

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB1104

Hearing Date: Monday February 06, 2012
Committee On: Education
Introducer: Adams
One Liner: Change the Postsecondary Education Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Adams, Avery, Council, Haar, Seiler, Sullivan
Nay:
Absent:
Present Not Voting: 2 Senators Howard, Cornett

Proponents:
Senator Greg Adams
Marshall Hill

Representing:
Introducer
Nebraska Coordinating Commission for Postsecondary
Education

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

Legislative Bill 1104 would amend the Postsecondary Institution Act by modifying terminology to clarify the application of provisions of the Act and by removing obsolete provisions. The main focus of the measure is to replace the term "authorization to operate" with the term "recurrent authorization to operate" throughout the Act in order to more clearly distinguish between provisions that apply to institutions that have a renewal requirement (recurrent authorization) and provisions that apply to institutions that do not have a renewal requirement (authorization to operate on a continuing basis). In addition, institutions would be able to qualify for an authorization to operate on a continuing basis based on offering graduate programs, rather than just undergraduate programs. The exemptions to the definition of "establishing a physical presence" would also be modified to limit exempted institutions offering short courses to offering no more than 2 courses in a calendar year.

Section 85-2403 would be amended by replacing the definition of "authorization to operate" with a definition of "recurrent authorization to operate". Recurrent authorization to operate would be defined as "approval by the Coordinating Commission for Postsecondary Education to operate a postsecondary institution in this state until a renewal of such authorization is required". The definition of "authorization to operate on a continuing basis" would remain unchanged and would continue to recognize approvals to operate without renewal requirements. Thus, authorized institutions would be classified as either having a recurrent authorization to operate or an authorization to operate on a continuing basis.

The definition of "establishing a physical presence" would be amended by clarifying that the exemption for short courses or seminars would only apply if no more than 2 such courses, as defined by the Commission, are offered in a calendar year by the institution.

Section 85-2405 would be amended by clarifying that the Commission powers and duties regarding the receipt of applications, investigation of applications and establishment of application fees apply only to original applications and renewal applications for recurrent authorizations.

Section 85-2406 would be amended by clarifying that rules and regulations establishing minimum standards apply only to recurrent authorizations.

Section 85-2408 would be amended to recognize that the exceptions to the Postsecondary Institution Act contained in section 85-2407 allow institutions to operate outside of the Act with a physical presence in the state. The two exceptions contained in that section are for:

1. Institutions or organizations which offers education or instruction and which are licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff; and
2. Private postsecondary career schools as defined in the Private Postsecondary Career School Act.

Section 85-2412 would be amended by clarifying which provisions apply only to recurrent authorizations and which provisions apply only to authorizations to operate on a continuing basis. The provisions regarding the review of original, renewal, and modification applications would apply only to recurrent authorizations. Institutions that have operated for 20 years under the same ownership with a physical presence in Nebraska would request, rather than apply for, authorization to operate on a continuing basis. Such authorization would be granted unless the Commission determines, after a review of the request, that an additional recurrent authorization is appropriate based on the standard established by the Commission. With changes in this measure, the grant an authorization to operate on a continuing basis could be based on offering either graduate or four-year undergraduate programs.

Section 85-2413 would be amended by clarifying that the section, which deals with the form of an approved authorization, would apply only to recurrent authorizations.

Section 85-2414 would be amended by clarifying that the procedures to be followed when an institution fails to meet the provisions of the Act apply only to recurrent authorizations.

Section 85-2415 would be amended by clarifying that the provisions for a change in ownership apply to both recurrent authorizations and authorizations to operate on a continuing basis. When there is a change in ownership, the new authorization would be a recurrent authorization regardless of the previous authorization.

Section 85-2416 would be amended by clarifying that the provisions requiring action at least ninety days prior to the expiration of an authorization would allow for either an application for a renewal of a recurrent authorization or a request for an authorization to operate on a continuing basis. Because authorizations to operate on a continuing basis do not expire, the section only applies to the expiration of recurrent authorizations.

Section 85-2417 would be amended by using the new terminology to clarify that provisions regarding denials apply to both recurrent authorizations and authorizations to operate on a continuing basis.

Section 85-2410 would be outright repealed. The section deemed institutions to be granted authorization to operate on a continuing basis on May 5, 2011 if the institution was a public Nebraska institution or had been operating for 20 years on a continuing basis. Nothing in this measure would change the status of those institutions.

Section 85-2411 would be outright repealed. The section required institutions that were operating in Nebraska on May 5, 2011 that were not deemed to have an authorization to operate on a continuing basis to apply for authorization before December 31, 2011.

