

## **BILL ANALYSIS**

Senate Research Center  
82R21119 KSD-F

C.S.S.B. 1325  
By: Watson  
Higher Education  
4/14/2011  
Committee Report (Substituted)

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

Last session, the legislature passed S.B. 1760, which is similar to this legislation. The governor vetoed the bill and, in his veto message, said, "While I fully support this program, the legislation has an inadvertent drafting error that would no longer allow individuals to make tax-deductible donations to the foundation. My office will continue to work with the comptroller over the interim to draft new legislation to be considered by the 82nd Legislature."

C.S.S.B. 1325 addresses the concerns that led to the governor's veto. The Texas Save and Match fund administered by the Office of the Comptroller of Public Accounts is comprised of both public funds and private funds donated to the Texas Match and Promise Foundation, a 501(c)(3) corporation. This bill establishes criteria for the distribution of funds from state-appropriated money.

C.S.S.B. 1325 requires the Texas Prepaid Higher Education Tuition Board to develop and implement the Texas Save and Match Program to assist qualifying beneficiaries who open a higher education savings plan (529 plan) or purchase a prepaid tuition contract (Texas Tuition Promise Fund).

This legislation expands the current Texas Save and Match Program. A family could either buy units in the Texas Tomorrow Fund II or open a Texas College Savings Plan. The over arching goal would be for participants to start savings for post-secondary education. To be eligible for a match, the beneficiary must be a resident or dependent of a resident, and be eligible for free meals under the national free or reduced-price breakfast and lunch program. More than 2.8 million Texas children (nearly two-thirds) participate in the school lunch program and close to half of them also receive breakfast.

This bill also provides that, notwithstanding the provisions of any specific statute to the contrary, no money on despite in a prepaid tuition contract or a savings trust account may be considered an asset of a parent, guardian, or student, or income for purposes of determining eligibility for a TEXAS grant, any other state-funded student financial assistance, the state child health plan, aid to families with dependent children, and medical assistance to needy families.

C.S.S.B. 1325 amends current law relating to the administration of the Texas Save and Match Program to assist qualifying beneficiaries under the state's prepaid tuition unit program and college savings plans and to the treatment of a beneficiary's assets under a prepaid tuition program or a college savings plan in determining eligibility for student financial assistance and other assistance programs.

[**Note:** While statutory references in this bill are to the Texas Department of Human Services (TDHS), the following amendments affect the Texas Health and Human Services Commission, as the successor agency to TDHS.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Prepaid Higher Education Tuition Board in SECTION 1 (Section 54.809, Education Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 54, Education Code, by adding Subchapter I, as follows:

### **SUBCHAPTER I. TEXAS SAVE AND MATCH PROGRAM**

Sec. 54.801. DEFINITIONS. Defines, in this section, "accredited out-of-state institution of higher education," "career school," "general academic teaching institution," "private or independent institution of higher education," "two-year institution of higher education," "beneficiary," "board," "fund," "program," and "program entity."

Sec. 54.802. TEXAS SAVE AND MATCH PROGRAM. (a) Requires the Prepaid Higher Education Tuition Board (board), in cooperation with the Texas Match and Promise Foundation (program entity), to administer the Texas Save and Match Program (program), under which money contributed to a savings trust account by an account owner under a higher education savings plan under Subchapter G (Higher Education Savings Plan) or paid by a purchaser under a prepaid tuition contract under Subchapter H (Prepaid Tuition Unit Undergraduate Education Program: Texas Tomorrow Fund II) on behalf of an eligible beneficiary may be matched with:

- (1) contributions made by any person to the program entity for use in making additional savings trust account contributions under Subchapter G or in purchasing additional tuition units under prepaid tuition contracts under Subchapter H; or
- (2) money appropriated by the legislature for the program to be used by the board to make additional saving trust account contributions under Subchapter G or to purchase additional tuition units under Subchapter H.

