[LB264 LB296 LB389]

The Committee on Revenue met at 1:30 p.m. on Friday, February 1, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB296, LB264, and LB389. Senators present: Paul Schumacher, Vice Chairperson; Tom Hansen; Burke Harr; Charlie Janssen; Beau McCoy; Pete Pirsch; and Kate Sullivan. Senators absent: Galen Hadley.

SENATOR SCHUMACHER: Ladies and gentlemen, welcome to this afternoon's activities of the Committee on Revenue. Senator Hadley is not here today, so the Vice will do his thing. First to introduce the members of the committee: Senator Pirsch; Senator Sullivan; Senator McCoy; committee counsel, Mary Jane Egr Edson; and Matt Rathje is our committee clerk; and the pages today are Evan Schmeits and Nate Funk. I remind you all to turn off your cell phones or put them on vibrate so they don't disturb the proceedings in the event they go off. Sign-in sheets for testifiers are on the tables by both doors and need to be completed by anyone who wishes to testify. If you're testifying on more than one bill, you'll need to submit a form for each bill. Please print and complete the form prior to coming up for your testimony. When you come up to testify, hand the testifier sheet to the committee clerk. There are also clipboards in the back of the room to sign. If you do not wish to testify but would like to indicate your support or opposition to a particular bill, these sheets will be included in the official records. We'll follow the agenda posted on the door today. The introducer or representative will present the bill, followed by the proponents, opponents, and neutral, in that order. Only the introducer will have an opportunity for closing remarks. As you begin your testimony, state your name, spell it for the record. If you have any handouts, please bring ten copies for the committee and staff. If you have only the original, then we can arrange for copies to be made. Give the handouts to the page to circulate to the committee. Today's first item on the agenda is LB296. It's a bill by Senator Hadley but since he's isn't here, Senator Harr will be introducing it. Senator Harr.

SENATOR HARR: Good afternoon, Mr. Vice Chairman and members of the Revenue Committee. My name is Burke Harr, H-a-r-r, and I represent Legislative District 8 and I, like Senator Schumacher, are standing in today for Senator Hadley. I'm here today as a cosponsor of LB296. Senator Hadley worked closely with State Treasurer Don Stenberg to develop LB296, which provides for several changes to Nebraska's College Savings Plan. To provide some background on this policy, Nebraska's College Savings Plan began in 2001 to encourage parents and grandparents to save for their children's higher education. The Nebraska State Treasurer serves as the program's trustee. First National Bank of Omaha serves as the program manager and all investments are approved by the Nebraska Investment Council. Currently, the plan allows account owners to qualify for up to $5,000 in Nebraska state income tax deduction. Qualified withdrawals for higher education expenses are federal and state income tax free and funds can be used at eligible schools nationwide and even some foreign schools. The impact of Nebraska having a successful college savings plan cannot be measured in revenue impact alone. As we are all aware, the cost of attending college is steadily on the rise. We need to think about the importance of saving for our children's futures as a basic right of parenthood and some would argue, grandparenthood, and the future economic viability of the state. This proposal not only would provide greater opportunity for our citizens to save, but would also result in an educated Nebraska with less loan to pay and more revenue to tax...income to tax. More account owners and account owners saving more will result in more money to spend on NEST scholarships, which in 2012 was well over $100,000. A well-known industry study on the research indicates that children are seven times more likely to go and to succeed in college when there is a college savings account in their name. We need to continue to support Nebraska's college school plan to ensure it remains viable and competitive. Given the strong evidence that supports college savings and to more closely align Nebraska's program with other states, this bill proposes to increase the amount of income tax deduction to $5,000 for individuals and $10,000 for married couples. In addition to the increased deduction, the bill makes several clarification and technical changes. Since the start of Nebraska's College Savings Program, rollover contributions from other state's plans, including any earnings or income contained therein, have been entitled to Nebraska state income tax deduction. The change proposed in the bill would align the statute...would clarify the statute with the Department of Revenue's interpretation and avoid any possible further confusion. The bill provides that upon the death of an account owner, the account would go to the beneficiary unless there is a successor account owner named by the account owner, in which case the account goes to the successor account owner. Finally, the bill will allow custodians of the Uniform Gifts to Minors Act, UGMA, and/or the Uniform Transfers to Minors Act, UTMA, account, to be treated similarly to account owners. Currently, Nebraska state income deductions for the plan contributions are available only to the account owners. For purposes of the UTMA and the UGMA accounts, the beneficiary is considered the account owner, which means the custodian is not able to enjoy a tax deduction for his or her contributions. I'd like to take a moment to discuss the fiscal note. When this was originally being worked upon, the State Treasurer consulted with the Department of Revenue to determine the potential financial impact for the state. At the time, this bill was estimated to cost approximately $430,000 annually. Since that time, the fiscal note has increased significantly, as you can see, to approximately $1.3 million per year. Obviously, this policy change comes with a cost, but I question whether LB296 will cause this much revenue loss. I think there will be some who can talk to this later. I would also say, I spoke with the Research Office at the Department of Revenue and as I understand it, the way the fiscal note was come upon was anyone who currently gives $5,000 or more is assumed to go automatically to $10,000, and those who gave less than $5,000 will stay at the same amount. And I'm not quite sure if that is a valid assumption that just because I gave $5,000, I'll give $10,000. So I think the fiscal note might be a bit high. In closing, I believe that college savings plans...the college that...college savings plan...college savings--I'll get it right--is one of the most important planning tools we can provide to our state's young people. Nebraska's College Savings Plan provides a convenient and easy way to save money for our children's future and expanding the plan will make higher education more obtainable for more Nebraska children. Treasurer Stenberg is here, along with Deborah Goodkin from First National Bank, and they'll be able to provide some technical details that you may have. Thank you for your time. I'm happy to answer any questions you might have. I guess I would first add a personal note on myself. When my first daughter was born, the first year, I gave more than...I used the college savings plan and I gave more than $5,000 because I didn't realize there was a cap. Since then, I've amended it. I think there are those who will give more. It's a great program. It's been very beneficial. It has a very low administrative cost and more importantly for a lazy guy like myself, it's based on your age of the child. So I don't have to constantly be checking and changing the investment. It's done automatically, so it's a really good program for the state of Nebraska, and I think we will hear testimony later on talking about how it is one of the top-rated 529 plans in the United States. So, I want to thank everyone for all their hard work to make this such a great program. And with that, I would be entertaining any questions. [LB296]

