

BILL ANALYSIS

Senate Research Center
77R5320 QS-D

C.S.S.B. 555
By: Ellis, Rodney
Education
2/28/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the State of Texas operates a prepaid tuition and college savings plan but lacks a college savings plan that permit parents to invest in mutual fund portfolios which would allow greater returns on investments to supplement the prepaid tuition program. C.S.S.B. 555 amends the Texas Education Code to create a college savings plan to provide purchasers with greater flexibility and potentially higher returns than are available through the Texas Tomorrow Fund.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Prepaid Higher Education Tuition Board in SECTION 1(Sections 54.702, 54.708, and 54.710, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER G. HIGHER EDUCATION SAVINGS PLAN

Sec. 54.701. DEFINITIONS. Defines “beneficiary,” “board,” “eligible educational institution,” “financial institution,” “nonqualified withdrawal,” “plan,” “plan manager,” “qualified higher education expenses,” “qualified withdrawal,” “savings trust account,” and “savings trust agreement.”

Sec. 54.702. POWERS AND DUTIES OF BOARD. Requires the Prepaid Higher Education Tuition Board (board) to perform certain duties. Authorizes the board to adopt rules governing withdrawal of money from a savings trust account and develop policies and penalties for nonqualified withdrawals. Authorizes the board to seek rulings and other guidance from the United States Department of Treasury, the Internal Revenue Service, and the Securities and Exchange Commission relating to the plan as necessary for proper implementation and development of the plan. Requires the board to make changes to the plan as necessary for savings trust account owners and beneficiaries of the plan to obtain or maintain federal income tax benefits or treatment provided by Section 529, Internal Revenue Code of 1986, as amended, and exemptions under federal securities laws. Requires the board to collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the plan in amounts not exceeding the cost of establishing and maintaining the plan. Requires a savings trust agreement used by a plan manager to be reviewed and approved by the board. Requires the board to review for compliance with applicable law and to approve any informational materials used by the plan manager to be furnished to participate or potential participants in the plan. Requires the board to adopt a policy to prevent contributions to an account on behalf of a beneficiary in excess of those necessary to pay the qualified higher education expenses of the beneficiary. Requires the board to monitor contributions to and withdrawals from the plan and each plan account to ensure that any applicable limits on contributions or withdrawals are not exceeded. Requires the board to prepare and file statements and information returns relating to accounts to the extent required

by federal or state tax law.

Sec. 54.703. OPERATION OF PLAN; ACCOUNTS HELD IN TRUST. Requires the board to administer a higher education savings plan to enable individuals to save money for the qualified higher education expenses of an individual by establishing a savings trust account in the plan. Provides that money contributed to a savings trust account and earnings on the account are held in trust by the board and the plan manager for the sole benefit of the account owner and beneficiary.

Sec. 54.704. SELECTION OF FINANCIAL INSTITUTION AS PLAN MANAGER. Requires the board to contract with one or more financial institutions to serve as plan manager and to invest the money in savings trust accounts. Requires the board to ensure that investments by a plan manager are made with the requisite judgment and care. Requires the board to solicit proposals from financial institutions to serve as plan managers. Requires the board to select a plan manager or managers from among bidding financial institutions that demonstrate the most advantageous combination to account owners or beneficiaries, based on certain criteria. Authorizes the board to require that any financial institution selected provide several investment options to account owners, taking into consideration the age of the beneficiary and the number of years remaining until likely enrollment at an eligible educational institution.

Sec. 54.705. DUTIES OF PLAN MANAGER. Requires a plan manager to perform certain duties. Requires a plan manager to hold all savings trust accounts in trust for the sole benefit of the account owner and beneficiary on behalf of the plan, acting in a fiduciary capacity and making investments under the standard provided by Section 54.704. Requires a plan manager to develop a strategy to promote the plan and, on approval by the board, promote the plan according to that strategy.

