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# A BILL FOR AN ACT

RELATING TO HIGHER EDUCATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 304A, part VII, Hawaii Revised  
2 Statutes, is amended by adding a new subpart to be appropriately  
3 designated and to read as follows:

4                       "Advanced College Tuition Payment Program

5           **§304A-       Advanced college tuition payment program;**  
6 **established.** The advanced college tuition payment program is  
7 established to help make higher education affordable and  
8 accessible to all citizens of the State by offering a savings  
9 incentive that will protect purchasers and beneficiaries against  
10 rising tuition costs. The program is designed to encourage  
11 savings and enhance the ability of residents to obtain financial  
12 access to institutions of higher education. In addition, the  
13 program encourages elementary and secondary school students to  
14 do well in school as a means of preparing for and aspiring to  
15 higher education attendance. This program is intended to  
16 promote a well-educated and financially secure population to the  
17 ultimate benefit of all residents of the State.



1           **§304A- Definitions.** As used in throughout this subpart,  
2 unless the context clearly requires otherwise:

3           "Account" means the advanced college tuition payment  
4 program account established for the deposit of all money  
5 received by the commission from eligible purchasers and interest  
6 earnings on investments of funds in the account.

7           "Commission" means the state post-secondary education  
8 commission.

9           "Contractual obligation" means a legally binding contract  
10 of the State with the purchaser and the beneficiary establishing  
11 that purchases of tuition units will be worth the same number of  
12 tuition units at the time of redemption as they were worth at  
13 the time of the purchase.

14           "Eligible beneficiary" means the person for whom the  
15 tuition unit will be redeemed for attendance at an institution  
16 of higher education. The beneficiary is that person named by  
17 the purchaser at the time that a tuition unit contract is  
18 accepted by the commission. Qualified organizations, as allowed  
19 under section 529 of the federal Internal Revenue Code,  
20 purchasing tuition unit contracts as future scholarships need  
21 not designate a beneficiary at the time of purchase.



1 "Eligible purchaser" means an individual or organization  
2 that has entered into a tuition unit contract with the  
3 commission for the purchase of tuition units for an eligible  
4 beneficiary.

5 "Institution of higher education" means an institution that  
6 offers education beyond the secondary level and is recognized by  
7 the Internal Revenue Service under chapter 529 of the Internal  
8 Revenue Code.

9 "Internal Revenue Code" means the Internal Revenue Code of  
10 1986, as amended. "Tuition and fees" means undergraduate  
11 tuition and services and activities fees. Services and  
12 activities fees do not include fees charged for the payment of  
13 bonds heretofore or hereafter issued for, or other indebtedness  
14 incurred to pay, all or part of the cost of acquiring,  
15 constructing, or installing any lands, buildings, or facilities.

16 "Tuition unit contract" means a contract between an  
17 eligible purchaser and the commission for the purchase of  
18 tuition units for a specified beneficiary that may be redeemed  
19 at a later date for an equal number of tuition units.

20 "Unit purchase price" means the minimum cost to purchase  
21 one tuition unit for an eligible beneficiary. The minimum  
22 purchase price shall be one per cent of the undergraduate



1 tuition and fees for the academic year in which the tuition unit  
2 contract is entered into, rounded to the nearest whole dollar,  
3 adjusted for the costs of administration and adjusted to ensure  
4 the actuarial soundness of the account. The adjustments shall  
5 include but not be limited to consideration of past and  
6 projected patterns of tuition increases, program liability, past  
7 and projected investment returns, and the need for a prudent  
8 stabilization reserve.

9       **§304A- Offices and personnel.** The commission shall  
10 maintain appropriate offices and employ and fix the compensation  
11 of such personnel as may be necessary to perform the advanced  
12 college tuition payment program duties. The positions shall be  
13 exempt from chapter 76.

14       **§304A- Administration of program; tuition units;**  
15 **promotion of program; authority of commission.** (a) The  
16 advanced college tuition payment program shall be administered  
17 by the commission.

18       (b) The advanced college tuition payment program shall  
19 consist of the sale of tuition units, which may be redeemed by  
20 the beneficiary at a future date for an equal number of tuition  
21 units regardless of any increase in the price of tuition that  
22 may have occurred in the interval.



