ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB80

Hearing Date: Monday January 26, 2009
Committee On: Banking, Commerce and Insurance
Introducer: Nelson
One Liner: Change the Uniform Principal and Income Act

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	8	Senators Christensen, Gloor, Langemeier, McCoy, Pahls, Pankonin, Pirsch, Utter
Nay:		
Absent:		
Present Not Voting:		

Proponents:	**Representing:**
John Murante	Legislative Aide for Senator John Nelson
Larry Ruth	NE Uniform Law Commissioners
John Gradwohl	Self

Opponents: **Representing:**

Neutral: **Representing:**

Summary of purpose and/or changes:
LB 80 (Nelson) would amend sections 30-3116, 30-3135, and 30-3146 of Nebraska's version of the Uniform Principal and Income Act and would enact a new section within the act in order to adopt amendments to the act approved and recommended to the states by the National Conference of Commissioners on Uniform State Laws in July of 2008. The amendments were developed by the Uniform Law Commissioners in response to an IRS Revenue Ruling. The bill would provide as follows:

Section 1 would amend section 30-3116 of the Uniform Principal and Income Act to provide that new section 4 of the bill shall be assigned within the act.

Section 2 would amend section 30-3135 of the Uniform Principal and Income Act [Section 409 of the official uniform text of the act] which regards allocation by a trustee of payments to income and principal in the case of deferred compensation, annuities, and similar payments. With regard to the proposed amendments to this section, the official comments of the Uniform Law Commissioners provide, in part, as follows:

"When an IRA or other retirement arrangement (a "plan") is payable to a marital deduction trust, the IRS treats the plan as a separate property interest that itself must qualify for the marital deduction. IRS Revenue Ruling 2006-26 said that, as written, Section 409 does not cause a trust to qualify for the IRS' safe harbors. Revenue Ruling 2006-26 was limited in scope to certain situations involving IRAs and defined contribution retirement plans. Without necessarily agreeing with the IRS' position in that ruling, the revision to this section is designed to satisfy the IRS' safe harbor and to address concerns that might be raised for similar assets."

"Subsection (e) requires the trustee to demand certain distributions if the surviving spouse so requests. The safe harbor of Revenue Ruling 2006-26 requires that the surviving spouse be separately entitled to demand the fund's income (without regard to the income from the trust's other assets) and the income from the other assets (without regard to the fund's income). In any event, the surviving spouse is not required to demand that the trustee distribute all of the fund's income from the fund or from other trust assets."

"Subsection (e) also recognizes that the trustee might not control the payments that the trustee receives and provides a remedy to the surviving spouse if the distributions under subsection (d)(1) are insufficient."

"Subsection (f) addresses situations where, due to lack of information provided by the fund's administrator, the trustee is unable to determine the fund's actual income."

Section 3 would amend section 30-3146 of the Uniform Principal and Income Act [Section 505 of the official uniform text of the act] which regards allocation by a trustee of taxes paid to income and principal. With regard to amendments to this section, the official comments of the Uniform Law Commissioners provide, in part, as follows:

"When a trust owns an interest in a pass-through entity, such as a partnership or S corporation, it must report its share of the entity's taxable income regardless of how much the entity distributes to the trust. Whether the entity distributes more or less than the trust's tax on its share of the entity's taxable income, the trust must pay the taxes and allocate them between income and principal."

"Subsection (c) requires the trust to pay the taxes on its share of an entity's taxable income from income or principal receipts to the extent that receipts from the entity are allocable to each. This assures the trust a source of cash to pay some or all of the taxes on its share of the entity's taxable income. Subsection 505(d) recognizes that, except in the case of an Electing Small Business Trust (ESBT), a trust normally receives a deduction of amounts distributed to a beneficiary. Accordingly, subsection 505(d) requires the trust to increase receipts payable to a beneficiary as determined under subsection (c) to the extent the trust's taxes are reduced by distributing those receipts to the beneficiary."

Section 4 would enact a new section in the Uniform Principal and Income Act to provide transition rules for amendments made to the act by this bill.

Rich Pahls, Chairperson