

AMENDMENTS TO LB 1104

Introduced by Education

1 1. Insert the following new sections:

2 Section 1. Section 77-3442, Revised Statutes Supplement,
3 2011, as amended by section 10, Legislative Bill 946, One Hundred
4 Second Legislature, Second Session, 2012, is amended to read:

5 77-3442 (1) Property tax levies for the support of local
6 governments for fiscal years beginning on or after July 1, 1998,
7 shall be limited to the amounts set forth in this section except as
8 provided in section 77-3444.

9 (2) (a) Except as provided in subdivision (2) (e) of this
10 section, school districts and multiple-district school systems,
11 except learning communities and school districts that are members
12 of learning communities, may levy a maximum levy of one dollar and
13 five cents per one hundred dollars of taxable valuation of property
14 subject to the levy.

15 (b) For each fiscal year, learning communities may levy
16 a maximum levy for the general fund budgets of member school
17 districts of ninety-five cents per one hundred dollars of taxable
18 valuation of property subject to the levy. The proceeds from the
19 levy pursuant to this subdivision shall be distributed pursuant to
20 section 79-1073.

21 (c) Except as provided in subdivision (2) (e) of this
22 section, for each fiscal year, school districts that are members
23 of learning communities may levy for purposes of such districts'

1 general fund budget and special building funds a maximum combined
2 levy of the difference of one dollar and five cents on each one
3 hundred dollars of taxable property subject to the levy minus
4 the learning community levies pursuant to subdivisions (2)(b) and
5 (2)(g) of this section for such learning community.

6 (d) Excluded from the limitations in subdivisions (2)(a)
7 and (2)(c) of this section are amounts levied to pay for
8 sums agreed to be paid by a school district to certificated
9 employees in exchange for a voluntary termination of employment
10 and amounts levied to pay for special building funds and sinking
11 funds established for projects commenced prior to April 1, 1996,
12 for construction, expansion, or alteration of school district
13 buildings. For purposes of this subsection, commenced means any
14 action taken by the school board on the record which commits
15 the board to expend district funds in planning, constructing, or
16 carrying out the project.

17 (e) Federal aid school districts may exceed the maximum
18 levy prescribed by subdivision (2)(a) or (2)(c) of this section
19 only to the extent necessary to qualify to receive federal aid
20 pursuant to Title VIII of Public Law 103-382, as such title existed
21 on September 1, 2001. For purposes of this subdivision, federal
22 aid school district means any school district which receives ten
23 percent or more of the revenue for its general fund budget from
24 federal government sources pursuant to Title VIII of Public Law
25 103-382, as such title existed on September 1, 2001.

26 (f) For school fiscal year 2002-03 through school fiscal
27 year 2007-08, school districts and multiple-district school systems

1 may, upon a three-fourths majority vote of the school board of
2 the school district, the board of the unified system, or the
3 school board of the high school district of the multiple-district
4 school system that is not a unified system, exceed the maximum
5 levy prescribed by subdivision (2)(a) of this section in an amount
6 equal to the net difference between the amount of state aid that
7 would have been provided under the Tax Equity and Educational
8 Opportunities Support Act without the temporary aid adjustment
9 factor as defined in section 79-1003 for the ensuing school fiscal
10 year for the school district or multiple-district school system
11 and the amount provided with the temporary aid adjustment factor.
12 The State Department of Education shall certify to the school
13 districts and multiple-district school systems the amount by which
14 the maximum levy may be exceeded for the next school fiscal year
15 pursuant to this subdivision (f) of this subsection on or before
16 February 15 for school fiscal years 2004-05 through 2007-08.

17 (g) For each fiscal year, learning communities may levy a
18 maximum levy of two cents on each one hundred dollars of taxable
19 property subject to the levy for special building funds for member
20 school districts. The proceeds from the levy pursuant to this
21 subdivision shall be distributed pursuant to section 79-1073.01.

22 (h) For each fiscal year, learning communities may levy
23 a maximum levy of two cents on each one hundred dollars of
24 taxable property subject to the levy for elementary learning center
25 facility leases, for remodeling of leased elementary learning
26 center facilities, and for up to fifty percent of the estimated
27 cost for focus school or program capital projects approved by

1 the learning community coordinating council pursuant to section
2 79-2111.

3 (i) For each fiscal year, learning communities may levy
4 a maximum levy of one cent on each one hundred dollars of
5 taxable property subject to the levy for elementary learning center
6 employees, for contracts with other entities or individuals who
7 are not employees of the learning community for elementary learning
8 center programs and services, and for pilot projects, except that
9 no more than ten percent of such levy may be used for elementary
10 learning center employees.

11 (3) (a) For fiscal years 2011-12 and 2012-13, community
12 college areas may levy a maximum of ten and one-quarter cents per
13 one hundred dollars of taxable valuation of property subject to the
14 levy for operating expenditures and may also levy the additional
15 levies provided in subdivisions (1) (b) and (c) of section 85-1517.

16 (b) For fiscal year 2013-14 and each fiscal year
17 thereafter, community college areas may levy a maximum levy of
18 eleven and one-quarter cents per one hundred dollars of taxable
19 valuation of property subject to the levy, inclusive of levies
20 for both operational and capital improvement purposes, subject to
21 the provisions of subsection (2) of section 85-1517. the levies
22 provided in subdivisions (2) (a) through (c) of section 85-1517, in
23 accordance with the provisions of such subdivisions. A community
24 college area may exceed such maximum aggregate the levy provided
25 in subdivision (2) (b) of section 85-1517 by the amount necessary
26 to retire general obligation bonds assumed by the community college
27 area or issued pursuant to section 85-1515 according to the terms

1 of such bonds or for any obligation pursuant to section 85-1535
2 entered into prior to January 1, 1997.