1 (c) Each purchase shall be worth a specific number of or  
2 fraction of tuition units at the University of Hawaii. The  
3 number of tuition units necessary to pay for a full year's,  
4 full-time undergraduate tuition and fee charges at the  
5 University of Hawaii shall be set by the commission at the time  
6 a purchaser enters into a tuition unit contract. The commission  
7 may limit the number of tuition units purchased by any one  
8 purchaser or on behalf of any one beneficiary, provided that no  
9 limit may be imposed that is less than that necessary to achieve  
10 four years of full-time, undergraduate tuition charges at the  
11 University of Hawaii.

12 (d) The commission also, at its discretion, may limit the  
13 number of participants, if needed, and may determine residency  
14 requirements for eligible purchasers and eligible beneficiaries,  
15 to ensure the actuarial soundness and integrity of the program.

16 (e) No tuition unit may be redeemed until two years after  
17 the purchase of the unit. Units may be redeemed for enrollment  
18 at any institution of higher education that is recognized by the  
19 Internal Revenue Service under chapter 529 of the Internal  
20 Revenue Code. Units redeemed at a nonstate institution of  
21 higher education or for graduate enrollment shall be redeemed at



1 the rate for the University of Hawaii in effect at the time of  
2 redemption.

3 (f) The commission shall determine the conditions under  
4 which the tuition units may be transferred to a family member.  
5 In permitting such transfers, the commission may not allow the  
6 tuition units to be bought, sold, bartered, or otherwise  
7 exchanged for goods and services by either the beneficiary or  
8 the purchaser.

9 (g) The commission shall administer the advanced college  
10 tuition payment program in a manner reasonably designed to be  
11 actuarially sound, such that the assets of the advanced college  
12 tuition payment program account will be sufficient to defray the  
13 obligations of the account including the costs of  
14 administration. The commission, at its discretion, may discount  
15 the minimum purchase price for certain groups of purchasers such  
16 as those from families with young children, as long as the  
17 actuarial soundness of the account is not jeopardized. The  
18 commission shall annually determine current value of a tuition  
19 unit. The commission shall promote, advertise, and publicize  
20 the advanced college tuition payment program.

21 (h) In addition to any other powers conferred by this  
22 subpart, the commission may:



- 1           (1)   Impose reasonable limits on the number of tuition  
2                   units or units that may be used in any one year;
- 3           (2)   Determine and set any time limits, if necessary, for  
4                   the use of benefits under this program;
- 5           (3)   Impose and collect administrative fees and charges in  
6                   connection with any transaction under this program;
- 7           (4)   Appoint and use advisory committees as needed to  
8                   provide program direction and guidance;
- 9           (5)   Formulate and adopt all other policies and rules  
10                  necessary for the efficient administration of the  
11                  program;
- 12          (6)   Consider the addition of an advanced payment program  
13                  for room and board contracts;
- 14          (7)   Purchase insurance from insurers licensed to do  
15                  business in the State, to provide for coverage against  
16                  any loss in connection with the account's property,  
17                  assets, or activities or to further insure the value  
18                  of the tuition units;
- 19          (8)   Make, execute, and deliver contracts, conveyances, and  
20                  other instruments necessary to the exercise and  
21                  discharge of its powers and duties under this program;



1           (9) Contract for the provision for all or part of the  
2           services necessary for the management and operation of  
3           the program with other state or nonstate entities  
4           authorized to do business in the State;

5           (10) Contract for other services or for goods needed by the  
6           commission in the conduct of its business under this  
7           program;

8           (11) Contract with financial consultants, actuaries,  
9           auditors, and other consultants as necessary to carry  
10          out its responsibilities under this program;

11          (12) Solicit and accept cash donations and grants from any  
12          person, governmental agency, private business, or  
13          organization;

14          (13) Adopt rules under chapter 91 to implement this part;  
15          and

16          (14) Perform all acts necessary and proper to carry out the  
17          duties and responsibilities of this program.

18          **§304A- Purchase of tuition units by organizations;**  
19          **rules; scholarship fund.** The commission, at its discretion, may  
20          allow an organization to purchase tuition units for future use  
21          as scholarships. Organizations electing to purchase tuition  
22          units for this purpose shall enter into a contract with the



1 commission which, at a minimum, ensures that the scholarship  
2 shall be freely given by the purchaser to a scholarship  
3 recipient. For such purchases, the purchaser need not name a  
4 beneficiary until four months before the date when the tuition  
5 units are first expected to be used.