Sec. 54.706. CONTRACT BETWEEN BOARD AND PLAN MANAGER. Requires a contract between the board and a financial institution to act as a plan manager under this subchapter to be for a term of at least five years and authorizes it to be renewable. Provides that if the contract is not renewed, certain conditions at the end of the term of the contract apply, so long as applying the conditions does not disqualify the plan as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended. Authorizes the board to cancel a plan manager contract with a financial institution for a violation of the contract or a provision of this subchapter by the financial institution at any time. Requires the board, if a contract is terminated under this subsection, to take custody of accounts held at that financial institution to promptly seek to transfer the accounts to another financial institution acting as a plan manager and into investment instruments as similar to the original investment instruments as possible.

Sec. 54.707. SAVINGS TRUST ACCOUNTS. Authorizes an individual to open a savings trust account to save money for the payment of the qualified higher education expenses of a beneficiary. Provides that the individual who opens the account is the owner of the account. Requires the owner of the account to also be the beneficiary. Authorizes an individual to open an account by completing a savings trust agreement prescribed by the plan manager and approved by the board and making the minimum contribution required by the plan manager to open an account. Requires a savings trust agreement to include certain terms. Authorizes an account owner to change the designated beneficiary of an account as provided by the Internal Revenue Code in accordance with procedures established by the board.

Sec. 54.708. CONTRIBUTIONS AND WITHDRAWALS; PENALTY FOR NONQUALIFIED WITHDRAWAL. Authorizes contributions to a savings trust account to be made only in cash. Authorizes an employee of the state or a political subdivision of the state to make contributions to a savings trust account by payroll deductions made by the appropriate officer of the state or political subdivision. Authorizes an account owner to withdraw all or part

of the balance of an account on prior notice as authorized by board rules. Requires the board to adopt rules governing the determination whether a withdrawal is a qualified withdrawal or a nonqualified withdrawal. Authorizes contributions to a savings trust account also be made by electronic funds transfer. Authorizes the rules to require an account owner requesting to make a qualified withdrawal to provide a certification of qualified higher education expenses. Provided that in the case of a nonqualified withdrawal from an account, an amount equal to 10 percent of the portion of the withdrawal constituting income as determined in accordance with the Internal Revenue Code is required to be withheld as a penalty. Authorizes the amount of the penalty to be increased if the board determines that the increased penalty is necessary to constitute a greater than de minimis penalty for purposes of qualifying the plan as a qualified state tuition program. Authorizes the amount of the penalty to be decreased by board rule if the board determines that the amount of the prescribed penalty is greater than required to constitute a greater than de minimis penalty for purpose of qualifying the plan as a qualified state tuition program and the penalty together with other revenue generated under this subchapter is producing more revenue than required to cover the costs of operating the plan and to recover any prior costs not previously recovered. Requires penalties collected under this subchapter to be used to cover cost of administering this subchapter, and requires any excess to be treated as earnings of the savings trust accounts in the plan.

Sec. 54.709. ADMINISTRATION OF ACCOUNTS. Requires the plan manager to provide separate accounting for each savings trust account. Prohibits an account owner or beneficiary from directing the investment of any contributions to or earnings on the account. Requires the board, if board termination of the contract of a financial institution to act as a plan manager results in accounts being transferred from that financial institution to another financial institution, to select the financial institution to which the balances of the accounts are transferred. Requires a savings trust agreement to provide that, if after a specified period the savings trust agreement has not been terminated and the beneficiary's rights in the account have not been exercised, the board, after making reasonable efforts to contact the owner and beneficiary of the account to report the unclaimed funds to the comptroller. Provides that money in a savings trust account is exempt from attachment, execution, and seizure for the satisfaction of debt or liability of an account owner or beneficiary. Prohibits a savings trust account from being assigned for the benefit of creditors, used as security or collateral for any loan, or other wise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge. Requires a distribution from an account to any individual or for the benefit of any individual during a calender year to be reported to the Internal Revenue Service and to the account owner or the beneficiary to the extent required by federal law. Requires the plan manager to provide an annual statement to each account owner not later than the January 31 after the end of each calender year and is authorizes the provision of statements more frequently than annually. Requires a statement to identify the contributions made during the reporting period, the total contributions made through the end of the reporting period, the value of the account at the end of the reporting period, withdrawals made during the reporting period, and any other information the board requires.

