The Texas Tomorrow Plan: Testimony on C.S.H.B. 1214

IHELG Monograph

94-1

Delivered by:
Michael A. Olivas
Professor of Law and
Director, IHELG
University of Houston Law Center
Houston, TX 77204-6370
(713) 743-2078
MOlivas@uh.edu

$5.00 © copyright Michael A. Olivas, 1995
University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

The University of Houston Institute for Higher Education Law and Governance (IHELG) provides a unique service to colleges and universities worldwide. It has as its primary aim providing information and publications to colleges and universities related to the field of higher education law, and also has a broader mission to be a focal point for discussion and thoughtful analysis of higher education legal issues. IHELG provides information, research, and analysis for those involved in managing the higher education enterprise internationally through publications, conferences, and the maintenance of a database of individuals and institutions. IHELG is especially concerned with creating dialogue and cooperation among academic institutions in the United States, and also has interests in higher education in industrialized nations and those in the developing countries of the Third World.

The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions—with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

Programs and Resources

IHELG has as its purpose the stimulation of an international consciousness among higher education institutions concerning issues of higher education law and the provision of documentation and analysis relating to higher education development. The following activities form the core of the Institute’s activities:

Higher Education Law Library

Houston Roundtable on Higher Education Law

Houston Roundtable on Higher Education Finance

Publication series

Study opportunities

Conferences

Bibliographical and document service

Networking and commentary

Research projects funded internally or externally
I am very pleased to have this opportunity to provide testimony on C.S.H.B. 1214, introduced by yourself and Committee member Ted Kamel, as since amended, establishing a Prepaid Higher Education Tuition Program for Texas, the "Texas Tomorrow Fund." My name is Michael A. Olivas, and I am a Professor of Law at the University of Houston, Associate Dean for Research at the UH Law Center, and Director of the Institute for Higher Education Law and Governance (IHELG) at UHLC. Of course, I speak in my own personal capacity, at your invitation, and do not represent any official University of Houston viewpoint.

My views on postsecondary prepaid tuition plans grow out of extensive research on the subject, familiarity with the national and state trends in this complex area, wide consultation with prepaid fund officials, and discussions with a large number of legislators and treasurers in states with such funds or contemplating prepaid fund programs. My view on these programs has evolved to the point that I believe them to hold great promise but also to hold far-ranging implications -- a number of which have been unanticipated and which could undermine general public support for the programs. Earlier, especially during the
pendency of the complex litigation over the Michigan and Kentucky funds’ tax status,\(^1\) I was concerned (like many observers) with the viability of the programs. However, for reasons I will not go into great detail here, I believe this corner has been turned. To be sure, federal taxation is a fluid and dynamic area of change, but I believe even the most negative tax determination (i.e., that the program is not tax exempt) could still allow a state program to maintain itself by amortizing the tax burden across all contracts. This frees me to be constructively critical of the plan details, while being for the existence of such plans. It is almost unpatriotic to be against a program that assists parents in saving for their children’s college educations.

Rather, I now fear the programs’ likelihood of success, not their possible failures. My concerns fall in three primary areas, each of which I will address briefly before I react to the Committee’s Substitute House Bill 214 provisions. These three concerns are equity, institutional implications, and legislative implications.

**Equity**

The bottom line for supporting prepaid proposals such as the Texas Tomorrow Fund is that it provides an investment vehicle for parents (or grandparents or other “givers,” like I would be to my nieces, nephews, and
godchildren), one that guarantees a return on the investment sufficient to pay for a specific amount of tuition in years to come. By pooling the funds and gaining a certain market leverage, a well-run Fund can get a better return on the money than can you or I. Further, the Program can anticipate future tuition levels and predict with relative certainty how much has to be paid out at a certain time in the future. Thus, run properly, it almost cannot lose. Like the lottery -- a social phenomenon that prepaid tuition plans most resemble -- the state takes in the money up front and pays out at the back end, and over time. Program costs are either included as a cost of doing business -- as part of the long term “float” -- or with a premium (for example, a set fee or sliding percentage fee paid at some point(s)). Unless bond markets go haywire or something cataclysmic occurs (a la the Mexican Bolsa or Orange County), your actuaries can predict the cash flow, program participation ratios, and the other technical details. I predict Texans will participate in record numbers, far surpassing Florida, the country’s premier program, run with excellent management, low cost colleges, and nearly 300,000 contracts to date.

But it is very likely to be wealthy and upper-middle class Texans who profit from this venture. This issue is not far-fetched, but both intuitive and evident from programs in other states. Take Michigan, which sold its first contract in 1988. In my 1993 book, Professor (now Dean) Jeffrey Lehmann followed up on his influential 1990 Michigan Law Review article, “Social Irresponsibility, Actuarial Assumptions, and Wealth Redistribution: Lessons About Public Policy from a
Prepaid Tuition Program,"³ with careful study of the Michigan Education Trust’s (MET’s) decision to expand its subscriber base by offering a monthly payment option (MPO). In his 1990 article, Lehman had charted the redistribution of state subsidy benefits upward to the most-advantaged Michigan residents. In 1990, partially in reaction to this criticism, the MET board changed its way of selling contracts to allow purchasers to spread the payments over a set period of time -- on an installment plan. It was anticipated that this would permit families with lower incomes to participate, especially since the size of monthly payments is often more salient to low-income consumers than is the total obligation. (I am reminded here of my brother, a car salesman in New Mexico and California, who marvels at how customers seem more concerned with their monthly payment rates than they are with the total price of the cars he sells.)

Lehman found that the availability of MPO reduced the "skewedness" of the original MET purchaser profiles, but not by a substantial margin, and measurement discrepancies between the periods before and after the change made exact comparisons difficult. Even so, in 1990, the richest two-fifths of the Michigan population with children had purchased 61% of the MET monthly payment option contracts.⁴ Figures for Florida suggest that purchasers in this state also constitute its more advantaged citizens.⁵ When this is combined with the original state investment to start the program, it is a remarkable, and remarkably regressive redistribution of state resources to the wealthy. While I do not wish to harp on
this point, any bailout of a troubled TTF, as contemplated in Sec. 54.619 (c), would come from the state’s general revenues -- requiring all Texas to pay for the advantaged purchasers’ continued advantage.