3 (4) (a) Natural resources districts may levy a maximum
4 levy of four and one-half cents per one hundred dollars of taxable
5 valuation of property subject to the levy.

6 (b) Natural resources districts shall also have the power
7 and authority to levy a tax equal to the dollar amount by which
8 their restricted funds budgeted to administer and implement ground
9 water management activities and integrated management activities
10 under the Nebraska Ground Water Management and Protection Act
11 exceed their restricted funds budgeted to administer and implement
12 ground water management activities and integrated management
13 activities for FY2003-04, not to exceed one cent on each one
14 hundred dollars of taxable valuation annually on all of the taxable
15 property within the district.

16 (c) In addition, natural resources districts located in
17 a river basin, subbasin, or reach that has been determined to
18 be fully appropriated pursuant to section 46-714 or designated
19 as overappropriated pursuant to section 46-713 by the Department
20 of Natural Resources shall also have the power and authority to
21 levy a tax equal to the dollar amount by which their restricted
22 funds budgeted to administer and implement ground water management
23 activities and integrated management activities under the Nebraska
24 Ground Water Management and Protection Act exceed their restricted
25 funds budgeted to administer and implement ground water management
26 activities and integrated management activities for FY2005-06, not
27 to exceed three cents on each one hundred dollars of taxable

1 valuation on all of the taxable property within the district for
2 fiscal year 2006-07 and each fiscal year thereafter through fiscal
3 year 2017-18.

4 (5) Any educational service unit authorized to levy a
5 property tax pursuant to section 79-1225 may levy a maximum levy of
6 one and one-half cents per one hundred dollars of taxable valuation
7 of property subject to the levy.

8 (6) (a) Incorporated cities and villages which are not
9 within the boundaries of a municipal county may levy a maximum levy
10 of forty-five cents per one hundred dollars of taxable valuation
11 of property subject to the levy plus an additional five cents per
12 one hundred dollars of taxable valuation to provide financing for
13 the municipality's share of revenue required under an agreement
14 or agreements executed pursuant to the Interlocal Cooperation Act
15 or the Joint Public Agency Act. The maximum levy shall include
16 amounts levied to pay for sums to support a library pursuant
17 to section 51-201, museum pursuant to section 51-501, visiting
18 community nurse, home health nurse, or home health agency pursuant
19 to section 71-1637, or statue, memorial, or monument pursuant to
20 section 80-202.

21 (b) Incorporated cities and villages which are within the
22 boundaries of a municipal county may levy a maximum levy of ninety
23 cents per one hundred dollars of taxable valuation of property
24 subject to the levy. The maximum levy shall include amounts paid
25 to a municipal county for county services, amounts levied to pay
26 for sums to support a library pursuant to section 51-201, a museum
27 pursuant to section 51-501, a visiting community nurse, home health

1 nurse, or home health agency pursuant to section 71-1637, or a
2 statue, memorial, or monument pursuant to section 80-202.

3 (7) Sanitary and improvement districts which have been in
4 existence for more than five years may levy a maximum levy of forty
5 cents per one hundred dollars of taxable valuation of property
6 subject to the levy, and sanitary and improvement districts which
7 have been in existence for five years or less shall not have
8 a maximum levy. Unconsolidated sanitary and improvement districts
9 which have been in existence for more than five years and are
10 located in a municipal county may levy a maximum of eighty-five
11 cents per hundred dollars of taxable valuation of property subject
12 to the levy.

13 (8) Counties may levy or authorize a maximum levy of
14 fifty cents per one hundred dollars of taxable valuation of
15 property subject to the levy, except that five cents per one
16 hundred dollars of taxable valuation of property subject to the
17 levy may only be levied to provide financing for the county's
18 share of revenue required under an agreement or agreements executed
19 pursuant to the Interlocal Cooperation Act or the Joint Public
20 Agency Act. The maximum levy shall include amounts levied to pay
21 for sums to support a library pursuant to section 51-201 or museum
22 pursuant to section 51-501. The county may allocate up to fifteen
23 cents of its authority to other political subdivisions subject
24 to allocation of property tax authority under subsection (1) of
25 section 77-3443 and not specifically covered in this section to
26 levy taxes as authorized by law which do not collectively exceed
27 fifteen cents per one hundred dollars of taxable valuation on any

1 parcel or item of taxable property. The county may allocate to
2 one or more other political subdivisions subject to allocation
3 of property tax authority by the county under subsection (1) of
4 section 77-3443 some or all of the county's five cents per one
5 hundred dollars of valuation authorized for support of an agreement
6 or agreements to be levied by the political subdivision for the
7 purpose of supporting that political subdivision's share of revenue
8 required under an agreement or agreements executed pursuant to the
9 Interlocal Cooperation Act or the Joint Public Agency Act. If an
10 allocation by a county would cause another county to exceed its
11 levy authority under this section, the second county may exceed
12 the levy authority in order to levy the amount allocated. Property
13 tax levies for costs of reassumption of the assessment function
14 pursuant to section 77-1340 or 77-1340.04 are not included in the
15 levy limits established in this subsection for fiscal years 2010-11
16 through 2013-14.