SENATOR SCHUMACHER: Thank you, Senator Harr. Record should reflect that we've been joined by Senator Janssen now. Any questions for Senator Harr? Senator Sullivan. [LB296]

SENATOR SULLIVAN: Thank you, Senator Schumacher and thank you, Senator Harr. Just on your last comment about checking the age, clarify that. Do you have to, you know, what's...what about the age limitation or details? [LB296]

SENATOR HARR: Oh, I'm sorry. So when you have a choice of programs that you can...for your investments and mine is based on my children's age. So when they're young, the investments are a little more...I don't want to say riskier, but they're...you get a higher... [LB296]

SENATOR SULLIVAN: Higher rate of return. [LB296]

SENATOR HARR: ...higher rate of return, and then as you get closer to college you want more stability and more conservative. And so I think it switches over more to bonds and so there's more of a stability so you don't lose all of it right at the end. It's been a great program. Thank you. [LB296]

SENATOR SULLIVAN: Okay. Thank you. [LB296]

SENATOR SCHUMACHER: Senator Pirsch. [LB296]

SENATOR PIRSCH: And that's what I was hoping and maybe I'll address this to a later testifier, but I was just hoping to get more of the overall structure of the 529, of Section

529 of the IRC in terms of ways that we could craft the maximum eligibility in terms of dollars. And I think this is bill that Tim Gay, is that right? Or maybe I'm not thinking correctly. When did this originally go in place, do you remember what year that was? [LB296]

SENATOR HARR: Unfortunately, I don't recall. And I know it's been in effect...I think it predates Senator Gay, though, because I can remember 10, 15...well, 15 years ago... [LB296]

SENATOR PIRSCH: You're right, I'm confusing it with another bill. I was thinking the health savings account, but... [LB296]

SENATOR HARR: ...this bill being...doing legal work on this bill. [LB296]

SENATOR PIRSCH: Thank you. [LB296]

SENATOR SCHUMACHER: Any other questions for Senator Harr? Will you be staying for... [LB296]

SENATOR HARR: I'm here for the whole day. [LB296]

SENATOR SCHUMACHER: Here for the whole day. Thank you, Senator Harr. [LB296]

SENATOR HARR: Thank you. [LB296]

SENATOR SCHUMACHER: Now proponent testimony. [LB296]

DON STENBERG: Mr. Vice Chairman, members of the committee, for the record my name is Don Stenberg, S-t-e-n-b-e-r-g. I'm the Nebraska State Treasurer and I'm here to testify in support of LB296. I want to begin by thanking Senator Hadley for sponsoring this legislation and I'd also like to thank Senators Avery, Bolz, Brasch, Conrad, Cook, Davis, Hansen, Harms, Harr, Howard, Kintner, Lathrop, Mello, Nelson, Nordquist, Pirsch, Schumacher, and Smith, all of whom are cosponsoring this legislation. The purpose of LB296 is to help make Nebraska's College Savings Plan even more effective than it already is. Senator Harr already covered some of the overview of the program so I'll try not to repeat...repeat that, but I want to touch on a few high points. This was created...this is a program created by the Nebraska Legislature in the year 2000, and as Senator Harr mentioned, by law the State Treasurer is the trustee of the college savings plan. There are currently over 56,000 Nebraska accounts in the Nebraska College Savings Plan. In addition, because Nebraska's College Savings Plan is one of the best in the country, over 144,000 non-Nebraskans are also invested in the Nebraska College Savings Plan. Current assets in the plan exceed $2.8 billion. So it's an excellent plan and recognized nationally. As Senator Harr explained, under Section 529 of the Federal