Paradoxically, the clear indication of state investment, willingness to use a state’s full faith and credit, and incorporating general revenues into the program are signposts that the IRS and judges will look to in determining whether a PTF will be tax exempt. If all the program participants share proportionately in a loss (as in bad investments or a shortfall), as happened in Kentucky’s Educational Savings Plan Trust, the plan may be seen as a “trust,” a pooled arrangement not tax exempt.\(^6\) However, I urge you to constitute this Fund so that the taxpayers of Texas will contribute very few general fund dollars to either the startup or any bailout provisions. On equity grounds, it seems very unfair to tax those who cannot afford or who are unable to attend college -- even through the Texas Tomorrow Fund -- so that their more advantaged neighbors can do so more easily. I do not know where the fair tipping point is, but it may be some “borrowing against” the future and repayment to the state for out-of-pocket start up costs. I know the Biblical admonishment that we will always have the poor among us, but I do not believe they should have to ante up just so that wealthier parents can have an additional savings vehicle for their children to go to college and more easily consume the considerable state investment already in place. This is
particularly true in a time when the federal government is in a pell-mell rush to create similar tax subsidies, sure to be regressive.  

Institutional Implications

Here, I fear that at some point institutional behavior will change, so that admissions might be predicated upon ability to pay. Let me paint a reasonable picture, borrowing from Florida -- whose favorable demographics resemble our own. They have sold nearly 250,000 contracts, and soon will have 300,000 contracts in play, spread over approximately 20 years; this includes children just born to college seniors consuming the paid-for benefits. If this were in Texas, and meant that 15,000 contracts were coming due each year, let us say that 2/3 of them actually wished to attend college in Texas; the others did not enroll or went out of state. This would mean 10,000 funded freshmen competing for spots in Texas institutions. Let us say 500-1000 wanted to attend Rice, Trinity, and Southwestern (maybe Baylor), the most elite private institutions in the State. This would leave 9,000-9,500 funded students applying to UT, TAMU, Tech, UH, and the other public and private 2 and 4 year colleges. The admissions pressure upon UT and TAMU, already evident as they scale back to more manageable size, will be enormous. Now say you are the President of UT, considering two exactly-equally qualified students -- let’s say Mexican Americans from the Valley. But one is fully funded and the other will require a combination of state, federal, and
scarce institutional funding. Who are you going to admit? Mind you, the fact that one student is smart enough to be born into a family that saves for her college fund is no reflection of her personal character; indeed, growing up successful in family without financial resources has often been seen as a good proxy for admissions decisions.

And I do not exaggerate the admissions pressures. Due to Texas’ booming economy and other reasons, current enrollments have slackened somewhat, and in a strictly enrollment-driven system such as we have in Texas, there some slight current underutilization of higher education, some “excess capacity.” But Coordinating Board data conservatively predict that in 15 short years, there will be 180,000 more students clamoring for higher education in Texas. If we get lucky and minority achievement increases, we could have 400,000 more students by 2010. (In 1994, Texas public universities alone enrolled 406,000 students.) Let’s say we split the difference: by 2010 we will have 290,000 more students than we do today. This is nine additional University of Houstons. Moreover, a prepaid tuition plan will stimulate savings and likely stimulate college attendance. Even if the savings go to substantially the same students who would have enrolled even without a Texas Tomorrow Fund, it is bound to increase -- in fact, it is designed to stimulate college going and college investment. That is, a successful plan will likely stimulate a greater need for college seats in Texas.\(^8\)
Thus, I believe my admonitions about the merging of admissions and ability to pay are conservative and the pressures at the institutional level will be irresistible. While the TTF does not guarantee admission, it will certainly guarantee higher expectations about admissibility on the part of purchaser parents, who are likely to become an angry cohort of taxpayers. No warning label or disclaimer about admissions standards will serve to placate this group.

**Legislative Implications**

This leads to my third major concern, the legislative fallout from a successful PTP. After 10 years of a successful Texas Tomorrow Fund, widely advertised in English, Spanish, and Vietnamese, there will be a very large accumulated pool of money, completely dedicated to higher education. For example, in 1993 alone, Florida has a pooled-fund of $340 million; even Michigan, with its adverse tax ruling and suspended sales for reorganization, sits on over $500 million. My question (or fear) is will the Legislature continue to appropriate state general revenues for an enterprise that has so many potential guaranteed-paid applicants in the pipeline? In other words, will this program suppland state support rather than supplement appropriations? And just to make it interesting, what will happen if the answer is to free tuition levels to rise to “market levels”? The Fund, actuarially premised upon steady, predictable tuition rates, will find it difficult to stick with its careful figures -- which drive the plan’s engine -- if tuition
rates exceed investment rates. Any ratcheting effect here will doom the careful
equilibrium necessary for balancing both ends of the equation. And again I ask,
where will we get the funds to build the 9 new UH campus-equivalents in 15
years? State support for higher education in Texas has declined as a portion of
overall expenses, and the state historically ranks low in per capita support of
postsecondary education. The Texas Tomorrow Fund, instead of being a
wonderful device for stimulating parental savings, could become an attractive
nuisance -- either by dampening legislative support for general institutional
appropriations or as a large, unintended ratchet to drive up tuition rates. (As a
corollary concern, fees, as contemplated by the legislation, have virtually no
control. A cynic might observe that the Texas Legislature has enacted a silent fee
system to guise its political unwillingness to take the heat for raising tuition rates.
One good thing to come from this legislation may be a more open consideration of
fees, tuition, fees, and residency\textsuperscript{10} structures in Texas.) All of these details have
real institutional consequences.