17 (9) Municipal counties may levy or authorize a maximum
18 levy of one dollar per one hundred dollars of taxable valuation
19 of property subject to the levy. The municipal county may allocate
20 levy authority to any political subdivision or entity subject to
21 allocation under section 77-3443.

22 (10) Property tax levies (a) for judgments, except
23 judgments or orders from the Commission of Industrial Relations,
24 obtained against a political subdivision which require or obligate
25 a political subdivision to pay such judgment, to the extent such
26 judgment is not paid by liability insurance coverage of a political
27 subdivision, (b) for preexisting lease-purchase contracts approved

1 prior to July 1, 1998, (c) for bonds as defined in section 10-134
2 approved according to law and secured by a levy on property except
3 as provided in section 44-4317 for bonded indebtedness issued
4 by educational service units and school districts, and (d) for
5 payments by a public airport to retire interest-free loans from the
6 Department of Aeronautics in lieu of bonded indebtedness at a lower
7 cost to the public airport are not included in the levy limits
8 established by this section.

9 (11) The limitations on tax levies provided in this
10 section are to include all other general or special levies
11 provided by law. Notwithstanding other provisions of law, the
12 only exceptions to the limits in this section are those provided by
13 or authorized by sections 77-3442 to 77-3444.

14 (12) Tax levies in excess of the limitations in this
15 section shall be considered unauthorized levies under section
16 77-1606 unless approved under section 77-3444.

17 (13) For purposes of sections 77-3442 to 77-3444,
18 political subdivision means a political subdivision of this state
19 and a county agricultural society.

20 (14) For school districts that file a binding resolution
21 on or before May 9, 2008, with the county assessors, county clerks,
22 and county treasurers for all counties in which the school district
23 has territory pursuant to subsection (7) of section 79-458, if the
24 combined levies, except levies for bonded indebtedness approved by
25 the voters of the school district and levies for the refinancing
26 of such bonded indebtedness, are in excess of the greater of (a)
27 one dollar and twenty cents per one hundred dollars of taxable

1 valuation of property subject to the levy or (b) the maximum
2 levy authorized by a vote pursuant to section 77-3444, all school
3 district levies, except levies for bonded indebtedness approved by
4 the voters of the school district and levies for the refinancing of
5 such bonded indebtedness, shall be considered unauthorized levies
6 under section 77-1606.

7 Sec. 2. Section 85-1517, Revised Statutes Supplement,
8 2011, as amended by section 18, Legislative Bill 946, One Hundred
9 Second Legislature, Second Session, 2012, is amended to read:

10 85-1517 (1) For fiscal years 2011-12 and 2012-13:

11 (a) The board may certify to the county board of
12 equalization of each county within the community college area
13 a tax levy not to exceed ten and one-quarter cents on each one
14 hundred dollars on the taxable valuation of all property subject to
15 the levy within the community college area, uniform throughout the
16 area, for the purpose of supporting operating expenditures of the
17 community college area;

18 (b) In addition to the levies provided in subdivisions
19 (1)(a) and (c) of this section, the board may certify to the
20 county board of equalization of each county within the community
21 college area a tax levy not to exceed one cent on each one
22 hundred dollars on the taxable valuation of all property within
23 the community college area, uniform throughout such area, for the
24 purposes of paying off bonds issued under sections 85-1520 to
25 85-1527 and establishing a capital improvement and bond sinking
26 fund as provided in section 85-1515. The levy provided by this
27 subdivision may be exceeded by that amount necessary to retire the

1 general obligation bonds assumed by the community college area or
2 issued pursuant to section 85-1515 according to the terms of such
3 bonds or for any obligation pursuant to section 85-1535 entered
4 into prior to January 1, 1997; and

5 (c) In addition to the levies provided in subdivisions
6 (1) (a) and (b) of this section, the board may also certify to the
7 county board of equalization of each county within the community
8 college area a tax levy on each one hundred dollars on the taxable
9 valuation of all property within the community college area,
10 uniform throughout such area, in the amount which will produce
11 funds only in the amount necessary to pay for funding accessibility
12 barrier elimination project costs and abatement of environmental
13 hazards as such terms are defined in section 79-10,110. Such tax
14 levy shall not be so certified unless approved by an affirmative
15 vote of a majority of the board taken at a public meeting of the
16 board following notice and a hearing. The board shall give at least
17 seven days' notice of such public hearing and shall publish such
18 notice once in a newspaper of general circulation in the area to be
19 affected by the increase. The proceeds of such tax levy shall be
20 deposited in the capital improvement and bond sinking fund provided
21 for in section 85-1515 for use in funding the projects authorized
22 pursuant to this subdivision.

23 (2) For fiscal year 2013-14 and each fiscal year
24 thereafter:

25 (a) The board may certify to the county board of
26 equalization of each county within the community college area
27 a tax levy not to exceed the difference between eleven and

1 one-quarter cents and the ~~combined~~ rate levied for such fiscal
2 year pursuant to ~~subdivisions (b) and (c)~~ subdivision (b) of this
3 subsection on each one hundred dollars on the taxable valuation
4 of all property subject to the levy within the community college
5 area, uniform throughout the area, for the purpose of supporting
6 operating expenditures of the community college area. For purposes
7 of calculating the amount of levy authority available for operating
8 expenditures pursuant to this subdivision, the rate levied pursuant
9 to subdivision (b) of this subsection shall not include amounts to
10 retire general obligation bonds assumed by the community college
11 area or issued pursuant to section 85-1515 according to the terms
12 of such bonds or for any obligation pursuant to section 85-1535
13 entered into prior to January 1, 1997;