Internal Revenue Code, earnings on a college savings plan such as Nebraska's are exempt from federal income tax so long as the funds are ultimately used for qualified college education expenses or higher education expenses. Also under current Nebraska law the earnings are exempt from Nebraska income tax. As I mentioned, Nebraska does have one of the top college savings plans in the country. A little over a year ago, Kiplinger's Personal Finance magazine named Nebraska's College Savings Plan the best 529 plan in the country for fund selection. And last year, an organization called savingforcollege.com, which is one of the recognized experts in the country at evaluating college savings plan, rated Nebraska's NEST Direct and NEST Advisor plans with a five cap rating, which the highest rating that they award. And in order to further improve Nebraska's College Savings Plan encourage more Nebraskans to invest more in the program, we brought forward this bill. And Senator Harr did an excellent job of explaining what was in the bill, so I will not repeat that although I'd be happy to answer any questions about any of the four provisions that he laid out. And with that, that concludes my prepared testimony. I'd be happy to answer any questions and encourage the committee to look favorably on this legislation and send it to the floor. Thank you. [LB296]

SENATOR SCHUMACHER: Senator Pirsch. [LB296]

SENATOR PIRSCH: Well, and thank you very much, Treasurer, for bringing forward this bill and for your work on this college savings program. It certainly is a big boon to the state. I have a question as to the...in terms of the...how the federal legislation was drafted. Are we...so we're bumping it out here on the state level and still meeting federal requirements. Are we at the maximum amount that states can, I mean, participate with respect to that? [LB296]

DON STENBERG: In terms of a state...what tax incentives the state can give at the state level, I don't believe the Internal Revenue Code has any restrictions on that. That's strictly a state matter. Really, the only federal requirement and there may be some little technical things, but basically the major federal requirement is that the funds ultimately be used for what, under the Federal Revenue Code, are called qualified educational expenses. And under Nebraska's plan, these funds can be used not only at a four-year college, it can be used at a community college. It can be used at many technical schools. It can be used in private or public higher education institutions throughout the United States. So you can use your plan, your Nebraska plan to go to MIT if you're a brilliant, budding scientist, or you can use it at Northeast Community College to further your education that way. So it's very flexible, a lot of uses. You just have to be...the institution you attend has to be an accredited institution recognized by the IRS, but almost every legitimate educational institution does meet that criteria. [LB296]

SENATOR PIRSCH: But on the federal level, on the federal side of things, is there a ceiling in terms of the federal income tax benefit that's provided? [LB296]

DON STENBERG: There may be a total...a maximum amount you can put in the account, I'm not sure of that. Deborah Goodkin is our expert back here and will answer that question for you. There may be some maximum total amount, I'm not sure of that. But other than that, I'm not aware of any other restriction. [LB296]

SENATOR PIRSCH: Wonderful. Thank you. [LB296]

SENATOR SCHUMACHER: Senator Sullivan. [LB296]

SENATOR SULLIVAN: Thank you, Senator Schumacher, and thank you, Mr. Stenberg. Could you respond a little to the fiscal note based on the history of people's tracking of their contributions and what impact this might be if we raise the...increase the deductions? [LB296]

DON STENBERG: Well, that's a good point, Senator. And Senator Harr mentioned before we brought this bill forward, before I even met with Senator Hadley, we had asked the Revenue Department to give an estimate of what they thought the fiscal impact would be. And I have in writing from them, their original estimate was just a little over $400,000 per fiscal year, at least starting out. And a couple of days ago, I found out they decided they made a miscalculation and increased it rather substantially. Number one, let me point out, looking at the biennium, this bill would become at least as written right now, becomes effective January 1, 2014, so for the biennium the fiscal impact over the two-year period would be $1.3 million, not twice that. And the fiscal note does reflect that. So if you want to spread that over two years, that's not the way the money will flow but basically it would be, even if the Revenue Department is correct, it would be about $650,000 for each of the two years in the biennium. Not knowing exactly what all the assumptions the department made, it's a little hard to evaluate their work. My sense is, if they're right, this will have been a tremendously successful bill because it will have encouraged a lot of Nebraskans to put a lot more money in their college savings plans. My sense of it, my best guess is that it's going to be somewhat less than what the department has estimated; but frankly, I'd be very happy if they're right because it would mean we have a very successful program. [LB296]

SENATOR SULLIVAN: Thank you. [LB296]