With these remarks, I have tried to place the legislation in context and to
show how a Prepaid Tuition Program could be enacted, one that would serve the
parallel goals of equity and excellence. The balance can be struck, but I urge the
Committee and your colleagues in both Houses to consider that the Trojan horse
here is not likely to be the plan’s failure, but its likely success. How Texas
handles success may say as much to future generations as how the state handles adversity.

What follows is a personal "markup" of CSHB 1214, including its 6 (six) recent proposed amendments. I have attempted to clarify the language or explain my remarks. I publicly acknowledge the contribution made to these suggestions by Mr. William Montjoy, the founding Executive Director of the Florida Prepaid Postsecondary Education Expense Board, and the Past President of the Prepaid Plan Network of the National Association of State Treasurers. However, I take full responsibility for my remarks, and Mr. Montjoy should be cleared of any guilt-by-association. Thank you for this generous opportunity to present my reviews on this important initiative. I would be pleased to answer any questions or to elaborate upon my remarks. Best wishes.

**CSHB 1214, as amended**

[Some remarks were drafted before the amendment process began. I retained my analyses in the event the Committee reconsiders the original provisions.] MAO

**Sec. 54.605 - Effect of Termination**
A prepaid tuition contract will be honored upon the termination of the program if the beneficiary is in college or within three years from college enrollment.

There is no reference to providing a special refund with interest for those contract holders more than three years away from college enrollment. This is due to Section 54.632 providing a refund with interest for all terminations. (Please see my comments under that section.)

Sec. 54.606 - Board Makeup

The Board is essentially comprised of the Comptroller with appointees by the Governor and Lt. Governor. The Board members serve for staggered six year terms.

There is no formal representation of the public institutions or private colleges. I recommend that formal representation for these entities be provided to ensure appropriate input into the process when the program is established. This will deflect criticism from higher education administrators as the Texas Tomorrow Fund (TTF) staff attempts to establish the necessary processes to administer the program. TTF can merely say to the complaining party to contact their representative on the Board as the rule or policy in question has been previously approved by the TTF Board. (In Florida, for example, the seven person board has
a representative from the State Board of Regents and the Community College Board.) You may also want some language about representativeness on the Board (racial, ethnic, etc.).

Sec. 54.615 - Executive Director: Staff

The Comptroller is the presiding officer of the Board (see Sec. 54.611) but under this section the TTF Board develops policies that separate the Board from management responsibilities of the Comptroller.

There may be a potential conflict of interest with this arrangement. With all staff of the TTF Board being also staff from the Comptroller’s office and with the Comptroller as both the Chair and Executive Director of the TTF Board, there will probably be no real separation of duties. I recommend having either an arrangement where the Comptroller manages the program with an advisory board or a separate board that elects its Chair which is assigned administratively to the Comptroller’s office. With an independent Board, the staff and Chair will be independent but the Comptroller would still serve on the Board and have the necessary and appropriate input.

Sec. 54.617 - Complaints
This section establishes procedures for filing and resolving public complaints. It
delineates in detail the information kept about each complaint filed with the Board
and requires certain due process, notices and hearings in order to resolve such
complaints.

I am unaware if this section is required by other Texas statutes but if the TTF
program grows as expected, this will create an enormous amount of unnecessary
paperwork. The Florida program currently receives in excess of 5,000 telephone
calls a week and 15,000 pieces of mail a week. If a purchaser writes a letter
complaining about the program not processing a change of address promptly or
correctly posting a payment, would that be considered a complaint under this
statute? Depending upon how liberally this section would be interpreted, I would
suggest that a large number of such calls and letters could be classified as
“complaints.” I recommend that this section be stricken and a section inserted
providing the Board authority to adopt procedures for handling complaints.

Sec. 54.618 - Powers

I would recommend specifically granting the Board authority to impose penalties
for fraud, or other similar action, in dealing with providing residency
documentation, obtaining a refund, etc. Because of constraints on Florida state
agencies imposing fines or penalties, Florida elected to approach the fraud and
forgery problems by requiring notarized statements for certain contract amendments. A more effective disincentive may be the imposition of a large penalty. I note that the legislation already contains authorization for verification under oath in Sec. 54.629, but some consideration may need to be given to this approach.

Sec. 54.619 - Prepaid Higher Education Tuition Program

The program will pay for the tuition and required fees. This avoids the question of how predictable fees are in the Texas higher education system.

In Florida, fees are not covered by the plan, whereas, fees are covered in Alabama. This is a state-by-state decision that turns on the actuarial predictability of such fees verses the benefits of marketing a plan that covers tuition and fees. If such fees are predictable within reasonable actuarial assumptions, I recommend that such fees be covered by the paid contract. This will greatly simplify marketing of the program and avoid misunderstandings among purchasers and beneficiaries about what is or is not covered by the contract. As I noted in my testimony, this may require biting the bullet and calling a fee tuition. A fee is tuition by another name.

Sec. 54.620 - Prepaid Tuition Contract
[The proposed addition of (b) 4 helps, but I cannot read it without thinking that this is possibly too-prescriptive and confining. What if the TTF uses other criteria?]

Subsection 5 of paragraph (d) of this section requires the contract to specify the number of credit hours contracted by the purchaser. Subsection 7 also states that contract shall “contain an assumption of a contractual obligation by the Board to the beneficiary to provide for a specified number of credit hours ....” These two sections appear to be redundant. It certainly must be made clear that only a specified number of credit hours is being purchased, not an open-ended number of credit hours needed to obtain a baccalaureate or associate of arts degree.

Sec. 54.626 - Contract Payment

This Section permits the Board to impose a late fee for payments not received by a specified time. In Section 54.618 the Board has the power to impose administrative fees. By adding this section, does this implicitly preclude payment of other fees by the exclusion of such authority? I recommend that this section be omitted, as the broad authority contained in Section 54.618 is sufficient for imposition of fees.