14 (b) In addition to the levies provided in subdivisions
15 (a) and (c) of this subsection, the board may certify to the
16 county board of equalization of each county within the community
17 college area a tax levy not to exceed two cents on each one
18 hundred dollars on the taxable valuation of all property within
19 the community college area, uniform throughout such area, for the
20 purposes of paying off bonds issued under sections 85-1520 to
21 85-1527 and establishing a capital improvement and bond sinking
22 fund as provided in section 85-1515. The levy provided by this
23 subdivision may be exceeded by that amount necessary to retire
24 general obligation bonds assumed by the community college area or
25 issued pursuant to section 85-1515 according to the terms of such
26 bonds or for any obligation pursuant to section 85-1535 entered
27 into prior to January 1, 1997; and

1 (c) In addition to the levies provided in subdivisions
2 (a) and (b) of this subsection, the board may certify to the county
3 board of equalization of each county within the community college
4 area a tax levy not to exceed three-quarters of one cent on each
5 one hundred dollars on the taxable valuation of all property within
6 the community college area, uniform throughout such area, ~~in the~~
7 ~~amount which will produce funds only in the amount necessary to~~
8 pay for funding accessibility barrier elimination project costs and
9 abatement of environmental hazards as such terms are defined in
10 section 79-10,110. Such tax levy shall not be so certified unless
11 approved by an affirmative vote of a majority of the board taken
12 at a public meeting of the board following notice and a hearing.
13 The board shall give at least seven days' notice of such public
14 hearing and shall publish such notice once in a newspaper of
15 general circulation in the area to be affected by the increase.
16 The proceeds of such tax levy shall be deposited in the capital
17 improvement and bond sinking fund provided for in section 85-1515
18 for use in funding accessibility barrier elimination project costs
19 and abatement of environmental hazards as such terms are defined in
20 section 79-10,110.

21 (3) The taxes provided by this section shall be levied
22 and assessed in the same manner as other property taxes and entered
23 on the books of the county treasurer. The proceeds of the tax, as
24 collected, shall be remitted to the treasurer of the board not less
25 frequently than once each month.

26 Sec. 3. Section 85-1801, Revised Statutes Cumulative
27 Supplement, 2010, is amended to read:

1 85-1801 The Legislature finds that the general welfare
2 and well-being of the state are directly related to educational
3 levels and skills of the citizens of the state and that a vital and
4 valid public purpose is served by the creation and implementation
5 of programs which encourage and make possible the attainment of
6 higher education by the greatest number of citizens of the state.
7 The state has limited resources to provide additional programs
8 for higher education funding and the continued operation and
9 maintenance of the state's public institutions of higher education,
10 and the general welfare of the citizens of the state will be
11 enhanced by establishing a program which allows parents and others
12 interested in the higher education of our youth to invest money in
13 a public trust for future application to the payment of qualified
14 higher education costs. expenses. The creation of the means of
15 encouragement for persons to invest in such a program represents
16 the carrying out of a vital and valid public purpose. In order
17 to make available to parents and others interested in the higher
18 education of our youth an opportunity to fund future higher
19 education needs, it is necessary that a public trust be established
20 in which money may be invested for future educational use.

21 Sec. 4. Section 85-1802, Revised Statutes Cumulative
22 Supplement, 2010, is amended to read:

23 85-1802 For purposes of sections 85-1801 to 85-1814:

24 (1) Administrative fund means the College Savings Plan
25 Administrative Fund created in section 85-1807;

26 (2) Beneficiary means the individual designated by
27 a participation agreement to benefit from advance payments of

1 qualified higher education costs expenses on behalf of the
2 beneficiary;

3 (3) Benefits means the payment of qualified higher
4 education costs expenses on behalf of a beneficiary by the trust
5 during the beneficiary's attendance at an ~~institution of higher~~
6 ~~education;~~ eligible educational institution;

7 (4) Eligible educational institution means an institution
8 described in 20 U.S.C. 1088 which is eligible to participate in a
9 program under Title IV of the federal Higher Education Act of 1965;

10 ~~(4)~~ (5) Expense fund means the College Savings Plan
11 Expense Fund created in section 85-1807;

12 ~~(5)~~ Higher education costs means the certified costs
13 of tuition and fees, books, supplies, and equipment required for
14 enrollment or attendance at an institution of higher education.
15 Reasonable room and board expenses, based on the minimum amount
16 applicable for the institution of higher education during the
17 period of enrollment, shall be included as a higher education cost
18 for those students enrolled on at least a half-time basis. Higher
19 education costs shall not include any amounts in excess of those
20 allowed by section 529 of the Internal Revenue Code;

21 ~~(6)~~ Institution of higher education means an institution
22 described in section 529 of the Internal Revenue Code which
23 is eligible to participate in the United States Department of
24 Education's student aid programs;

25 ~~(7)~~ (6) Nebraska educational savings plan trust means the
26 trust created in section 85-1804;

27 ~~(8)~~ (7) Nebraska eligible educational institution of

1 ~~higher education~~ means an institution described in section 529 of
2 the Internal Revenue Code which is eligible to participate in the
3 United States Department of Education's student aid program and
4 which is located in Nebraska;

5 (8) Nonqualified withdrawal refers to a distribution from
6 an account to the extent it is not used to pay the qualified higher
7 education expenses of the beneficiary or a qualified rollover
8 permitted by section 529 of the Internal Revenue Code;