SENATOR SCHUMACHER: Any other questions? Just got a couple. Is this $10,000, is that per year? [LB296]

DON STENBERG: Yes, that's per year. [LB296]

SENATOR SCHUMACHER: And can a parent have...who has four kids do it times four or is that...? [LB296]

DON STENBERG: No, that's a good question. Under Nebraska law, and we don't change that aspect of it here, let's say you've got an account for each of four kids, after you put a total of ten...if you put $3,000 in each one for a total of $12,000, your tax deduction would be limited to the ten under this bill. Some states do it differently than Nebraska and provide a certain amount of deduction, $3,000 or $5,000 per beneficiary. That has not been the Nebraska plan. We don't change the approach in this bill. There are even some states that have unlimited deductions, which is kind of surprising, but not. But what we're doing with this is, it would be...it's based on the taxpayer, not the number of beneficiaries. [LB296]

SENATOR SCHUMACHER: Now can a taxpayer or can a beneficiary have more than one taxpayer contributing to them? In other words, can grandma and grandpa make a contribution, the other grandma and grandpa and the parents to get three times...? [LB296]

DON STENBERG: They can. Now in order for them to get their tax deduction, they have to set up a separate account for the same beneficiary. But if you're doing your tax planning right and understand the details, grandma and grandpa could put in...well, under the bill, if it were to pass, could put in $10,000 for granddaughter, Susie A. The other grandparents could do the same thing, another $10,000 for Susie A., and her parents could do another $10,000. If the grandparents put it in the parent's plan, under the law, they don't get a tax deduction if they do it that way. So you've got to understand your tax planning. But if you do it correctly, each of those...both sets of grandparents and the parents could set up accounts and get the maximum deduction from their accounts. [LB296]

SENATOR SCHUMACHER: But what has experience been for rate of return on that? [LB296]

DON STENBERG: Well, it varies a lot. This last year was a very good year because the stock market was pretty good, and it depends on the plan that you select. And we have a...as I indicated, Kiplinger gave us the best...rated us the highest plan for fund selection. So you have a lot of choices in what kind of plan you want. Senator Harr mentioned the age-based plans, which can be age-based conservative or age-based aggressive or whatever and it's a different mix, or you can select your own. This year some of the plans did about 14 to 17 percent return. This is probably a better year than usual. Some of the investment choices were significantly less than that, so it depends on what your investment choices were, it depends what happens in the stock and bond markets. One thing that we implemented earlier in my tenure as State Treasurer was the FDIC insured option. Now, right now, that pays like two-tenths of 1 percent, but for folks that are getting real close to college or for extremely conservative investors, maybe grandma and grandpa, they're not looking for the upside, but they don't want...they want what money they did put in to be there, they can choose the FDIC insured option. It's a very low return right now but it's 100 percent safe. [LB296]

SENATOR SCHUMACHER: Who gets zinged and how bad if the kid decides he doesn't want to go to school? [LB296]

DON STENBERG: There's a number of options. You can name another beneficiary. You can change beneficiary at any time. And you can take the money out. Now, there are adverse tax consequences if you do that. There's recapture of the deductions and taxes on the earnings, and so forth. It's called a nonqualified distribution. So it's going to cost you, but you can take the money out if you're willing to accept the tax consequences. [LB296]

SENATOR SCHUMACHER: Any other questions? Senator Sullivan. [LB296]

SENATOR SULLIVAN: Just one final question and I should probably know this, but on the FDIC and sponsored plan, does that mean that the money could be invested in the bank of the investor's choice? [LB296]

DON STENBERG: It does not, I'm sorry. We did talk about that. We're not able to do it that way. It goes in...it has to go into the plan like all of the other investments in order to come under the plan's situation, so, but... [LB296]

SENATOR SULLIVAN: Okay. All right. Thank you. [LB296]

SENATOR SCHUMACHER: Senator Janssen. [LB296]

SENATOR JANSSEN: Thank you, Vice Chair. Thank you, Treasurer Stenberg, for showing up. Now, I think we have a track record here in the past. My children are signed up for this and it was in the early 2000s and I believe it was a $1,000 exemption at that time, and I was wondering if you had any information because I think it went from one to five and I don't know what year. I know Treasurer Osborn I think pushed that through and I think he tried for ten at the time, but I was wondering if you had any information on what the fiscal note was then, and the impact, and that could be used as maybe a guideline for us in making our decision of what the true economic impact would be. [LB296]

DON STENBERG: That's an excellent question. I'm not familiar with that fiscal note but it's certainly something the committee might want to take a look at. I know that the plan has grown tremendously. Well, I mean, started in 2000, you know, 12...roughly 12 years later, we're up to $2.8 billion in assets starting from zero and over 200,000 account owners nationwide. So, it's had rapid growth. [LB296]