Sec. 54.627 - Change of Beneficiary
This section does not restrict the change of a beneficiary if the purchaser is not an individual. This would mean that groups or corporations that purchase the contract can substitute a non-related beneficiary at will.

There may be some opportunity for abuse by permitting groups complete authority to substitute beneficiaries that are not related. What if an employer establishes a fringe benefit program utilizing prepaid tuition contracts? Could the employer use the threat of substituting another beneficiary against an employee to obtain compliance by the employee for unreasonable work conditions? Could a wealthy individual who has a corporate entity or partnership purchase a contract for a beneficiary and require labor of an indentured servitude type to maintain the contract? I do not believe it can be assumed that every group is well intentioned in purchasing a prepaid tuition plan without restriction.

This can be extremely complicated provision to administer. I would suggest that it is permissible to allow conversions, but I would provide for more leeway to the Board to decide the process of such adjustments. Under the current language, it may restrict the Board to providing only a new monthly payment plan in the event of a conversion. The Board may wish to require a lump-sum payoff for a conversion. What if a purchaser wanted to convert down to a plan of lesser value and get a partial refund of payments made into the program? These issues
become extremely time consuming and expensive to administer and should be restricted to reasonable instances.

[Proposed Substitute 54.627. Change in Beneficiary. Add (c): this proposed revision would meet the objection I mentioned above, although I could see allowing one family member to sell or assign a contract to another family member. I would give authority to the Program to determine this policy.]

[Sec. 54.631. Contract Termination.

New (b) This is a good amendment, which puts an expiration date on each contract.]

Sec. 54.632. - Refunds

This section permits a refund with 5% interest for voluntary terminations. There is on restriction or receiving a refund with interest.

The effect of this section is to alter the prepaid tuition plan into a state-run savings account. This would probably have an adverse impact upon the Internal Revenue Service and Securities and Exchange Commission rulings. Moreover, I do not believe this is good public policy. The state should not be in competition with banks, financial institutions, brokerage houses, etc. Prepaid tuition programs are based upon prepayment of educational services and should not attempt to be something they are not. [The proposed revision is what I would have proposed.]
Sec. 54.634 - Establishment of Fund

This section establishes the fund outside the State Treasury. The Board is designated as the trustee of the fund's assets. I recommend that the fund be established within the State Treasury. Establishing the fund outside of the State Treasury was one of the critical areas that the IRS and the District Court focused upon in the Michigan Education Trust case. To avoid this issue, it would be better to establish the fund inside the State Treasury, unless Texas law precludes this.

Sec. 54.636 - Investment of Fund Assets

This section delineates the approved investments for fund assets. It states that preferred stocks, common stocks traded on the New York Stock Exchange, mutual funds regulated by the SEC, corporate debt obligations, etc. are acceptable investments.

I would suggest that limiting common stocks to those only on the New York Stock Exchange is too restrictive. Moreover, if the fund can be invested in mutual funds those mutual funds will invest in stocks not on the New York Stock Exchange. Also, preferred stocks may not be on the New York Stock Exchange even though they are authorized for investment. Many companies that are very good
investments like Apply Computers and MicroSoft are traded in the NASDAQ. I would recommend instead an authorization to invest in domestic stocks with a prohibition against investments in international funds.

[Sec. 54.640 Actuarial Soundness of Fund.

This may be desirable, but actuarial soundness is only one dimension of a well-run program. (Note spelling of actuarially.) An option might be to require the program to stand on its own resources, after start-up costs.]

[Sec. 54.641 Status of Prepaid Tuition Contract.

As in my comments at 54.632 (Refund), my concern is that these not become negotiable instruments outside the TTF program. This should improve the situation.]

Sec. 54.642 Reports.

2(c) sets out a January 1, 1996 or 90 days after Board appointment starting date. There are fewer vendors and professionals in this field than in the lottery field, upon which this short fuse in modelled. I believe a 6 or 9 month startup date is more reasonable, under the circumstances.
Conclusion

Overall, the statute is very well written. Except as I have noted, it provides the Comptroller and the Board proper authority to make decisions regarding such issues as selection of marketing agents, investment managers, actuaries, etc. avoiding the pitfall of micro-managing that process. I will be happy to discuss this analysis with you at your convenience.

Michael A. Olivas
University of Houston Law Center
April 26, 1995


4. Lehman, in Olivas, ed., at Table 3.3. In 1988, without MPO, the wealthiest 40% had purchased 72% of all MET contracts. See Table 3.5.

5. Jim Kenyon, “Banking on College,” *Tampa Tribune*, November 6, 1994, 1, 6 (10% of participants are black or Hispanic). At the 1994 National Association of State Treasurers Conference, Mr. William Montjoy estimated that Florida’s plan was less skewed than was Michigan’s but not proportionate to the income distribution in the state.


8. It is widely accepted that this has happened in Florida. See Kenyon, supra at note 5.


10. Texas has a very confusing and contradictory residency determination system, with many exceptions, loopholes, and hard-to-prove provisions. Michael A. Olivas, “Administering Intentions: Law, Theory, and Practice in Postsecondary Residency Requirements,” Journal of Higher Education Vol. 59, No. 3 (1988), 263-290. To confuse it further, this draft proposes that the TTF determine residency for this program, while the Texas Legislature and the Higher Education Coordinating Board set tuition residency policy.
Table 1.1. State Prepaid Tuition Programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Code/Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Baccalaureate Education System Trust</td>
<td>Indiana Code Ann. §21-8-3 (Burns 1991).*</td>
</tr>
<tr>
<td>Massachusetts began a PPA in 1994</td>
<td></td>
</tr>
<tr>
<td>Michigan Education Trust Act</td>
<td>Michigan Comp. Laws Ann. §3900.1444 (West 1988).*</td>
</tr>
<tr>
<td>Oklahoma Tuition Trust Act</td>
<td>Oklahoma Stat. tit. 70, §6002 (West 1989).*</td>
</tr>
</tbody>
</table>

* Inactive or suspended operation.
† Not yet operational.
** Several state institutions administer their own programs.
†† Combined prepaid tuition fund and savings plan trust.
A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a prepaid higher education tuition program.