6 The commission shall formulate and adopt such rules as are  
7 necessary to determine which organizations may qualify to  
8 purchase tuition units for scholarships under this section. The  
9 commission may adopt additional rules for the use of tuition  
10 units if purchased as scholarships.

11 The commission may establish a scholarship fund with moneys  
12 from the advanced college tuition payment program account. The  
13 fund shall be administered by the commission and shall be  
14 provided to students who demonstrate financial need. Financial  
15 need is not a criterion that any other organization need  
16 consider when using tuition units as scholarships. The  
17 commission also may establish its own corporate-sponsored  
18 scholarship fund under this program.

19 **§304A- Contractual obligation legally binding; use of**  
20 **state appropriations.** The advanced college tuition payment  
21 program is an essential state governmental function. Contracts  
22 with eligible participants shall be contractual obligations



1 legally binding on the State as set forth in this subpart. If,  
2 and only if, the moneys in the account are projected to be  
3 insufficient to cover the State's contracted expenses for a  
4 given biennium, then the legislature shall appropriate to the  
5 account the amount necessary to cover such expenses.

6 The tuition and fees charged by an eligible institution of  
7 higher education to an eligible beneficiary for a current  
8 enrollment shall be paid by the account to the extent the  
9 beneficiary has remaining unused tuition units for the  
10 appropriate school.

11 **§304A- Advanced college tuition payment program account.**

12 (a) The advanced college tuition payment program account is  
13 created as a revolving fund under the custody of the director of  
14 finance. The account shall be a discrete nontreasury account  
15 retaining its interest earnings.

16 (b) The commission shall deposit in the account all money  
17 received for the program. The account shall be self-sustaining  
18 and consist of payments received from purchasers of tuition  
19 units and funds received from other sources, public or private.  
20 With the exception of investment and operating costs associated  
21 with the investment of money, the account shall be credited with  
22 all investment income earned by the account. Money expended for



1 program administration shall be subject to the allotment  
2 process; provided that an appropriation is not required for  
3 those expenditures.

4 (c) The assets of the account may be spent without  
5 appropriation for the purpose of making payments to institutions  
6 of higher education on behalf of qualified beneficiaries, making  
7 refunds, transfers, or direct payments upon the termination of  
8 the advanced college tuition payment program. Disbursements  
9 from the account shall be made only on the authorization of the  
10 commission.

11 (d) With regard to the assets of the account, the State  
12 acts in a fiduciary, not ownership, capacity. The assets of the  
13 program shall not be considered state money, common cash, or  
14 revenue to the State.

15 **§304A- Advanced college tuition payment program account;**  
16 **powers and duties; investments.** (a) The commission has the  
17 full power to invest, reinvest, manage, contract, sell, or  
18 exchange investment money in the account. The earnings from the  
19 investment of the money shall be retained by the account.

20 (b) The authority to establish all policies relating to  
21 the account resides with the commission. Disbursements from the  
22 account shall be made only on the authorization of the



1 commission, and money in the account may be spent only for the  
2 purposes of the program.

3       **§304A-       Advanced college tuition payment program account;**  
4 **actuarial soundness; adjustment of tuition credit purchases.**

5 The commission shall annually evaluate, and cause to be  
6 evaluated by a nationally recognized actuary, the soundness of  
7 the account and determine the additional assets needed, if any,  
8 to defray the obligations of the account.

9       If funds are not sufficient to ensure the actuarial  
10 soundness of the account, the commission shall adjust the price  
11 of subsequent tuition unit purchases to ensure its soundness.

12       If there are insufficient numbers of new purchases to  
13 ensure the actuarial soundness of the account, the commission  
14 shall request such funds from the legislature as are required to  
15 ensure the integrity of the program. Funds may be appropriated  
16 directly to the account or appropriated under the condition that  
17 they be repaid at a later date. The repayment shall be made at  
18 such time that the account is again determined to be actuarially  
19 sound.

20       **§304A-       Discontinuation of program; use of units;**  
21 **refunds.** (a) In the event that the commission determines that  
22 the program is not financially feasible, or for any other



1 reason, the commission may declare the discontinuance of the  
2 program and cease to accept any further tuition unit contracts  
3 or purchases.