9 (9) Participant or account owner means an individual,
10 an individual's legal representative, or any other legal entity
11 authorized to establish a savings account under section 529 of
12 the Internal Revenue Code who has entered into a participation
13 agreement for the advance payment of qualified higher education
14 ~~costs~~ expenses on behalf of a beneficiary;

15 (10) Participation agreement means an agreement between a
16 participant and the Nebraska educational savings plan trust entered
17 into under sections 85-1801 to 85-1814;

18 (11) Program fund means the College Savings Plan Program
19 Fund created in section 85-1807;

20 ~~(12) Refund penalty means the amount assessed by the~~
21 ~~State Treasurer for cancellation of a participation agreement or~~
22 ~~other refund which is not considered a de minimis penalty pursuant~~
23 ~~to section 529 of the Internal Revenue Code;~~

24 (12) Qualified higher education expenses means the
25 certified costs of tuition and fees, books, supplies, and equipment
26 required for enrollment or attendance at an eligible educational
27 institution. Reasonable room and board expenses, based on the

1 minimum amount applicable for the eligible educational institution
2 during the period of enrollment, shall be included as qualified
3 higher education expenses for those students enrolled on at least
4 a half-time basis. In the case of a special needs beneficiary,
5 expenses for special needs services incurred in connection with
6 enrollment or attendance at an eligible educational institution
7 shall be included as qualified higher education expenses. Expenses
8 paid or incurred in 2009 or 2010 for the purchase of computer
9 technology or equipment or Internet access and related services,
10 subject to the limitations set forth in section 529 of the Internal
11 Revenue Code, shall be included as qualified higher education
12 expenses. Qualified higher education expenses does not include any
13 amounts in excess of those allowed by section 529 of the Internal
14 Revenue Code;

15 (13) Section 529 of the Internal Revenue Code means such
16 section of the code and the regulations interpreting such section;
17 ~~and~~ ~~as such section and regulations existed on April 18, 2001;~~
18 ~~and~~

19 (14) Tuition and fees means the quarter or semester
20 charges imposed to attend an institution of higher education
21 ~~and required as a condition of enrollment.~~ eligible educational
22 institution.

23 Sec. 5. Section 85-1804, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 85-1804 The Nebraska educational savings plan trust is
26 created. The State Treasurer is the trustee of the trust and
27 as such is responsible for the administration, operation, and

1 maintenance of the program and has all powers necessary to carry
2 out and effectuate the purposes, objectives, and provisions of
3 sections 85-1801 to 85-1814 pertaining to the administration,
4 operation, and maintenance of the trust and program, except that
5 the state investment officer shall have fiduciary responsibility
6 to make all decisions regarding the investment of the money in
7 the administrative fund, expense fund, and program fund, including
8 the selection of all investment options and the approval of
9 all fees and other costs charged to trust assets except costs
10 for administration, operation, and maintenance of the trust as
11 appropriated by the Legislature, pursuant to the directions,
12 guidelines, and policies established by the Nebraska Investment
13 Council. The State Treasurer may adopt and promulgate rules and
14 regulations to provide for the efficient administration, operation,
15 and maintenance of the trust and program. The State Treasurer shall
16 not adopt and promulgate rules and regulations that in any way
17 interfere with the fiduciary responsibility of the state investment
18 officer to make all decisions regarding the investment of money in
19 the administrative fund, expense fund, and program fund. The State
20 Treasurer or his or her designee shall have the power to:

21 (1) Enter into agreements with any ~~institution of higher~~
22 ~~education~~, eligible educational institution, the state, any federal
23 or other state agency, or any other entity to implement sections
24 85-1801 to 85-1814, except agreements which pertain to the
25 investment of money in the administrative fund, expense fund,
26 or program fund;

27 (2) Carry out the duties and obligations of the trust;

1 (3) Carry out studies and projections to advise
2 participants regarding present and estimated future qualified
3 higher education ~~costs~~ expenses and levels of financial
4 participation in the trust required in order to enable participants
5 to achieve their educational funding objectives;

6 (4) Participate in any federal, state, or local
7 governmental program for the benefit of the trust;

8 (5) Procure insurance against any loss in connection with
9 the property, assets, or activities of the trust as provided in
10 section 81-8,239.01;

11 (6) Enter into participation agreements with
12 participants;

13 (7) Make payments to ~~institutions of higher education~~
14 eligible educational institutions pursuant to participation
15 agreements on behalf of beneficiaries;

16 (8) Make ~~refunds~~ distributions to participants upon the
17 termination of participation agreements pursuant to the provisions,
18 limitations, and restrictions set forth in sections 85-1801 to
19 85-1814;

20 (9) Contract for goods and services and engage personnel
21 as necessary, including consultants, actuaries, managers, legal
22 counsels, and auditors for the purpose of rendering professional,
23 managerial, and technical assistance and advice regarding trust
24 administration and operation, except contracts which pertain to the
25 investment of the administrative, expense, or program funds; and

26 (10) Establish, impose, and collect administrative fees
27 and charges in connection with transactions of the trust, and

1 provide for reasonable service charges, including penalties for
2 cancellations, ~~refund penalties~~, and late payments with respect to
3 participation agreements.

4 The Nebraska Investment Council may adopt and promulgate
5 rules and regulations to provide for the prudent investment of
6 the assets of the trust. The council or its designee also has the
7 authority to select and enter into agreements with individuals and
8 entities to provide investment advice and management of the assets
9 held by the trust, establish investment guidelines, objectives, and
10 performance standards with respect to the assets held by the trust,
11 and approve any fees, commissions, and expenses, which directly or
12 indirectly affect the return on assets.