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

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

SUBCHAPTER F. PREPAID HIGHER EDUCATION TUITION PROGRAM

Sec. 54.601. DEFINITIONS. In this subchapter:

(1) "Beneficiary" means a person who is entitled to receive benefits under a prepaid tuition contract.

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

(3) "Fund" means the Texas tomorrow fund.

(4) "Institution of higher education" has the meaning assigned by Section 61.003.

(5) "Prepaid tuition contract" means a contract entered into under this subchapter by the board and a purchaser to provide for the payment of higher education tuition and required fees of a beneficiary.

(6) "Private or independent institution of higher education" has the meaning assigned by Section 61.003.

(7) "Program" means the prepaid higher education tuition program.

(8) "Public junior college" has the meaning assigned
by Section 61.003.

(9) "Public senior college or university" has the meaning assigned by Section 61.003.

(10) "Purchaser" means a person who is obligated to make payments under a prepaid tuition contract.

Sec. 54.602. ESTABLISHMENT OF BOARD; FUNCTION. (a) The Prepaid Higher Education Tuition Board is in the office of the comptroller.

(b) The board shall administer the program.

Sec. 54.603. SUNSET PROVISION. The Prepaid Higher Education Tuition Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and the program terminates September 1, 2007.

Sec. 54.604. TERMINATION OR MODIFICATION OF PROGRAM. If the comptroller determines the program is financially infeasible, the comptroller shall notify the governor and the legislature and recommend that the program be modified or terminated.

Sec. 54.605. EFFECT OF TERMINATION OF PROGRAM 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 in an institution of higher education or a private or independent 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.
(b) A prepaid tuition contract terminates when the program is terminated if the contract does not remain in effect under Subsection (a).

Sec. 54.606. MEMBERS OF BOARD; APPOINTMENT; TERMS OF OFFICE.

(a) The board consists of:

(1) the comptroller;

(2) two members appointed by the governor with the advice and consent of the senate; and

(3) four members appointed by the lieutenant governor, at least two of whom must be appointed from a list of persons recommended by the speaker of the house of representatives.

(b) The appointed members must possess knowledge, skill, and experience in higher education, business, or finance.

(c) The appointed members serve for staggered six-year terms. The terms of one-third of the appointed members expire on February 1 of each odd-numbered year.

Sec. 54.607. DUTY IN RECOMMENDING, MAKING, OR CONFIRMING APPOINTMENTS. (a) In recommending, making, or confirming appointments to the board, the governor, lieutenant governor, speaker of the house of representatives, and senate shall ensure that each appointee has the background and experience suitable for performing the statutory responsibilities of a member of the board.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 54.608. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a
member of the board if the person or the person's spouse:

(1) is employed by or participates in the management
of a business entity receiving funds from the board;

(2) owns or controls, directly or indirectly, more
than a 10-percent interest in a business entity receiving funds
from the board; or

(3) uses or receives a substantial amount of tangible
goods, services, or funds from the board, other than compensation
or reimbursement authorized by law for board membership,
attendance, or expenses.

(b) An officer, employee, or paid consultant of a Texas
trade association in the field of higher education may not be a
member or employee of the board who is exempt from the state's
position classification plan or is compensated at or above the
amount prescribed by the General Appropriations Act for step 1,
salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or
paid consultant of a Texas trade association in the field of higher
education may not be a board member and may not be a board employee
who is exempt from the state's position classification plan or is
compensated at or above the amount prescribed by the General
Appropriations Act for step 1, salary group 17, of the position
classification salary schedule.

(d) A person may not serve as a member of the board or act
as the general counsel to the board if the person is required to
register as a lobbyist under Chapter 305, Government Code, because
of the person's activities for compensation on behalf of a
profession related to the operation of the board.

(e) A person may not serve as an appointed member of the board if the person is related in the second degree by affinity or consanguinity, as determined under Subchapter B, Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a Texas trade association in the banking, securities, or investment industry.

(f) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 54.609. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) violates a prohibition established by Section 54.608;

(2) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action was taken when a ground for removal of a board member existed.
Sec. 54.610. TRAINING OF BOARD MEMBERS. (a) Before a member of the board may assume the member's duties and before an appointed member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

Sec. 54.611. BOARD OFFICERS. (a) The comptroller serves as
the presiding officer of the board.

(b) The board shall appoint a secretary of the board whose duties may be prescribed by law and by the board.

Sec. 54.612. COMPENSATION AND EXPENSES OF APPOINTED BOARD MEMBERS. Appointed members of the board shall serve without pay but shall be reimbursed for their actual expenses incurred in attending meetings of the board or in performing other work of the board when that work is approved by the presiding officer of the board.

Sec. 54.613. MEETINGS. (a) The board shall hold regular quarterly meetings in the city of Austin and other meetings at places and times scheduled by the board in formal sessions and called by the presiding officer.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(c) Minutes of all meetings shall be available in the board's office for public inspection.

Sec. 54.614. APPLICABILITY OF OPEN MEETINGS LAW AND ADMINISTRATIVE PROCEDURE LAW. The board is subject to the open meetings law, Chapter 551, Government Code, and the administrative procedure law, Chapter 2001, Government Code.

Sec. 54.615. EXECUTIVE DIRECTOR; STAFF. (a) The comptroller serves as the executive director of the board.

(b) The employees of the comptroller selected by the comptroller for that purpose serve as the staff of the board.
(c) The comptroller shall select and supervise the staff of the board and perform other duties delegated to the comptroller by the board.

(d) The comptroller shall provide to members of the board and to board staff, as often as necessary, information regarding their qualifications for office or employment under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the comptroller and the staff of the board.

Sec. 54.616. PROGRAM AND FACILITY ACCESSIBILITY. (a) The board shall comply with federal and state laws related to program and facility accessibility.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs and services.