(b) Provides that, in addition to the board's powers assigned under Subchapters F (Prepaid Higher Education Tuition Program), G, and H, the board has the powers necessary or proper to carry out its duties under this subchapter, including the power to:

- (1) sue and be sued;
- (2) enter into contracts and other necessary instruments;
- (3) 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;
- (4) appear on its own behalf before governmental agencies;
- (5) 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;
- (6) engage the services of private consultants, actuaries, trustees, records administrators, managers, legal counsel, and auditors for administrative or technical assistance;
- (7) solicit and accept gifts, grants, donations, loans, and other aid from any source or participate in any other manner in any government program to carry out this subchapter;
- (8) impose administrative fees;
- (9) contract with a person to market the program;

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

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

(c) Provides that, notwithstanding other law, for purposes of Subchapter I (Charitable Contributions), Chapter 659 (Compensation), Government Code:

(1) the program entity is considered an eligible charitable organization entitled to participate in a state employee charitable campaign under Subchapter I, Chapter 659, Government Code; and

(2) a state employee is entitled to authorize a payroll deduction for contributions to the program entity as a charitable contribution under Section 659.132 (Deduction Authorized), Government Code.

Sec. 54.803. INITIAL ELIGIBILITY FOR PARTICIPATION IN PROGRAM. (a) Requires a beneficiary, to be initially eligible to participate in the program, at the time a prepaid tuition contract is entered into on the beneficiary's behalf under Subchapter H, or a savings trust account is opened on the beneficiary's behalf under Subchapter G, as applicable, to be:

(1) a resident of this state; or

(2) a dependent for purposes of Section 152, Internal Revenue Code of 1986, of a resident of this state.

(b) Requires a beneficiary, to be initially eligible to receive matching funds described by Section 54.802(a)(2) under the program, at the time a prepaid tuition contract is entered into on the beneficiary's behalf under Subchapter H, or a savings trust account is opened on the beneficiary's behalf under Subchapter G, as applicable, to be eligible for free meals under the national free or reduced-price breakfast and lunch program.

Sec. 54.804. LIMITATIONS. Provides that a matching account established by the board or program entity on behalf of a beneficiary under this subchapter is forfeited and reverts to the board or program entity on the occurrence of any of the following:

(1) the 10th anniversary of the date the beneficiary is projected to graduate from high school, as indicated by the purchaser in the enrollment contract, except that time spent by the beneficiary as an active duty member of the United States armed services tolls the period described by this subdivision;

(2) a change of beneficiary by the account owner or purchaser of the matched account;

(3) a contract cancellation of the matched account and refund request;

(4) the successful completion by the beneficiary of an associate or bachelor's degree program;

(5) transfer of the matched account to another qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986; or

(6) any other event the board or program entity determines would be inconsistent with the program's purposes.

Sec. 54.805. **MATCHING ACCOUNT ADMINISTRATION.** (a) Requires that a matching account established by the board or program entity on behalf of a beneficiary under this subchapter be accounted for separately from the beneficiary's prepaid tuition contract balance or savings trust account balance.

(b) Requires money or tuition units in a beneficiary's matching account, to the extent possible, to be used or redeemed after money is used from the beneficiary's savings trust account under Subchapter G or tuition units are redeemed from the prepaid tuition contract for the beneficiary under Subchapter H.

(c) Requires the board, to the extent possible, to include information about a matching account in the periodic statement provided to applicable account owners and purchasers under Subchapters G and H.

Sec. 54.806. **CONFIDENTIALITY.** (a) Provides that records in the custody of the board or program entity relating to the participation of specific purchasers, beneficiaries, applicants, scholarship recipients, or donors under the program are confidential.

(b) Authorizes the board or program entity, notwithstanding Subsection (a), to release information described by Subsection (a) to the extent required by a general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, career school, or accredited out-of-state institution of higher education at which a beneficiary may enroll or is enrolled. Requires the institution or school receiving information described by Subsection (a) to keep the information confidential.

(c) Authorizes the board or program entity, notwithstanding any other provision of this subchapter, to release information to the Internal Revenue Service or to any state tax agency as required by applicable tax law.

(d) Authorizes the board or program entity, notwithstanding any other provision of this subchapter, to release information relating to donors who authorize release of that information.

Sec. 54.807. **PILOT PROJECTS UNDER PROGRAM.** Authorizes the board, to fulfill the intent of the program, to use funds described by Subsection 54.802(a)(2) to establish pilot projects under the program in an effort to incentivize participation in the higher education savings program under Subchapter G and the prepaid tuition unit undergraduate education program under Subchapter H, including projects that incentivize participation by:

(1) awarding additional matching grants based on a beneficiary's achievement of specified academic goals;

(2) providing initial matching grants and paying application fees;

(3) providing incentives for employers to contribute matching funds to the program; and

(4) creating a program information portal designed to increase program awareness and accessibility among school districts, parents, and students.