SENATOR JANSSEN: It would be an interesting case study to see where it moved from that time and the potential impacts and, I know, the higher threshold. You know, not everybody is in a position to go to that higher threshold. [LB296]

DON STENBERG: I think it's an excellent question, and I would encourage the committee to look at that information. I don't have it with me. [LB296]

SENATOR JANSSEN: Thank you. Perhaps somebody does behind you, I don't know. [LB296]

SENATOR SCHUMACHER: Any other questions from any members of the committee? Thank you, Treasurer Stenberg, for your testimony today. [LB296]

DON STENBERG: Thank you very much. [LB296]

SENATOR SCHUMACHER: Any other proponents? [LB296]

DEBORAH GOODKIN: Hello, everyone. Nice to be here. I'm Deborah Goodkin, G-o-o-d-k-i-n. I'm testifying in support of LB296 on behalf of First National Bank of Omaha as the program manager for Nebraska College Savings Program, and we call it NEST for short. As Treasurer Stenberg mentioned, we, too, believe that these recommendations would make NEST even more effective than it currently is. More than 15 years ago college savings plans were established specifically to ensure that youth can afford to go to college, then enter the workforce and contribute to the state's economy. The initiative set forth in this bill will enhance the plans in support of this goal. The first proposal is to raise the deduction up to $10,000 as we've discussed, and it is well in line with industry practice. Twenty-five out of thirty-four states that permit deductions for college savings allow $10,000 or more, including those that permit a per-beneficiary deduction as was mentioned, and four having unlimited tax deduction. The states that allow $10,000 or more include our neighbors: Colorado, Iowa, Kansas, and Missouri. In fact, only six states in total, including Nebraska, have a deduction of $5,000 or under. Increasing the deduction will encourage more Nebraskans to save more for their college...child's college. In the past three years my staff and I have had countless conversations with individuals and advisors throughout Nebraska who have told us the actual dollar amount of the deduction is too small to matter to them when they make decisions on college savings. Being very active in the 529 college industry, I know that Nebraskans do not always use the Nebraska plan even though they have Nebraska state income. Even though our plan has high industry ratings, has been mentioned, it has great customer service, and is one the lowest cost plans in the country with great returns, potential Nebraskan account owners invest in other state's plans or not at all. This change could encourage those to roll their funds from another state plan back into Nebraska, and this change could also encourage more parents and grandparents to use our plan, providing a greater opportunity for our citizens to save and showing great support for Nebraska's College Savings Plan. Next, I'd like to address the portion of the bill that calls for contributions being made tax deductible when an account is set up for a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act. In the two years that First National has been the program manager, we've had many Nebraska taxpayers concerned about why their contribution to their child's UTMA/UGMA account was not tax deductible, and we've been working very hard with the Department of Revenue to explain to these individuals. These changes will enable parents and custodians to contribute to their child's account. And in addition, we hope that this will encourage other UTMA/UGMA accounts to come into NEST where the earnings are tax free. Finally, the bill...I'm sorry, the federal level is tax free. Finally, the bill recommends that if a successor account owner is not named on the account, the account will revert to a spouse, or in the absence of a spouse, to the beneficiary. And I understand we would be willing to entertain an amendment to that to have it go directly to the beneficiary. In my 16 years in the college savings plan industry, I've witnessed many heartbreaking situations in which an account owner dies and no successor owner has been named. While we try to encourage everyone to name a successor account owner, many times they do not understand that the money isn't going to go directly to the beneficiary on their death. And the purpose of the 529 plan is very clear. Upon account owning and through the years of contributing, it is the account owner's desire to provide for the educational funding for their beneficiary. Yet we have seen time after time that when a successor account owner is not named, the assets get unnecessarily tied up in probate with the child nearing or in college unable to use the assets set aside for him or her. The reason for this suggested enhancement was because of our experience, and we recently had two such instances in the Nebraska plans in the last few months. And this change will result in the wishes of the account owner to give the beneficiary the money for college to continue after their death. In summary, we want the very best college savings plan for the citizens of Nebraska. While these changes will enable us to conform to the rules and tax deduction amounts provided by other states, we are not cutting edge. These changes represent how the college savings industry has evolved over the years. And certainly since the 11 years since the Nebraska plans were initially launched except, I guess, it's 12 years, it has evolved to very high tax deductions. Most importantly, these changes represent our support of the children of Nebraska and their education potential. Thank you for your time, and I'm happy to answer any questions. [LB296]

SENATOR SCHUMACHER: Senator Pirsch. [LB296]

SENATOR PIRSCH: And thank you very much for your testimony here today. Just some overarching type of questions and with respect to the way this program was originally established by the federal government in looking at the statutes and the IRC, is...was it set up that the states were required to participate in some manner for the federal benefit to confer... [LB296]

DEBORAH GOODKIN: No. [LB296]

SENATOR PIRSCH: ...or was it just free floating and we decided to match it, right? [LB296]