Sec. 54.617. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of
directing complaints to the board.

(c) The board shall keep information about each complaint filed with the board. The information shall include:

(1) the date the complaint is received;
(2) the name of the complainant;
(3) the subject matter of the complaint;
(4) a record of all persons contacted in relation to the complaint;
(5) a summary of the results of the review or investigation of the complaint; and
(6) for complaints for which the board took no action, an explanation of the reason the complaint was closed without action.

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

Sec. 54.618. POWERS OF BOARD. (a) The board has the powers necessary or proper to carry out this subchapter.

(b) The board may:

(1) adopt an official seal;
(2) adopt rules to implement this subchapter;
(3) sue and be sued;

(4) enter into contracts and other necessary
instruments;

(5) enter into agreements or other transactions with
the United States, state agencies, including institutions of higher
education, and local governments;

(6) appear in its own behalf before governmental
agencies;

(7) contract for necessary goods and services and
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.

Sec. 54.619. PREPAID HIGHER EDUCATION TUITION PROGRAM. (a)
Under the program, a purchaser may enter into a prepaid tuition
contract with the board under which the purchaser agrees to prepay
the tuition and required fees for a beneficiary to attend an
institution of higher education.

(b) The board shall deposit the money paid under a prepaid
tuition contract in the fund, invest the money and credit the
income earned to the fund, and apply money in the fund to the
tuition and required fees of the institution of higher education in
which the beneficiary enrolls as provided by the prepaid tuition
contract.

(c) If there is not enough money in the fund to pay the
tuition and required fees of the institution of higher education in
which a beneficiary enrolls as provided by the prepaid tuition
contract, the legislature shall appropriate to the fund the amount
necessary for the board to pay the tuition and required fees of the
institution.

(d) If the beneficiary enrolls in a private or independent
institution of higher education, the board shall pay the
institution the tuition and required fees the board would have paid
had the student enrolled in an institution of higher education
covered by the plan selected in the prepaid tuition contract. The
beneficiary is responsible for paying the private or independent
institution of higher education the amount by which the tuition and
required fees of the institution exceed the tuition and required
fees paid by the board.

Sec. 54.620. PREPAID TUITION CONTRACT. (a) The board may
contract with a purchaser for the purchaser to prepay the tuition
and required fees for a beneficiary to attend an institution of
higher education to which the beneficiary is admitted as a student.

(b) The terms of a prepaid tuition contract shall be based
on an actuarial analysis of:

(1) tuition growth rates;
required for the degree that corresponds to the plan purchased on behalf of the beneficiary;

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

(9) contain any other provisions the board considers necessary or appropriate.
(e) A prepaid tuition contract does not cover the cost of
laboratory fees charged for specific courses.

Sec. 54.621. BENEFICIARY. (a) The beneficiary of a prepaid
tuition contract must be younger than 18 years of age at the time
the purchaser enters into the contract and 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.

(b) The board may require a reasonable period of residence
in this state for a beneficiary or the parent of a beneficiary.

(c) A beneficiary is considered a resident for purposes of
tuition regardless of the beneficiary's residence on the date of
enrollment.

Sec. 54.622. TYPES OF PLANS. The board shall make prepaid
tuition contracts available for the:

(1) junior college plan;
(2) senior college plan; and
(3) junior-senior college plan.

Sec. 54.623. JUNIOR COLLEGE PLAN. Through the junior
college plan, a prepaid tuition contract shall provide prepaid
tuition and required fees for the beneficiary to attend a public
junior college for a specified number of undergraduate credit hours
not to exceed the typical number of hours required for a
certificate or an associate degree awarded by a public junior
college.
Sec. 54.624. SENIOR COLLEGE PLAN. Through the senior college plan, a prepaid tuition contract shall provide prepaid tuition and required fees for the beneficiary to attend a public senior college or university for a specified number of undergraduate credit hours not to exceed the typical number of hours required for a baccalaureate degree awarded by a public senior college or university.

Sec. 54.625. JUNIOR-SENIOR COLLEGE PLAN. Through the junior-senior college plan, a prepaid tuition contract shall provide prepaid tuition and required fees for the beneficiary to attend:

(1) a public junior college for a specified number of undergraduate credit hours not to exceed the typical number of hours required for a person to receive a certificate or associate degree awarded by a public junior college; and

(2) a public senior college or university for a specified number of credit hours not to exceed the typical number of additional hours required for the person to receive a baccalaureate degree awarded by a public senior college or university.

Sec. 54.626. CONTRACT PAYMENT. (a) The board may provide for the receipt of payments under prepaid tuition contracts in lump sums or installment payments.

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

(c) An employee of the state or a political subdivision of the state may make payments under a prepaid tuition contract by
payroll deductions made by the appropriate officer of the state or political subdivision.

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

Sec. 54.627. CHANGE OF BENEFICIARY. (a) The purchaser of a prepaid tuition contract may designate a new beneficiary instead of the original beneficiary if the new beneficiary meets the requirements of a beneficiary on the date the designation is changed. If the purchaser is an individual, the new beneficiary must be a sibling, step-sibling, or half-sibling of the original beneficiary.

(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.

Sec. 54.628. CONVERSION TO ANOTHER PLAN. (a) A purchaser may convert a prepaid tuition contract from one plan to another plan.

(b) The board may adjust the terms of the contract so that the purchaser is required to pay the amount required under the plan to which the contract is converted, taking into account any payments made before the date the contract is converted.

Sec. 54.629. VERIFICATION UNDER OATH. The board may require a purchaser to verify under oath a request to:

(1) change a beneficiary;

(2) convert a contract to another plan; or
(3) terminate a contract.

Sec. 54.630. PROMISE OR GUARANTEE OF ADMISSION. This subchapter is not a promise or guarantee that a beneficiary will be:

(1) admitted to any institution of higher education;
(2) admitted to a particular institution of higher education;
(3) allowed to continue enrollment at an institution of higher education after admission; or
(4) graduated from an institution of higher education.