13 Sec. 6. Section 85-1806, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 85-1806 The Nebraska educational savings plan trust may
16 enter into participation agreements with participants on behalf of
17 beneficiaries pursuant to the following terms and conditions:

18 (1) A participation agreement shall require a participant
19 to agree to invest a specific amount of money in the trust for the
20 benefit of a beneficiary as allowed by section 529 of the Internal
21 Revenue Code. A participant shall not be required to make an annual
22 contribution on behalf of a beneficiary, shall not be subject to
23 minimum contribution requirements, and shall not be required to
24 maintain a minimum account balance. The maximum contribution shall
25 not exceed the amount allowed under section 529 of the Internal
26 Revenue Code. The State Treasurer may set a maximum cumulative
27 contribution, as necessary, to maintain compliance with section

1 529 of the Internal Revenue Code. Participation agreements may be
2 amended to provide for adjusted levels of contributions based upon
3 changed circumstances or changes in educational plans or to ensure
4 compliance with section 529 of the Internal Revenue Code or any
5 other applicable laws and regulations;

6 (2) Beneficiaries designated in participation agreements
7 shall meet the requirements established by the trustee and section
8 529 of the Internal Revenue Code;

9 (3) Payment of benefits provided under participation
10 agreements shall be made in a manner consistent with section 529 of
11 the Internal Revenue Code;

12 (4) The execution of a participation agreement by the
13 trust shall not guarantee in any way that qualified higher
14 ~~education costs~~ expenses will be equal to projections and estimates
15 provided by the trust or that the beneficiary named in any
16 participation agreement will (a) be admitted to an ~~institution~~
17 ~~of higher education,~~ eligible educational institution, (b) if
18 admitted, be determined a resident for tuition purposes by the
19 ~~institution of higher education,~~ eligible educational institution,
20 (c) be allowed to continue attendance at the ~~institution of higher~~
21 ~~education~~ eligible educational institution following admission, or
22 (d) graduate from the ~~institution of higher education,~~ eligible
23 educational institution;

24 (5) A beneficiary under a participation agreement may
25 be changed as permitted under the rules and regulations adopted
26 under sections 85-1801 to 85-1814 and consistent with section
27 529 of the Internal Revenue Code upon written request of the

1 participant as long as the substitute beneficiary is eligible for
2 participation. Participation agreements may otherwise be freely
3 amended throughout their term in order to enable participants
4 to increase or decrease the level of participation, change the
5 designation of beneficiaries, and carry out similar matters as
6 authorized by rule and regulation; and

7 (6) Each participation agreement shall provide that
8 the participation agreement may be canceled upon the terms and
9 conditions and upon payment of applicable fees and costs set forth
10 and contained in the rules and regulations.

11 Sec. 7. Section 85-1807, Revised Statutes Cumulative
12 Supplement, 2010, is amended to read:

13 85-1807 (1) The State Treasurer shall deposit money
14 received by the Nebraska educational savings plan trust into three
15 funds: The College Savings Plan Program Fund, the College Savings
16 Plan Expense Fund, and the College Savings Plan Administrative
17 Fund. The State Treasurer shall deposit money received by the
18 trust into the appropriate fund. The State Treasurer and Accounting
19 Administrator of the Department of Administrative Services shall
20 determine the state fund types necessary to comply with section 529
21 of the Internal Revenue Code and state policy. The money in the
22 funds shall be invested by the state investment officer pursuant
23 to policies established by the Nebraska Investment Council. The
24 program fund, the expense fund, and the administrative fund shall
25 be separately administered. The Nebraska educational savings plan
26 trust shall be operated with no General Fund appropriations.

27 (2) All money paid by participants in connection with

1 participation agreements and all investment income earned on such
2 money shall be deposited as received into separate accounts within
3 the program fund. Contributions to the trust made by participants
4 may only be made in the form of cash. All funds generated in
5 connection with participation agreements shall be deposited into
6 the appropriate accounts within the program fund. A participant
7 or beneficiary shall not provide investment direction regarding
8 program contributions or earnings held by the trust. Money accrued
9 by participants in the program fund may be used for payments to any
10 ~~institution of higher education.~~ eligible educational institution.

11 (3) The College Savings Plan Administrative Fund is
12 created. Money from the trust transferred from the expense fund to
13 the administrative fund in an amount authorized by an appropriation
14 from the Legislature shall be utilized to pay for the costs
15 of administering, operating, and maintaining the trust, to the
16 extent permitted by section 529 of the Internal Revenue Code. The
17 administrative fund shall not be credited with any money other than
18 money transferred from the expense fund in an amount authorized
19 by an appropriation by the Legislature or any interest income
20 earned on the balances held in the administrative fund. The State
21 Treasurer shall transfer any money in the administrative fund on
22 July 1, 2010, to the expense fund on July 1, 2010, or as soon
23 as administratively possible. Any money in the administrative fund
24 available for investment shall be invested by the state investment
25 officer pursuant to the Nebraska Capital Expansion Act and the
26 Nebraska State Funds Investment Act.

27 (4) The College Savings Plan Expense Fund is created.