DEBORAH GOODKIN: They decided the education of their citizens was a state responsibility, and so these plans are state municipal securities. And it does not require it; in fact, even Wyoming doesn't have a state plan and sometimes other states don't as well, but it is not required. There are well over 90 plans and as we know, there are 50 states, so many states like ours have more than one plan representing different types of potential account owners. [LB296]

SENATOR PIRSCH: Well, and I appreciate that. So it's up to us to decide the stricture. [LB296]

DEBORAH GOODKIN: Yes. [LB296]

SENATOR PIRSCH: We're not confined by some sort of requirements on the federal level. [LB296]

DEBORAH GOODKIN: Absolutely not. [LB296]

SENATOR PIRSCH: How many plans do we offer on the state level? [LB296]

DEBORAH GOODKIN: We offer four: a State Farm college savings plan; the NEST Direct, which is direct to a customer college savings plan; the Advisor College Savings Plan, which is sold through financial advisors; and the TD Ameritrade 529 college savings plan, which is sold on the TD Ameritrade Web site to retail clients and through their network of RIA customers. [LB296]

SENATOR PIRSCH: And through these four plan offerings then, we've attracted about...did I hear correct, 56,000 internal accounts and then something like 144,000 external, nondomestic accounts? [LB296]

DEBORAH GOODKIN: You mean Nebraska versus non-Nebraska, yeah, that... [LB296]

SENATOR PIRSCH: Yeah, I'm sorry. [LB296]

DEBORAH GOODKIN: They're a little...not Nebraska. So it's over 200,000 and so... [LB296]

SENATOR PIRSCH: All together. [LB296]

DEBORAH GOODKIN: All together and about 55,000 Nebraskans. [LB296]

SENATOR PIRSCH: What is it about the plan that has attracted...or the plans, rather, that has attracted such a...you know, I think we're number one is what I heard mentioned in terms of attracting outstate? [LB296]

DEBORAH GOODKIN: We are number one. I don't know those numbers because they're proprietary, but we are, you know, a very highly rated plan and we certainly have a lot of assets. What attracts them is the mix of investment options, the low fees, the excellent customer service, and I would say, our investment strategy as well. When others write about us, it's usually those for considerations. In addition, I must say that the benefit for the instate and out-of-state residents, the tax deduction is a consideration when we get rated. [LB296]

SENATOR PIRSCH: The benefit for... [LB296]

DEBORAH GOODKIN: So many states who have very low or no tax benefit for investing in the college savings plan, sometimes for...there are many different industry self-proclaimed gurus and agencies that rate these plans and everybody looks at a different one a different way. But for in-state residents, one of the ratings is what is the tax deduction for in-state residents? And also how much scholarship money is going back into the state in the state residence? So saving for college that gave us five stars to fed into consideration. But as you know, as I mentioned, we're now on the very low end of tax deductions for in-state residents. [LB296]

SENATOR PIRSCH: Right. And the tax deductions typically with all of these programs nationwide, are they transferable? [LB296]

DEBORAH GOODKIN: I'm not sure I understand the question, I apologize. [LB296]

SENATOR PIRSCH: Well, the benefit here is that if they're utilized in the fashion in which they were...as long as you utilize them for tuition in-state, is that...? [LB296]

DEBORAH GOODKIN: So, let me explain that. I understand now where you're going. So, there's two different things. One is a state tax deduction for the contributions you put in. And the other is the deferment of the earnings, tax on the earnings. So they're two separate items. On a federal level, the interest that you earn in a 529 or a college savings account are tax deferred until you withdraw them. And if you use them for qualified higher education expenses, the earnings are tax free. It is also...we, the state, follows that same rule so the earnings are tax deferred and tax free. On the deduction, is Nebraska only, and that's our state tax deduction and that's on contributions. [LB296]

SENATOR PIRSCH: Okay. Thank you for clarifying that. [LB296]

SENATOR SCHUMACHER: Senator Sullivan. [LB296]

SENATOR SULLIVAN: Thank you, Senator Schumacher, and thank you for your explanation. Following along those lines, I need a little clarification on...I think which is a new dimension of this legislation, that the account is set up by the contributor or the investor for the benefit of this person that will eventually go to college. But if this person dies and has not named a successor, then that money gets tied up and doesn't automatically, immediately flow to the beneficiary. [LB296]

DEBORAH GOODKIN: Unless the account owner has named a successor account owner, which is like transfer on death in other investment vehicles. [LB296]

SENATOR SULLIVAN: Thank you. [LB296]

DEBORAH GOODKIN: And so for those that have not named a successor account owner, it would have to go to probate. [LB296]

SENATOR SULLIVAN: Now, is there any part of this legislation that you're dealing with, I mean, or is that already in place right now? [LB296]

DEBORAH GOODKIN: That is going to probate? [LB296]