Sec. 54.631. 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 if:

(1) the purchaser:
   (A) gives notice of termination; or
   (B) defaults on the contract; or
(2) the beneficiary:
   (A) dies;
   (B) becomes permanently and totally disabled;
   (C) is denied admission by each institution of higher education to which the beneficiary applies; or
   (D) enrolls in an institution of higher education but does not graduate from the institution on or before
the 10th anniversary of the projected date of graduation from that
institution, not counting time spent by the beneficiary as an
active duty member of the United States armed services.

Sec. 54.632. REFUND. (a) A prepaid tuition contract shall
specify:

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

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

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

(c) The amount of the refund is the sum of the payments made
under the prepaid tuition contract, together with five percent
interest on each payment accruing from the date the payment is
received to the date the refund is paid, multiplied by a fraction,
the numerator of which is the number of credit hours remaining
under the contract and the denominator of which is the number of
credit hours originally covered by the contract.

Sec. 54.633. PREPAID HIGHER EDUCATION TUITION SCHOLARSHIPS
FOR NEEDY STUDENTS. (a) To the extent money is available, the
board may award a prepaid higher education tuition scholarship to a
student who meets economic and academic requirements adopted by the
board by rule.

(b) A scholarship awarded under this section terminates if
the student to whom the scholarship is awarded is:

    (1) convicted of, or adjudicated as having engaged in
delinquent conduct constituting, an offense under Chapter 481,
Health and Safety Code; or

(2) convicted of, or adjudicated as having engaged in
delinquent conduct constituting, a felony or Class A misdemeanor.

(c) The board shall ensure that each region of the state is
equitably represented in the awarding of scholarships under this
section.

(d) Scholarships under this section are funded by the
private sector, the United States, and this state. The legislature
may appropriate an amount for the scholarships not to exceed the
amount provided by the private sector and the United States.

(e) The board may establish a direct-support organization
under the Texas Non-Profit Corporation Act (Article 1396-1.01 et
seq., Vernon's Texas Civil Statutes) to:

(1) receive, hold, invest, and administer money,
gifts, grants, loans, or other property for or on behalf of the
program; and

(2) purchase scholarships under this section.

(f) The board of directors of the direct-support
organization consists of:

(1) the comptroller;

(2) a member appointed by the governor with the advice
and consent of the senate; and

(3) three members appointed jointly by the comptroller
and the member appointed by the governor.

(g) The board must certify that the direct-support
organization operates in a manner consistent with the goals of this
state and in the best interests of this state.
(h) The board may contract with an independent certified public accountant to annually audit the direct-support organization under rules adopted by the board. The board shall submit the audit to the comptroller, governor, lieutenant governor, speaker of the house of representatives, Legislative Budget Board, Legislative Audit Committee, state auditor, and Texas Higher Education Coordinating Board. The comptroller or state auditor may require the direct-support organization or independent certified public accountant to provide additional information relating to the operation of the organization.

(i) The identity of a donor under this section who desires to remain anonymous and the records of the direct-support organization, other than the records disclosed under Subsection (h), are confidential.

Sec. 54.634. ESTABLISHMENT OF FUND. (a) The Texas tomorrow fund is outside the state treasury. The fund consists of:

(1) state appropriations for purposes of the fund;

(2) money acquired from other governmental or private sources;

(3) money paid under prepaid tuition contracts; and

(4) the income from money deposited in the fund.

(b) The board shall administer the assets of the fund. The board is the trustee of the fund's assets.

(c) The board may:

(1) segregate contributions and payments to the fund into various accounts; and

(2) acquire, hold, manage, purchase, sell, assign,
trade, transfer, and dispose of any security, evidence of
indebtedness, or other investment in which the fund's assets may be
invested.

Sec. 54.635. STATE TREASURER. (a) Except as provided by
Subsections (d) and (e), the state treasurer is the custodian of
the assets of the fund.

(b) The state treasurer 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) The state treasurer annually shall furnish to the board
a sworn statement of the amount of the fund's assets in the
treasurer's custody.

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

(e) If the office of the state treasurer is abolished, the
comptroller is the custodian of the assets of the fund.

Sec. 54.636. INVESTMENT OF FUND ASSETS. (a) The board
shall invest the assets of the fund.

(b) The board may contract with private professional
investment managers to assist the board in investing the assets of
the fund.

(c) The board shall develop written investment 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.

(d) The comptroller shall develop a comprehensive plan for
the investment of the assets of the fund consistent with the
objectives developed by the board under Subsection (c). The plan
shall specify the policies under which the board shall invest the
assets of the fund. The board must approve the plan.

(e) The assets of the fund may be invested only in:

(1) investments authorized by Section 404.024,

Government Code;

(2) corporate debt obligations that have received one
of the two highest credit ratings by at least two nationally
recognized rating services;

(3) preferred stocks;

(4) common stocks traded on the New York Stock
Exchange;

(5) institutional investment products, including fixed
annuities, variable annuities, and guaranteed insurance contracts
that are obligations of United States insurance companies; and

(6) mutual funds regulated by the Securities and
Exchange Commission.

(f) In investing the assets of the fund, the board shall
exercise the judgment and care, under the circumstances prevailing
at the time of the investment, that persons of ordinary prudence,
discretion, and intelligence exercise in the management of their
own affairs, not in speculation but when making a permanent
disposition of their money, considering the probable income from
the disposition and the probable safety of their capital.

Sec. 54.637. 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 institutions of higher education on behalf of beneficiaries; and

(3) make refunds under prepaid tuition contracts.

Sec. 54.638. REQUEST OF RULINGS FROM INTERNAL REVENUE SERVICE AND SECURITIES AND EXCHANGE COMMISSION. (a) The board shall request rulings from:

(1) the Internal Revenue Service regarding the tax consequences to purchasers and beneficiaries of participating in the program; and

(2) the Securities and Exchange Commission regarding the application of federal securities laws to the fund.