1 The expense fund shall be used to pay costs associated with the
2 Nebraska educational savings plan trust and shall be funded with
3 fees assessed to the program fund. The State Treasurer shall
4 transfer from the expense fund to the State Investment Officer's
5 Cash Fund an amount equal to the pro rata share of the budget
6 appropriated to the Nebraska Investment Council as permitted in
7 section 72-1249.02, to cover reasonable expenses incurred for
8 investment management of the Nebraska educational savings plan
9 trust. Annually and prior to such transfer to the State Investment
10 Officer's Cash Fund, the State Treasurer shall report to the
11 budget division of the Department of Administrative Services and
12 to the Legislative Fiscal Analyst the amounts transferred during
13 the previous fiscal year. The State Treasurer shall transfer any
14 money in the endowment fund on July 1, 2010, to the expense fund
15 on such date. Transfers may be made from the expense fund to the
16 General Fund at the direction of the Legislature. Any money in
17 the expense fund available for investment shall be invested by the
18 state investment officer pursuant to the Nebraska Capital Expansion
19 Act and the Nebraska State Funds Investment Act.

20 Sec. 8. Section 85-1808, Revised Statutes Cumulative
21 Supplement, 2010, is amended to read:

22 85-1808 (1) A participant may cancel a participation
23 agreement at will. ~~The trustee shall determine and collect a~~
24 ~~refund penalty by deducting the refund penalty from the returned~~
25 ~~funds. Collected refund penalties shall be deposited in the expense~~
26 ~~fund. by submitting a request to terminate the participation~~
27 ~~agreement. Additionally, if a participant requests and obtains~~

1 a nonqualified withdrawal, the participation agreement shall be
2 deemed canceled with respect to the amount of the nonqualified
3 withdrawal. A participation agreement shall not be deemed canceled
4 if a participant requests and obtains a distribution of his or
5 her entire account balance for qualified higher education expenses
6 and subsequently closes his or her account. Furthermore, the
7 State Treasurer shall have the power to terminate, freeze, or
8 suspend a participation agreement if he or she determines that
9 the participant provided false or misleading information to the
10 detriment of the trust, if the participant's account has a zero
11 balance, or if the State Treasurer is unable to verify the identity
12 of the participant.

13 (2) If a participation agreement is canceled for any
14 of the causes listed in this subsection, the participant shall
15 be entitled to receive the principal amount of all contributions
16 made by the participant under the participation agreement plus the
17 actual program fund investment income earned on the contributions,
18 less any losses incurred on the investment, and such distribution
19 will generally not be subject to federal tax penalty:

20 (2) Upon the occurrence of any of the following
21 circumstances, no refund penalty shall be levied by the trust in
22 the event of a refund or termination of a participation agreement:

23 (a) Death of the beneficiary if the distribution is
24 paid to the estate of the beneficiary or transferred to another
25 beneficiary as set forth in subsection (10) of section 85-1809;

26 (b) Permanent disability or mental incapacity of the
27 beneficiary;

1 (c) The beneficiary is awarded a scholarship as defined
2 in section 529 of the Internal Revenue Code, but only to the extent
3 the ~~refund~~ distribution of earnings does not exceed the scholarship
4 amount; or

5 (d) A qualified rollover is made as permitted by section
6 529 of the Internal Revenue Code, except that if a qualified
7 rollover is made into a plan sponsored by another state or entity,
8 the participation agreement shall be deemed to have been canceled
9 for purposes of subdivision (8)(c) of section 77-2716 and federal
10 adjusted gross income shall be increased to the extent previously
11 deducted as a contribution to the trust.

12 (3) ~~In the event of cancellation of a participation~~
13 ~~agreement for any of the causes listed in subsection (2) of this~~
14 ~~section, the participant shall be entitled to receive the principal~~
15 ~~amount of all contributions made by the participant under the~~
16 ~~participation agreement plus the actual program fund investment~~
17 ~~income earned on the contributions, less any losses incurred on the~~
18 ~~investment.~~ Notwithstanding any other provisions of this section,
19 under no circumstances shall a participant or beneficiary receive a
20 ~~refund or~~ distribution that is more than the fair market value of
21 the specific account on the applicable liquidation date.

22 (4) If a participant cancels a participation agreement,
23 obtains a rollover into a plan sponsored by another state or
24 entity, or obtains a distribution, a portion of which constitutes a
25 nonqualified withdrawal, the amount of the distribution, rollover,
26 or withdrawal will be subject to recapture of previous Nebraska
27 state income tax deductions as set forth in subdivision (8)(c)

1 of section 77-2716. The transfer of assets among plans sponsored
2 by the State of Nebraska shall be considered an investment option
3 change and not a rollover.

4 Sec. 9. Section 85-1809, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 85-1809 (1) A participant retains ownership of all
7 contributions made under a participation agreement up to the
8 date of utilization for payment of qualified higher education costs
9 expenses for the beneficiary. Notwithstanding any other provision
10 of law, any amount credited to any account is not susceptible
11 to any levy, execution, judgment, or other operation of law,
12 garnishment, or other judicial enforcement, and the amount is not
13 an asset or property of either the participant or the beneficiary
14 for the purposes of any state insolvency or inheritance tax laws.
15 All income derived from the investment of the contributions made
16 by the participant shall be considered to be held in trust for the
17 benefit of the beneficiary.

18 (2) If the program created by sections 85-1801 to 85-1814
19 is terminated prior to payment of qualified higher education
20 costs expenses for the beneficiary, the participant is entitled to
21 receive the fair market value of the account established in the
22 program, ~~less any assessed refund penalty.~~

23 (3) If the beneficiary graduates from an ~~institution of~~
24 ~~higher education~~ eligible educational institution and a balance
25 remains in the participant's account, any remaining funds may
26 be transferred as allowed by rule or regulation, subject to the
27 provisions of section 529 of the Internal Revenue Code, as well as

1 any other applicable state or federal laws or regulations.