SENATOR SULLIVAN: Yeah. [LB296]

DEBORAH GOODKIN: That's in place and what this bill is attempting to do is to allow the monies to go to the beneficiary who was intended by the account owner to use it for college. [LB296]

SENATOR SULLIVAN: Gotcha. Okay. Very good. Thank you. [LB296]

SENATOR SCHUMACHER: Senator Janssen. [LB296]

SENATOR JANSSEN: Thank you, Vice Chair Schumacher. Thank you for being here today. I had a question, I think it came up earlier and maybe I missed it, but is there, that you know of, a taxable income level where you're...that this deduction wouldn't apply? [LB296]

DEBORAH GOODKIN: There is not. [LB296]

SENATOR JANSSEN: Do you have any idea--I'm shifting gears here--why this program is so popular and the long-term care, which I think is what Senator Gay put forward, is just not really taking off? Is it...I think it's probably the people are more into their kids, but I don't know if you could speak to that or not. I should have probably asked the Treasurer that. [LB296]

DEBORAH GOODKIN: I'd probably defer to a long-term care specialist who is in the room on that, but I will say that college savings plans, being that the earnings are tax free or tax deferred and wind up almost in all cases tax free, is a fantastic benefit. The other great benefit of a college savings plan, it's a completed gift. So a lot of individuals use this for estate planning purposes and they move the assets out of their estate and give it to this beneficiary, which is another element of the plan. And I do want to mention there is a maximum, and the maximum is in our state $360,000 per beneficiary. The account balance can't exceed that for all accounts for the beneficiaries in all four of our plans and that is the federal government requires a maximum contribution limit. And it's up to the state to determine what it is and ours is $360,000. [LB296]

SENATOR JANSSEN: So you say all four plans, that you just clarify... [LB296]

DEBORAH GOODKIN: If you have an account for Johnny in State Farm and TD and the Direct plan and the Advisor plan, the sum of that. [LB296]

SENATOR JANSSEN: Okay. Thank you. [LB296]

DEBORAH GOODKIN: You're welcome. [LB296]

SENATOR SCHUMACHER: I just got a couple of questions. First of all, is this limited to individual donors or can a corporation make a...set up a plan? [LB296]

DEBORAH GOODKIN: A corporation can open up an account and name a beneficiary. In addition, there are federal rules that permit scholarship accounts with an unnamed beneficiary. So, for example, the Treasurer's Office or the Nebraska Educational Savings Trust has opened up accounts for scholarship winners. We give in total probably well over $100,000 each year and some of them go into a trust that when the beneficiary is of age, they can take it for college. [LB296]

SENATOR SCHUMACHER: And is the corporation limited to...would be $10,000 also? [LB296]

DEBORAH GOODKIN: Yes. It's a tax filer. [LB296]

SENATOR SCHUMACHER: And do you need either at the individual or corporate level to declare a particular beneficiary or can you reserve that until later? [LB296]

DEBORAH GOODKIN: Yes, you can...well, yes and yes. (Laugh) So yes, there is a way that you can declare a beneficiary or you can...if you're a 501(c)(3), you can open up a corporation...501(c)(3) organization can open up an account with unnamed beneficiary. So can a state and local entity and when they're ready to give the award, and they just keep money in there, and they, when a child, for example, graduates high school, they name the child as the recipient and the money goes to that child's college. [LB296]

SENATOR SCHUMACHER: Now, an individual, can they do the same thing, not name a beneficiary, or are they...? [LB296]

DEBORAH GOODKIN: They cannot. [LB296]

SENATOR SCHUMACHER: They cannot. If the kid doesn't spend the $360,000, doesn't quite make it into MIT, what happens to the balance? Can that be designated to somebody else or is the kid going to pay taxes? [LB296]

DEBORAH GOODKIN: It could be designated to any member of the family of the beneficiary and it's a very, very long list as to what a member of family is. It could be a husband, a wife, a spouse, you could keep it in there until that child...until that beneficiary gets married, change the account owner on it, and give it to their child. [LB296]

SENATOR SCHUMACHER: With retention of all those incidents of ownership, is...the IRS still considers this to be a completed gift even though you can shift around like that? [LB296]

DEBORAH GOODKIN: At the present time, they do. I'm not suggesting that they're not thinking about that as well. [LB296]

SENATOR SCHUMACHER: And so technically, who is the owner of the account? Is it the beneficiary or is it still the grantor? [LB296]

DEBORAH GOODKIN: It is...so it doesn't...it's the person who opens the account. They literally sign a contract with a trust saying that they're opening it for the beneficiary of the child. They can open it up for themselves as well if they want to go back to school or go to school for the first time which is a very nice element in this. We do have adults owning accounts for themselves. [LB296]

SENATOR SCHUMACHER: This is an income tax deduction, is that correct? [LB296]

DEBORAH GOODKIN: That's correct. [LB296]