4 (b) The remaining tuition units for all beneficiaries who  
5 have either enrolled at institutions of higher education or who  
6 are within four years of graduation from a secondary school  
7 shall be honored until such tuition units have been exhausted,  
8 or for ten fiscal years from the date that the program has been  
9 discontinued, whichever comes first. All other contract holders  
10 shall receive a refund equal to the value of the current tuition  
11 units in effect at the time that the program was declared  
12 discontinued.

13 (c) At the end of the ten-year period, any tuition units  
14 remaining unused by currently active beneficiaries enrolled at  
15 institutions of higher education shall be refunded at the value  
16 of the current tuition unit in effect at the end of that ten-  
17 year period.

18 (d) At the end of the ten-year period, all other funds  
19 remaining in the account not needed to make refunds or to pay  
20 for administrative costs shall be deposited to the general fund.

21 (e) The commission may make refunds under other  
22 exceptional circumstances as it deems fit, however, no tuition



1 units may be honored after the end of the tenth fiscal year  
2 following the declaration of discontinuance of the program.

3       **§304A- Program planning; consultation with public and**  
4 **private entities; cooperation.** (a) The commission, in planning  
5 and operating the program, may consult with any other state  
6 agency for advice and assistance.

7       (b) The commission may seek the assistance of any state  
8 agency, private financial institutions, and any other entity  
9 with experience in the areas of accounting, actuary, risk  
10 management, or investment management to assist with preparing an  
11 accounting of the program and ensuring the fiscal soundness of  
12 the account.

13       (c) State agencies and the University of Hawaii shall  
14 fully cooperate with the commission in matters relating to the  
15 program in order to ensure the solvency of the account and  
16 ability of the commission to meet outstanding commitments.

17       **§304A- Refunds.** (a) The intent of the advanced college  
18 tuition payment program is to redeem tuition units for  
19 attendance at an institution of higher education. Refunds may  
20 be allowed under specific conditions that may include the  
21 following:



- 1           (1) Certification that the beneficiary, who is eighteen  
2           years of age or older, will not attend an institution  
3           of higher education. The refund shall not exceed the  
4           current value per tuition unit, as determined by the  
5           commission, in effect at the time of that  
6           certification minus a penalty at the rate established  
7           by the commission. The refund shall be made no sooner  
8           than ninety days after such certification, less any  
9           administrative processing fees assessed by the  
10          commission;
- 11          (2) Certification of the death or disability of the  
12          beneficiary. The refund shall be equal to one hundred  
13          per cent of any remaining unused tuition units at the  
14          current value, as determined by the commission, at the  
15          time that such certification is submitted to the  
16          commission, less any administrative processing fees  
17          assessed by the commission;
- 18          (3) Certification by the student of graduation or program  
19          completion. The refund shall be as great as one  
20          hundred per cent of any remaining unused tuition units  
21          at the current value, as determined by the commission,  
22          at the time that such certification is submitted to



1 the commission, less any administrative processing  
2 fees assessed by the commission. The commission may,  
3 at its discretion, impose a penalty if needed to  
4 comply with federal tax rules;

5 (4) Certification of other tuition and fee scholarships  
6 which will cover the cost of tuition for the eligible  
7 beneficiary. The refund shall be equal to one hundred  
8 per cent of the current value of tuition units, as  
9 determined by the commission, in effect at the time of  
10 the refund request, less any administrative processing  
11 fees assessed by the commission. The refund under  
12 this paragraph may not exceed the value of the  
13 scholarship;

14 (5) Incorrect or misleading information provided by the  
15 purchaser or beneficiaries may result in a refund of  
16 the purchaser's investment, less any administrative  
17 processing fees assessed by the commission. The value  
18 of the refund shall not exceed the actual dollar value  
19 of the purchaser's contributions; and

20 (6) The commission may determine other circumstances  
21 qualifying for refunds of remaining unused tuition  
22 units and may determine the value of that refund.



1 (b) No refunds may be made before the tuition units have  
2 been held for two years.

3 §304A- Tuition units exempt from bankruptcy and  
4 enforcement of judgments. In regard to bankruptcy filings and  
5 enforcement of judgments, tuition units purchased more than two  
6 years prior to the date of filing or judgment will be considered  
7 excluded personal assets."

8 SECTION 2. This Act shall take effect on July 1, 2007.  
9

INTRODUCED BY:

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JAN 19 2007



**Report Title:**

Higher education; prepaid tuition

**Description:**

Establishes a prepaid tuition program under the state post-secondary education commission.

