

## **BILL ANALYSIS**

Senate Research Center  
80R18601 JRJ-F

C.S.H.B. 2173  
By: Cook, Byron et al. (Brimer)  
Government Organization  
5/15/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Prepaid Higher Education Tuition Board (board) oversees the state's two 529 college savings plans. The Texas Guaranteed Tuition Plan allows Texas families to prepay college tuition and is backed by the full faith and credit of the state. The board temporarily suspended enrollment in the Guaranteed Tuition Plan in 2003, because of the uncertain effects of tuition deregulation. The Guaranteed Tuition Plan Fund currently has assets of about \$1.7 billion. The board also oversees Tomorrow's College Investment Plan that works much like a 401(k) but with after-tax dollars. This plan helps parents save for college, but is not guaranteed by the state.

Housed at the Office of the Comptroller of Public Accounts, the board is supported by 21 staff members and receives no appropriations but instead relies on guaranteed tuition contract payments, investment income, and fees to cover administrative costs and tuition benefits. The board contracts out administration of Tomorrow's College Investment Plan, and also contracts for investment advice, and advertising and actuarial services.

The board is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the legislature. As a result of its review of the board, the Sunset Advisory Commission recommended continuation of the board and several statutory modifications that are contained in C.S.H.B. 2173.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Prepaid Higher Education Tuition Board in SECTION 8 (Section 54.619, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 54.603, Education Code, to provide that the Prepaid Higher Education Tuition Board (board) is abolished and the programs established under this subchapter and under Subchapter G terminate on September 1, 2019, rather than 2007, unless continued in existence as provided by that chapter.

SECTION 2. Amends Sections 54.608(b), (c), and (f), Education Code, as follows:

(b) Prohibits a person, rather than an officer, employee, or paid consultant of a Texas trade association in the field of higher education, from being a member of the board and from being a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if certain conditions are present. Deletes existing text of Subsection (c) and includes the text from former subsection as part of criteria mentioned in (b) relating to certain persons who are ineligible to be a member of the board or an employee of the board.

(f) Redefines "Texas trade association."

SECTION 3. Amends Subchapter F, Chapter 54, Education Code, by adding Section 54.6085, as follows:

Sec. 54.6085. PREPAID HIGHER EDUCATION TUITION BOARD ETHICS POLICY. (a) Requires the board, in addition to any other requirements provided by law,

to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment decisions of the board. Requires the ethics policy to include provisions that address certain issues as they apply to the management and investment decisions of the board.

(b) Requires the ethics policy to include provisions applicable to certain persons.

SECTION 4. Amends Section 54.609, Education Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Sets forth the grounds for removal for board members.

(c) Requires the staff, if the staff of the board has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer then to notify the governor and the attorney general that a potential ground for removal exists. Requires the staff of the board, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Amends Section 54.610, Education Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with section. Deletes existing text relating to the assumption of a member's duties.

(c) Entitles a person appointed to the board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Amends Section 54.617, Education Code, by amending Subsections (c) and (d) and adding Subsection (e), as follows:

(c) Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires the board to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text relating to the collection and maintenance of information regarding complaints.

(d) Requires the board to make information available describing its procedures for complaint investigation and resolution. Deletes existing text relating to the collection and maintenance of information regarding complaints.

(e) Requires the board to periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 7. Amends Subchapter F, Chapter 54, Education Code, by adding Sections 54.6175 and 54.6185, as follows:

Sec. 54.6175. USE OF TECHNOLOGY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the staff of the board on the Internet.

Sec. 54.6185. COMPLIANCE WITH SUNSET MANAGEMENT RECOMMENDATIONS. (a) Requires the board to comply with and implement the management action recommendations regarding the board adopted by the Sunset Advisory Commission (SAC) on January 10, 2007, as a result of its review of the board,

and to report to SAC not later than November 1, 2008, the information SAC requires regarding the board's implementation of the recommendations as required by this subsection.

(b) Provides that this section expires June 1, 2009.

SECTION 8. Amends Section 54.619, Education Code, by adding Subsections (c-1) and (k), as follows:

(c-1) Sets forth certain actions the board is required and authorized to take if the beneficiary of a prepaid tuition contract entered into after December 31, 2003, under Section 54.623, 54.624, or 54.625 enrolls in an institution of higher education.

(k) Requires the board by rule to establish criteria and procedures to guide the board in determining when and under what conditions to reopen new enrollment in the Prepaid higher education tuition program (program) in the event new enrollment in the program is suspended under Subsection (j). Requires the procedure to require that, each year in which new enrollment in the program is suspended, the board consider the current structure of the program and determine whether any statutory or administrative changes are needed to enable the board to reopen new enrollment in the program in an actuarially sound manner.

SECTION 9. Amends Subchapter F, Chapter 54, Education Code, by adding Section 54.6195, as follows:

Sec. 54.6195. APPLICATION FOR ENROLLMENT. (a) Requires the board to adopt a form for an application for enrollment in the program. Requires the form to indicate the information that the applicant is required to provide in order for the application to be considered, including the information required by Subsection (b) and any other information the board considers appropriate.

(b) Requires an application for enrollment in the program to contain certain information.

SECTION 10. Amends Section 54.621, Education Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Makes a conforming change.

(d) Authorizes the board, in order to provide sufficient time for program investments to mature in an actuarially sound manner with regard to the amounts prepaid under a contract entered into after December 31, 2003, to require a maturity period between the time a purchaser enters into the contract and the time the board is required to act on its contractual obligation to pay any tuition or fees on behalf of the beneficiary.

SECTION 11. Amends Section 54.624(b), Education Code, to make the subsection applicable to the beneficiary of a senior college plan prepaid tuition contract entered into on or before December 31, 2003.

SECTION 12. Repealer: Section 54.608(e) (prohibiting certain persons from being members of the board), Education Code.

SECTION 13. Requires the board, not later than September 1, 2008, to conduct a study to determine the feasibility of the board and an institution of higher education entering into an agreement under which the institution offers tuition discounts or other benefits to beneficiaries of prepaid tuition contracts who enroll in the institution. Requires the study to include an analysis of the benefits of such an agreement to the board and to institutions of higher education and an evaluation of the level of interest in such agreements on the part of institutions of higher education.

SECTION 14. Effective date: upon passage or September 1, 2007.