

## **BILL ANALYSIS**

Senate Research Center

H.B. 9  
By: Stiles (Barrientos)  
Finance  
4-28-97  
Committee Report (Amended)

### **DIGEST**

The 74th Legislature created the Texas Tomorrow Fund, which is a prepaid higher education tuition program that allows the purchaser to enter a contract to prepay the tuition and fees for the purchaser's beneficiary to attend a public institution of higher education. At this time, 13 other states have prepaid tuition programs; approximately five other states are preparing to implement similar programs.

Though the program has been very successful, the Comptroller's Office has identified some areas in which the statute can be improved and updated. This bill would amend current law to prevent purchasers from using the Private College Plan as tax shelters, allowing for the prepayment of tuition and fees for any high school student regardless of age, and would conform the law to Section 529, Internal Revenue Code. H.B. 9 would also require the state to impose penalties on refunds in certain circumstances, such as when a refund is requested because the beneficiary does not attend college.

### **PURPOSE**

As proposed, H.B. 9 amends existing law to update the prepaid higher education tuition program and conform with federal requirements.

### **RULEMAKING AUTHORITY**

This bill grants does not any additional rulemaking authority to a state agency, institution, or officer.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 54.619(d) and (e), Education Code, to require the Prepaid Higher Education Tuition Board (board), if the beneficiary of a plan enrolls in an institution of higher education, to pay to the purchaser, rather than to the beneficiary, the amount by which the estimated average private tuition and required fees exceeds the tuition and required fees of the institution. Makes conforming changes.

SECTION 2. Amends Section 54.621, Education Code, to require the beneficiary of a prepaid tuition contract to be younger than 18 years of age or 18 years of age or older and enrolled in high school at the time the purchaser enters into the contract. Requires, notwithstanding Section 54.052(d), the tuition and required fees charged by an institution of higher education for semester hours and fees that are paid for by a prepaid tuition contract to be determined as if the beneficiary of that contract were a resident student. Deletes text proving that a beneficiary is considered a resident for purposes of tuition regardless of the beneficiary's residence on the date of enrollment.

SECTION 3. Amends Section 54.627, Education Code, to require, except as provided by Subsection (b), the new beneficiary to meet certain requirements. Deletes text requiring the new beneficiary, if the purchaser is an individual, to be a sibling, step-sibling, or half-sibling of the original beneficiary. Sets forth provisions applicable if a purchaser is this state, a local government of this state, or an organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 because it is listed in Section 501(c)(3) of that code that purchases an interest in a prepaid tuition contract as part of a scholarship program operated by the government or organization. Makes conforming changes.

SECTION 4. Amends Section 54.632, Education Code, by adding Subsection (d), to require the board to comply with Section 529 of the Internal Revenue Code of 1986 in imposing penalties for refunds and excess amounts payable under Sections 54.619(d) and (e).

SECTION 5. Amends Section 54.633, Education Code, as follows:

Sec. 54.633. New heading: PREPAID HIGHER EDUCATION TUITION SCHOLARSHIPS FOR STUDENTS. Authorizes the board or the board of a direct-support organization established by the board under Subsection (e), to the extent money is available, to award a prepaid higher education tuition scholarship to a student who meets economic or academic requirements adopted by the board, or economic or academic requirements established by the board of a direct-support organization that are approved by the board. Provides that scholarships under this section may be, rather than are, funded by the private sector, the state, or a local government of the state. Authorizes the board to establish a direct-support organization under the Texas Non-Profit Corporation Act, Article 1396-1.01 et seq., V.T.C.S., to purchase and award scholarships under this section, and establish economic and academic eligibility requirements that are approved by the board. Provides that the comptroller serves as executive director of the board of the direct-support organization. Requires the comptroller to serve as executive director of the board of the direct-support organization. Sets forth requirements for the comptroller. Requires the board of the direct-support organization to develop and implement policies that clearly separate the policy-making responsibilities of the board of the direct-support organization and the management responsibilities of the comptroller and the staff of the board of the direct-support organization. Authorizes a prepaid tuition contract to be purchased for scholarship purposes under this section without identifying a specific beneficiary. Prohibits the awarding entity, in awarding a scholarship under this section, from awarding a scholarship using funds derived from this state or a local government unless the awarding entity makes certain determinations. Makes conforming changes.

SECTION 6. Amends Section 54.636(e), Education Code, to require the board, in making investments of the assets of the fund, to exercise the judgment and care, under the circumstances at the time of the investment, that a person of ordinary prudence, and intelligence would exercise in the management of the person's own affairs, not for speculation but for making a permanent disposition of funds, considering the probable income from the disposition and the probable safety of capital. Deletes a provision requiring the board to invest the assets of the fund in accordance with the Public Investment Act.

SECTION 7. Amends Section 54.639, Education Code, to provide that money in the fund is exempt from claims of creditors, including claims of creditors of a purchaser, beneficiary, or a successor in interest of a purchaser or beneficiary. Provides that 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 an institution of higher education or a private or independent institution of higher education 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. Provides that a claim or judgment against a purchaser, beneficiary, or a 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 certain rights.

SECTION 8. Amends Section 54.641(a), Education Code, to require, not later than January 1 of each year, rather than December 1 of each year, the board to furnish without charge to each purchaser a statement of certain amounts paid, numbers of credit hours, and other information.

SECTION 9. Amends Section 54.643, Education Code, by adding Subsection (c), to authorize the board, notwithstanding any other provision of this subchapter, to release information to the Internal Revenue Service and to any state tax agencies as required by applicable tax law.

SECTION 10. Amends Chapter 54F, Education Code, by adding Section 54.644, as follows:

Sec. 54.644. TAX EXEMPT STATUS REQUIREMENTS. Provides that the provisions of this section are intended to meet the requirements of Section 529 of the Internal Revenue Code of 1986. Requires a payment of an amount due to the fund for a prepaid tuition contract to be made in cash. Prohibits a person from making a payment to the fund in excess of the amounts required to be paid under a prepaid tuition contract. Requires the board to maintain a separate accounting for each beneficiary. Prohibits the purchaser of a prepaid tuition contract and the beneficiary of the contract from controlling or directing the investment of payments under the contract or any earnings of the fund. Prohibits the purchaser of a prepaid tuition and the beneficiary of the contract from using any interest in the contract as security for a loan or other obligation. Requires the board to make reports required by the secretary of the United States Treasury.

SECTION 11. Repealer: Section 54.638, Education Code (Request of Rulings From Internal Revenue Service and Securities Exchange Commission).

SECTION 12. Emergency clause.  
Effective date: upon passage.

### **SUMMARY OF COMMITTEE CHANGES**

#### Amendment 1.

Page 4, lines 7-11, strike Subdivisions (1) and (2) and replace with new Subdivisions (1) and (2).

#### Amendment 2.

Page 4, lines 22 and 23, to amend Subsection (d) to provide that scholarships may be, rather than are, funded by the private sector, the state, or a local government of the state.

Page 5, lines 5 and 6, strike Subsection (e)(3) and insert new Subsection (e)(3).