(b) The board shall inform a purchaser of the status of the requests under Subsection (a) before the purchaser enters into a prepaid tuition contract.

Sec. 54.639. EXEMPTION FROM CREDITORS' CLAIMS. Money in the fund is exempt from claims of creditors of a purchaser or beneficiary.

Sec. 54.640. 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 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. 54.641. STATEMENT REGARDING STATUS OF PREPAID TUITION CONTRACT. (a) Not later than December 1 of each year, the board shall furnish without charge to each purchaser a statement of:

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

(2) the number of credit hours originally covered by the contract;

(3) the number of credit hours remaining under the contract;

(4) the amount of the refund to which the person designated by the contract would be entitled if the contract were terminated on the date of the statement; and

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

(b) The board shall furnish a statement complying with Subsection (a) to a purchaser or beneficiary on written request. The board may charge a reasonable fee for each statement furnished under this subsection.

Sec. 54.642. 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 board's fiscal transactions 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 Texas Higher Education Coordinating Board complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education.

Sec. 54.643. 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 an institution of higher education in which a beneficiary may enroll or is enrolled. The institution of higher education shall keep the information confidential.

SECTION 2. (a) As soon as possible on or after the effective date of this Act, the governor and lieutenant governor shall appoint the members of the Prepaid Higher Education Tuition Board appointed by those officers. In making the appointments, the
governor shall designate one member for a term expiring February 1, 1997, and one member for a term expiring February 1, 1999. In making the appointments, the lieutenant governor shall designate one member for a term expiring February 1, 1997, one member appointed from a list of persons recommended by the speaker of the house of representatives for a term expiring February 1, 1999, and two members for terms expiring February 1, 2001, one of whom must be appointed from a list of persons recommended by the speaker of the house of representatives.

(b) The legislature may appropriate to the board an amount sufficient to cover the board's administrative costs for the state fiscal biennium ending August 31, 1997.

(c) The board shall be prepared to enter into a prepaid tuition contract not later than the 90th day after the date all the members are appointed or January 1, 1996, whichever occurs later.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.
Item 1
Amend C.S.H.B. 1214, Section 1, Subsection 54.620(b) by adding (4), as follows:
(4) years until beneficiary is projected to graduate from high school.

Item 2
Amend C.S.H.B 1214, Section 1, Subsection 54.627 to add (c), as follows:
(c) The purchaser of a prepaid contract may not sell the contract to a new purchaser.

Item 3
Amend C.S.H.B. 1214, Section 1, Subsection 54.631(b), to read as follows:
(b) A prepaid tuition contract terminates ten years after the beneficiary is projected to
graduate from high school, not counting time spent by the beneficiary as an active member of
the United States armed services.

Item 4
Amend C.S.H.B. 1214, Section 1, Subsection 54.632(c), to read as follows:
(c) The amount of the refund is determined by the board and specified by the prepaid tuition
contract.
Committee Amendment No. ___

By _____________

Item 1
Amend C.S.H.B. 1214, Section 1, Subsection 54.640(a) to read as follows:
(a) The board shall administer the fund in a manner that is sufficiently actuarially sound to pay all costs of program administration and operations and meet the obligations of the program.
Item 1
Amend C.S.H.B. 1214, Section 1, Subsection 54.641(a) to delete (4) and renumber accordingly.
# Amendments to CSHB 1214
## The Prepaid Tuition Program

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. 54.620. Prepaid Tuition Contract.</strong>&lt;br&gt;Add (b)(4): years until the beneficiary is projected to graduate from high school.</td>
<td>This information is necessary to determine the terms of a prepaid tuition contract under an installment payment plan.</td>
</tr>
<tr>
<td><strong>2. 54.627. Change of Beneficiary.</strong>&lt;br&gt;Add (c): The purchaser of a prepaid tuition contract may not sell the contract to a new purchaser.</td>
<td>This is part of the groundwork to prove that this is not an investment instrument and to prevent a secondary market from developing.</td>
</tr>
<tr>
<td><strong>3. 54.631. Contract Termination.</strong>&lt;br&gt;New (b): A prepaid tuition contract terminates ten years after the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active member of the United States armed services.</td>
<td>By striking language in the old section (b), the board will be able to determine policy through its rulemaking authority. The language as written is too restrictive considering that elsewhere the bill allows for the transferral to other siblings.</td>
</tr>
<tr>
<td><strong>4. 54.632. Refund.</strong>&lt;br&gt;New (c) The amount of the refund is determined by the board and specified in the prepaid tuition contract.</td>
<td>This change will allow the board to best protect the state from liability. To guard against the appearance that a prepaid program is an investment instrument, interest cannot be paid upon voluntary termination. The board would most probably set policy similar to the programs in other states. These programs allow refunds of payments plus 5 percent interest in cases of death or disability of the beneficiary, payments of 5 percent when the beneficiary receives a scholarship, payments plus market rate if the program is disbanded, and payments only if the contract purchaser voluntarily terminates the contract. Also, the board can charge an administrative fee to cover the cost of voluntary termination if it occurs within two years of purchase. The board policy would probably reflect this or something similar for termination and refund.</td>
</tr>
<tr>
<td><strong>5. 54.640. Actuarial Soundness of Fund.</strong>&lt;br&gt;New (a) The board shall administer the fund in a manner that is sufficiently actuarially sound to pay all costs of program administration and operations and meet the obligations of the program.</td>
<td>This states that the program is to be operated such that it is self-sufficient. This language is necessary to confirm legislative intent and to get a favorable fiscal note.</td>
</tr>
<tr>
<td><strong>6. 54.641. State Regarding Status of Prepaid Tuition Contract.</strong>&lt;br&gt;Strike (a)(4) and renumber accordingly.</td>
<td>This change goes along with changes in refund amount. The information cited by the present (a)(4) suggests that this is an investment instrument.</td>
</tr>
</tbody>
</table>