Sec. 54.710. PLAN LIMITATIONS. Provides that nothing in this subchapter or in any savings trust agreement entered into under this subchapter is to be construed to give certain benefits or guarantees or any obligation of the state, any agency or instrumentality of the state, or the plan manager to guarantee for the benefit of an account owner or beneficiary and certain other factors. Requires the board by rule to require that every savings trust agreement, deposit slip, and other similar document used in connection with a contribution to an account clearly indicate that the account is not insured by this state and that neither the principal deposited nor the investment return is guaranteed by this state.

Sec. 54.711. NO PROMISE OF ADMISSION, ENROLLMENT, OR GRADUATION. Provides that the opening or maintenance of a savings trust account does not promise or guarantee that a beneficiary of the account will be admitted to, enroled in, graduated from any educational institution.

Sec. 54.712. RESIDENCY NOT REQUIRED. Provides that a savings trust account owner or beneficiary is not required to be a resident of this state.

Sec. 54.713. POLICIES FOR PROMOTION AND DISCLOSURE OF INFORMATION. Requires the board to adopt policies for promotion of the plan and the disclosure of plan information to savings trust account owners and beneficiaries in a manner consistent with this subchapter and the requirements of the Internal Revenue Code of 1986, to ensure that promotional material and plan information disclose that no money invested in the plan is insured by this state and that neither the principal deposited nor the investment returned is guaranteed by this state; and any fees imposed under this subchapter are disclosed in promotional material and plan information provided to the public and to account owners and beneficiaries.

Sec. 54.714. CONFIDENTIALITY OF RECORDS. Provides that except as otherwise provided by this section, all information relating to the plan is public and subject to disclosure under Chapter 552 (Public Information), Government Code. Provides that information relating to a beneficiary or owner of a savings trust account, including any personally identifiable information about an owner or beneficiary, is confidential except that the board is required to disclose that information to an account owner regarding the owner's account.

Sec. 54.715. TERMINATION OR MODIFICATION OF PLAN. Requires the comptroller, if the comptroller determines that the plan is not financially feasible, to notify the governor and the legislature and recommend that the board not administer a higher education savings plan or that the plan be modified or terminated.

Sec. 54.716. EFFECT OF TERMINATION OF PLAN ON SAVINGS TRUST AGREEMENT. Requires the balance of each savings trust account, if the plan is terminated, to be paid to the account owner, to the extent possible, and any unclaimed assets is required to be escheat to the state in accordance with general law regarding unclaimed property.

SECTION 2. Amends Section 54.601, Education Code, by amending Subdivision (4) and adding Subdivision (13), to redefine "fund," and define "account."

SECTION 3. Amends Section 54.602(b), Education Code, to require the board to administer the prepaid higher education tuition program established under this subchapter and the higher education savings plan established under Subchapter G.

SECTION 4. Amends Sections 54.603 and 54.634, Education Code, to provide that unless continued in existence as provided by that chapter, the board is abolished and the programs established under this subchapter and under Subchapter G terminate September 1, 2007. Makes a conforming change.

Sec. 54.634. New heading: ESTABLISHMENT OF TRUST FUND; COLLEGE SAVINGS PLAN ACCOUNT. Provides that the Texas tomorrow constitutional trust fund is created as a trust fund to be held with the comptroller, rather than outside the state treasury. Provides that the Texas college savings plan account is created within the Texas tomorrow constitutional trust fund and is financed through administrative fees and service charges as authorized by Section 54.702(c).

SECTION 5. Amends Chapter 54F, Education Code, by adding Section 54.6401, as follows:

Sec. 54.6401. COMPLIANCE WITH LIMITS ON CONTRIBUTIONS AND WITHDRAWALS. Requires the board to monitor contributions to and withdrawals from the fund and any account within the fund to ensure that any applicable limits on contributions or withdrawals are not exceeded.

SECTION 6. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 555, Section 54.708, Education Code, to add new proposed language providing that an employee may make contributions to a savings trust account by payroll deductions or electronic funds transfer. Makes conforming changes.