Sec. 54.808. **TEXAS SAVE AND MATCH TRUST FUND; AGREEMENTS BETWEEN BOARD AND PROGRAM ENTITY REGARDING PROGRAM ENTITY FUNDS.** (a) Provides that the Texas save and match trust fund (fund) is established as a trust fund to be held with the comptroller of public accounts.

(b) Authorizes money in the fund to be spent without appropriation and only to establish matching accounts, make deposits, purchase tuition units, and award

matching grants and scholarships under the program and to pay the costs of program administration and operations.

(c) Authorizes the board to invest, reinvest, and direct the investment of any available money in the fund.

(d) Requires that interest and income from the assets of the fund be credited to and deposited in the fund.

(e) Authorizes the board and program entity to enter into an agreement under which the board is authorized to hold and manage funds of the program entity and provide services to the program entity.

Sec. 54.809. RULES. Requires the board to adopt rules for the administration of this subchapter.

SECTION 2. Amends Subchapter A, Chapter 56, Education Code, by adding Section 56.007, as follows:

Sec. 56.007. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. Prohibits the right of a person to assets held in or the right to receive payments or benefits under any fund or plan established under Subchapters G, H, or I, Chapter 54, including an interest in a savings trust account, prepaid tuition account, or related matching account, notwithstanding any other law, from being considered an asset of the person, or otherwise included in the person's household income or other financial resources, for purposes of determining the person's eligibility for a TEXAS grant or any other state-funded student financial assistance.

SECTION 3. Amends Subchapter C, Chapter 62, Health and Safety Code, by adding Section 62.1012, as follows:

Sec. 62.1012. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. Prohibits the Health and Human Services Commission (HHSC), for purposes of determining whether a child meets family income and resource requirements for eligibility for the child health plan, from considering as income or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

SECTION 4. Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.0039, as follows:

Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. Prohibits the Texas Department of Human Services, for purposes of determining the amount of financial assistance granted to an individual under this chapter for the support of dependent children or determining whether the family meets household income and resource requirements for financial assistance under this chapter, from considering the right to assets held in or the right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

SECTION 5. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.02611, as follows:

Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Prohibits HHSC, except as provided by Subsection (b), in determining eligibility and need for medical assistance, from considering as assets or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) Authorizes HHSC, in determining eligibility and need for medical assistance for an applicant who may be eligible on the basis of the applicant's eligibility for medical assistance for the aged, blind, or disabled under 42 U.S.C. Section 1396a(a)(10), to consider as assets or resources a right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a).

(c) Requires HHSC, notwithstanding Subsection (b), to seek a federal waiver authorizing HHSC to exclude, for purposes of determining the eligibility of an applicant described by that subsection, the right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a) if the fund, plan, or tuition program was established before the 21st birthday of the beneficiary of the fund, plan, or tuition program.

SECTION 6. Repealer: Section 54.7521 (Texas Save and Match Program), Education Code.

SECTION 7. Requires the board to adopt the initial rules required by Subchapter I, Chapter 54, Education Code, as added by this Act, not later than May 31, 2012.

SECTION 8. Provides that the Texas Save and Match Program established by this Act is an expansion of the Texas Save and Match program created under Section 54.7521, Education Code. Authorizes the tax-exempt charitable organization created under Section 54.7521, Education Code, on and after the effective date of the repeal of Section 54.7521, Education Code, by this Act, to provide matching funds under that program, to continue to accept tax-deductible donations for the purpose of providing matching funds under the program established by this Act.

SECTION 9. Provides that Subchapter I, Chapter 54, Education Code, as added by this Act, applies to a prepaid tuition contract purchased for a beneficiary under Subchapter H, Chapter 54, Education Code, regardless of whether the prepaid tuition contract was purchased before, on, or after the effective date of this Act. Provides that Subchapter I, Chapter 54, Education Code, as added by this Act, applies only to a savings trust account opened for a beneficiary under Subchapter G, Chapter 54, Education Code, on or after January 1, 2012.

SECTION 10. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 11. Provides that the changes in law made by this Act apply to a person who receives health benefits coverage under Chapter 62, Health and Safety Code, financial assistance under Chapter 31, Human Resources Code, or medical assistance under Chapter 32, Human

Resources Code, on or after the effective date of this Act, regardless of the date on which eligibility for coverage or assistance was initially determined.

SECTION 12. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 6 of this Act: January 1, 2012.