Explanation of amendments:

The committee amendment would add the provisions of LB 954, with modifications to language which outlines the circumstances in which penalties on distributions may be assessed (page 30, lines 10-19 of the amendment contrasted

with page 19, lines 10-18 of the original bill).

The amendment would also change the community college levy structure for fiscal year 2013-14 and each fiscal year thereafter. Specifically, the amendment would move the levy for accessibility barrier elimination projects and abatement of environmental hazards outside of the aggregate levy lid of 11.25 cents per one hundred dollars of taxable valuation imposed for fiscal years 2013-14 and each fiscal year thereafter and establish a limit on such levy of three-quarters of a cent per one hundred dollars of taxable valuation. The current community college levy provisions for fiscal year 2013-14 and each fiscal year thereafter were enacted earlier this session in LB 946.

LB 954 Provisions

Section 85-1801 would be amended to replace the term "higher education costs" with the term "qualified higher education expenses" to harmonize with the terminology changes proposed in section 2 of the bill.

Section 85-1802 would be amended to change terminology used in sections 85-1801 through 85-1814, which pertain to the Nebraska educational savings plan trust.

The term "higher education costs" would be stricken and replaced with the term "qualified higher education expenses." These terms are defined as follows:

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

"Qualified higher education expenses" means the certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at an eligible educational institution. Reasonable room and board expenses, based on the minimum amount applicable for the eligible educational institution during the period of enrollment, shall be included as qualified higher education expenses for those students enrolled on at least a half-time basis. In the case of a special needs beneficiary, expenses for special needs services incurred in connection with enrollment or attendance at an eligible educational institution shall be included as qualified higher education expenses. Expenses paid or incurred in 2009 or 2010 for the purchase of computer technology or equipment or Internet access and related services, subject to the limitations set forth in section 529 of the Internal Revenue Code, shall be included as qualified higher education expenses. Qualified higher education expenses does not include any amounts in excess of those allowed by section 529 of the Internal Revenue Code.

Section 85-1802 would also be amended to replace the term "institution of higher education" with the term "eligible educational institution." These terms are defined as follows:

"Institution of higher education" means an institution described in section 529 of the Internal Revenue Code which is eligible to participate in the United States Department of Education's student aid programs.

"Eligible educational institution" means an institution described in 20 U.S.C. 1088 which is eligible to participate in a program under Title IV of the federal Higher Education Act of 1965.

Section 85-1802 would also be amended to provide for a new term, "nonqualified withdrawal", and eliminate the term "refund penalty." "Qualified withdrawal" would refer to a distribution from an account to the extent it is not used to pay the qualified higher education expenses of the beneficiary or a qualified rollover permitted by section 529 of the Internal Revenue Code. "Refund penalty" is defined currently as the amount assessed by the State Treasurer for cancellation of a participation agreement or other refund which is not considered a de minimis penalty pursuant to section 529 of the Internal Revenue Code.

A new term, "account owner", would have the same definition as the term "participant."

Language that references the Internal Revenue Code and its regulations as they existed on April 18, 2001 would be stricken, as would language in the definition of "tuition and fees" that limits such charges to those required as a condition of enrollment.

Section 85-1804 would be amended to replace the terms "institution of higher education" and "higher education costs" with the terms "eligible educational institution" and "qualified higher education expenses", respectively. The word "refunds" would be replaced with "distributions" and a reference to "refund penalties" would be stricken.

Section 85-1806 would be amended to provide that participants in the Nebraska educational savings plan trust shall not be subject to minimum contribution requirements or be required to maintain a minimum account balance. The terms "institution of higher education" and "higher education costs" would be replaced with the terms "eligible educational institution" and "qualified higher education expenses", respectively.

Section 85-1807 would be amended to replace the term "institution of higher education" with the term "eligible educational institution."

Section 85-1808 would be amended to change provisions related to cancellation of a participation agreement. Language pertaining to the collection of refund penalties would be stricken. Instances of the word "refund" would be stricken in favor of the word "distribution." Language would be added to the section to specify that a participant may cancel a participation agreement by submitting a request to terminate the participation agreement. New language would provide that if a participant requests and obtains a nonqualified withdrawal, the participation agreement would be deemed canceled with respect to the amount of the nonqualified withdrawal. A participation agreement would not be deemed canceled if a participant requests and obtains a distribution of his or her entire account balance for qualified higher education expenses and subsequently closes his or her account. The State Treasurer would have the power to terminate, freeze, or suspend a participation agreement if he or she determines that the participant provided false or misleading information to the detriment of the trust, if the participant's account has a zero balance, or if the State Treasurer is unable to verify the identity of the participant.