2 (4) The ~~institution of higher education~~ eligible
3 educational institution shall obtain ownership of the payments
4 made for the qualified higher education costs ~~costs~~ expenses paid to the
5 institution at the time each payment is made to the institution.

6 (5) Any amounts which may be paid to any person or
7 persons pursuant to the Nebraska educational savings plan trust but
8 which are not listed in this section are owned by the trust.

9 (6) A participant may transfer ownership rights to
10 another eligible participant, including a gift of the ownership
11 rights to a minor beneficiary. The transfer shall be made and the
12 property distributed in accordance with the rules and regulations
13 or with the terms of the participation agreement.

14 (7) A participant shall not be entitled to utilize any
15 interest in the Nebraska educational savings plan trust as security
16 for a loan.

17 (8) The Nebraska educational savings plan trust may
18 accept transfers of cash investments from a custodian under the
19 Nebraska Uniform Transfers to Minors Act or any other similar laws
20 under the terms and conditions established by the trustee.

21 (9) A participant may designate a successor account
22 owner to succeed to all of the participant's rights, titles, and
23 interest in an account, including the right to change the account
24 beneficiary, upon the death or legal incapacity of the participant.
25 If a participant dies or becomes legally incapacitated and has
26 failed to name a successor account owner, the participant's estate,
27 acting through the participant's personal representative, shall be

1 named the successor participant.

2 (10) Upon the death of a beneficiary, the participant
3 can change the beneficiary on the account, transfer assets to
4 another beneficiary who is a member of the family of the former
5 beneficiary, or request a nonqualified withdrawal.

6 Sec. 10. Section 85-1810, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 85-1810 A student loan program, student grant program, or
9 other program administered by any agency of the state, except as
10 may be otherwise provided by federal law or the provisions of any
11 specific grant applicable to the federal law, shall not take into
12 account and shall not consider amounts available for the payment of
13 qualified higher education costs expenses pursuant to the Nebraska
14 educational savings plan trust in determining need and eligibility
15 for student aid.

16 Sec. 11. Section 85-1812, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 85-1812 (1) For federal income tax purposes, the Nebraska
19 educational savings plan trust shall be considered a qualified
20 state tuition program exempt from taxation pursuant to section 529
21 of the Internal Revenue Code. The trust meets the requirements of
22 section 529(b) of the Internal Revenue Code as follows:

23 (a) Pursuant to section 85-1806, a participant may make
24 contributions to an account which is established for the purpose
25 of meeting the qualified higher education ~~costs~~ expenses of the
26 designated beneficiary of the account;

27 (b) Pursuant to section 85-1806, a maximum contribution

1 level is established;

2 (c) Pursuant to section 85-1807, a separate account is
3 established for each beneficiary;

4 (d) Pursuant to section 85-1807, contributions may only
5 be made in the form of cash;

6 (e) Pursuant to section 85-1807, a participant or
7 beneficiary shall not provide investment direction regarding
8 program contributions or earnings held by the trust;

9 (f) Pursuant to section 85-1808, ~~penalties~~ Penalties are
10 provided on ~~refunds~~ distributions of earnings which are: (i) Not
11 ~~not~~ used for qualified higher education ~~costs~~ expenses of the
12 beneficiary; (ii) ~~made~~ made on account of the death ~~or~~ disability of
13 the designated beneficiary, if the distribution is not transferred
14 to another beneficiary or paid to the estate of the beneficiary;
15 (iii) not made on account of the disability of the designated
16 beneficiary; or (iv) made due to scholarship, allowance, or payment
17 receipt as provided in section 529(b)(3) of the Internal Revenue
18 Code in excess of the scholarship, allowance, or payment receipt;
19 and

20 (g) Pursuant to section 85-1809, a participant shall not
21 pledge any interest in the trust as security for a loan.

22 (2) State income tax treatment of the Nebraska
23 educational savings plan trust shall be as provided in section
24 77-2716.

25 (3) For purposes of federal gift and generation-skipping
26 transfer taxes, contributions to an account are considered a
27 completed gift from the contributor to the beneficiary.

1 Sec. 12. Section 85-1814, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 85-1814 Nothing in sections 85-1801 to 85-1813 shall
4 be deemed to prohibit both resident and nonresident participants
5 and designated beneficiaries from being eligible to participate
6 in and benefit from the Nebraska educational savings plan trust
7 and program. It is the intent of the Legislature that funds and
8 income credited to the program fund are fully portable and may be
9 used at any ~~institution of higher education.~~ eligible educational
10 institution.

11 2. On page 13, line 16, after "Original" insert "sections
12 85-1806, 85-1809, 85-1810, 85-1812, and 85-1814, Reissue Revised
13 Statutes of Nebraska, sections 85-1801, 85-1802, 85-1804, 85-1807,
14 and 85-1808, Revised Statutes Cumulative Supplement, 2010,"; and
15 in line 18 after the last comma insert "and sections 77-3442 and
16 85-1517, Revised Statutes Supplement, 2011, as amended by sections
17 10 and 18, respectively, Legislative Bill 946, One Hundred Second
18 Legislature, Second Session, 2012,".

19 3. Renumber the remaining sections and correct internal
20 references accordingly.