithstanding Subsection (a), the board may release information described by that subsection to 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 at which a beneficiary may enroll or is enrolled. The institution shall keep the information confidential.

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

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

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

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

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

(4) the value of the purchasers' tuition units if redeemed

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

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

(b) Notwithstanding Subsection (a), the board may release information described by that subsection to 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 at which a beneficiary may enroll or is enrolled. The institution shall keep the information confidential.

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

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

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

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

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

(4) the value of the purchasers' tuition units if redeemed

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at any general academic teaching institution or two-year institution of higher education designated for that year by the purchaser in the time and manner required by the board, not to exceed five institutions; and
(5) any other information the board determines by rule is necessary or appropriate.
Sec. 54.777. REPORTS. (a) Not later than December 1 of each year, the board shall submit to the governor, lieutenant governor, speaker of the house of representatives, Legislative Budget Board, Legislative Audit Committee, state auditor, and Texas Higher Education Coordinating Board a report including:
(1) the fiscal transactions of the board and the plan manager under this subchapter during the preceding fiscal year;
(2) the market and book value of the fund as of the end of the preceding fiscal year;
(3) the asset allocations of the fund expressed in percentages of stocks, fixed income, cash, or other financial investments;
(4) the rate of return on the investment of the fund's assets during the preceding fiscal year; and
(5) an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded.
(b) The board shall make the report described by Subsection (a) available to purchasers of prepaid tuition contracts.
(c) Not later than December 1 of each year, the board shall provide to the coordinating board complete prepaid

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at any general academic teaching institution or two-year institution of higher education designated for that year by the purchaser in the time and manner required by the board, not to exceed five institutions; and
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(4) the rate of return on the investment of the fund's assets during the preceding fiscal year; and
(5) an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded.
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tuition contract sales information, including projected enrollments of beneficiaries at general academic teaching institutions and two-year institutions of higher education.
Sec. 54.778. AUDIT. The fiscal transactions of the board under this subchapter, including the administration of the fund, are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

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

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

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tuition contract sales information, including projected enrollments of beneficiaries at general academic teaching institutions and two-year institutions of higher education.
Sec. 54.778. AUDIT. The fund and the operations of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Same as House version.

Same as House version.

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