Existing language in subsection (3) of section 85-1808 would be stricken and replicated in a new subsection (2). The language replicated in the new subsection (2) would provide that if a participation agreement is canceled for any of the causes listed in the subsection (death of the beneficiary, permanent disability or mental incapacity, receipt of a scholarship up to the scholarship amount, or making of a qualified rollover), the participant would be entitled to receive the principal amount of all contributions made by the participant under the participation agreement plus the actual program fund investment income earned on the contributions, less any losses incurred on the investment, and such distribution will generally not be subject to federal tax penalty. Language pertaining to one of these causes, death of the beneficiary, would be amended to provide that a participant is entitled to receive distributions without being subject to a federal tax penalty only if the distribution is paid to the estate of the beneficiary or transferred to another beneficiary.

A new subsection (subsection 4) would be added to section 85-1808 to provide that if a participant cancels a participation agreement, obtains a rollover into a plan sponsored by another state or entity, or obtains a distribution, a portion of which constitutes a nonqualified withdrawal, the amount of the distribution, rollover, or withdrawal would be subject to recapture of previous Nebraska state income tax deductions as set forth in subdivision (8)(c) of section 77-2716. The transfer of assets among plans sponsored by the State of Nebraska would be considered an investment option change and not a rollover.

Section 85-1809 would be amended to replace the terms "institution of higher education" and "higher education costs" with the terms "eligible educational institution" and "qualified higher education expenses", respectively. Language pertaining to the assessment of a refund penalty would be stricken.

A new subsection (subsection 9) would be added to section 85-1809 to allow a participant to designate a successor account owner to succeed to all of the participant's rights, titles, and interest in an account, including the right to change

the account beneficiary, upon the death or legal incapacity of the participant. If a participant dies or becomes legally incapacitated and has failed to name a successor account owner, the participant's estate, acting through the participant's personal representative, would be named the successor participant.

A second new subsection (subsection 10) would be added to section 85-1809 to provide that upon the death of a beneficiary, the participant could change the beneficiary on the account, transfer assets to another beneficiary who is a member of the family of the former beneficiary, or request a nonqualified withdrawal.

Section 85-1810 would be amended to replace the term "higher education costs" with the term "qualified higher education expenses."

Section 85-1812 would be amended to replace the term "qualified higher education costs" with the term "qualified higher education expenses." Use of the word "refunds" would be replaced with the word "distributions."

Language pertaining to the imposition of penalties would be amended to modify the circumstances in which penalties may be imposed. Generally, these circumstances are the inverse of those in which a participant is entitled to receive all principal and income, net of losses, pursuant to subsection (2) of section 85-1808. Penalties would be provided on distributions which are: (i) not used for qualified higher education expenses of the beneficiary; (ii) made on account of the death of the designated beneficiary if the distribution is not transferred to another beneficiary or paid to the estate of the beneficiary; (iii) not made on account of the disability of the designated beneficiary; or (iv) made due to scholarship, allowance, or payment receipt in excess of the scholarship, allowance, or payment receipt. The language pertaining to the imposition of penalties contained in the amendment (page 30, lines 9-19) differs from that contained in the original LB 954 (page 19, lines 10-18). This is the only instance in which the LB 954 provisions of the amendment differ from those of the original bill.

A new subsection (subsection 3) would be added to section 85-1812 to provide that for purposes of federal gift and generation-skipping transfer taxes, contributions to an account are considered a completed gift from the contributor to the beneficiary.

Section 85-1814 would be amended to replace the term "institution of higher education" with the term "eligible education institution."

Community College Levy Provisions

Section 85-1517 would be amended to move the levy for accessibility barrier elimination projects and abatement of environmental hazards outside of the aggregate levy lid of 11.25 cents per one hundred dollars of taxable valuation imposed for fiscal years 2013-14 and each fiscal year thereafter and establish a limit on such levy of three-quarters of a cent per one hundred dollars of taxable valuation.

Section 77-3442 would be amended to authorize community college areas to levy the levies provided in subdivisions (2)(a) through (c) of section 85-1517 for fiscal year 2013-14 and each fiscal year thereafter, in accordance with the provisions of such subdivisions. Existing language pertaining to the authority of community college areas to exceed the levy limitation in order to retire general obligation bonds and obligations entered into pursuant to section 85-1535 prior to January 1, 1997 would be amended to reference to the capital improvement and bond sinking fund levy provided in subdivision (2)(b) of section 85-1517 rather than the maximum aggregate levy.

The current community college levy provisions for fiscal year 2013-14 and each fiscal year thereafter were enacted earlier this session in LB 946.