SENATOR SCHUMACHER: If we were to get rid of the income tax, what would be the impact on the program? [LB296]

DEBORAH GOODKIN: We wouldn't need this, would we? That part of this bill. [LB296]

SENATOR SCHUMACHER: I don't have any further questions. Anyone else? Thank you very much for your testimony. [LB296]

DEBORAH GOODKIN: Thank you. [LB296]

THOMAS O'NEILL: (Exhibit 1) Senator Schumacher, members of the Revenue Committee, my name is Thomas O'Neill, that's T-h-o-m-a-s O-'-N-e-i-l-l. I'm the president of the Association of Independent Colleges and Universities of Nebraska. AICUN is a consortium of 14 privately controlled, nonprofit colleges and universities located within the state. I provided you a little one-page fact information about us. We enroll 33,000 students. We awarded more than 41 percent of all bachelor's and advanced degrees in Nebraska in 2011. I was privileged to work on LB1003 when Nebraska passed the first college savings plan bill back in 2000. Nebraska was, quite frankly, relatively late to join the rest of the states in passing a Section 529 plan, but I believe in...it worked to our advantage, ultimately. In 2000 our State Treasurer, Dave Heineman, was the president of the National Association of State Treasurers and he had seen what had worked well in other states and what had not worked well. He worked closely with Senators Don Pederson and Ed Schrock in crafting a Nebraska program that I believe combined the best elements of plans from across the country, and I think that's why our plan has been very successful. We also have had effective administration in marketing our plan, first with Union Bank and Trust in Lincoln, and now with First National Bank of Omaha. We need to encourage families to save for college. And enhancing tax benefits will certainly encourage more participation. I mean that's...we started this plan in 2000 at a time of great fiscal difficulty in the state and that's why we had a $1,000 deduction. The bill as introduced had a $5,000 deduction; and we had to knock it back to $1,000 because we just couldn't pass the bill with the fiscal note the way it was initially. And, ultimately, we increased that to $5,000 a few years later and now we're, I think, coming back and trying to get it to $10,000. Because from a marketing standpoint, that's something that will encourage more people to participate and encourage more dollars going into the plans. And that helps people save for college, that means more money can be utilized for people who can't afford to save for college. And quite frankly, there are generations of students that are going to be coming along here whose families won't be able to afford to save for college. And so people who can afford to pay for college will have to pay more. And so that's why we support the bill, and we encourage the Revenue Committee to advance LB296. Be happy to answer any questions you might have. [LB296]

SENATOR SCHUMACHER: Seeing none, thank you, Mr. O'Neill, for your testimony. [LB296]

THOMAS O'NEILL: Thank you. [LB296]

SENATOR SCHUMACHER: More proponents? Good afternoon. [LB296]

COURTNAY VANDEVELDE: (Exhibit 2) Good afternoon. My name is Courtnay VanDeVelde, C-o-u-r-t-n-a-y V-a-n-D-e-V-e-l-d-e. I'm a policy associate at Voices for Children in Nebraska. Voices for Children is in support of LB296 and commends Senator Hadley for bringing it forward. The rising cost of tuition has moved higher education out of reach for many families. Students are increasingly graduating with significant amounts of debt, and in 2011, 63 percent of Nebraska's college students graduated with that averaging $24,284. This trend has made savings for higher education significantly more important. While attaining higher education is good on an individual level, it also impacts the state's ability to create a well-educated, workforce-ready population. By 2018, a projected 66 percent of Nebraska jobs will require some sort of postsecondary education. However, in 2011, only 37.6 percent of Nebraskans over 24 years old had some sort of postsecondary degree. Research suggests that having an educational savings account is likely to have a positive effect on children's college progress, even when other factors impacting college success are controlled. These findings suggest that an educational savings account can increase the likelihood of both seeking and completing a postsecondary degree. In supporting the bill, we also hope that the Legislature will consider additional steps that might be taken to help lower income families save for college. One way to make savings easier would be to allow individuals the opportunity to split tax refunds between checking and savings. The state could allow for direct deposits of full or partial state income tax refunds into checking while also giving the option to deposit into a 529 college savings plan. Another option would be to track the data on the existing accounts to highlight the need for reform. Texas required that state 529 plans collect data on parental income and race or ethnicity. The data showed that children of color were drastically underrepresented as were those making less than $50,000 annually. In helping more families save, it may be worth assessing to see where Nebraska stands on these issues. Many other states also offer matching contributions for some or all families. For instance, Kansas provides a state match for 529 contributions of up to $600 for families at or below 200 percent of the federal poverty line. In San Francisco, the state created kindergarten to college initiative in the fall of 2010 by opening college savings accounts for 25 percent of those enrolled in public kindergarten. As of July 21...or July 31, 2012, 343 students were enrolled. And this pilot program will be expanded to 100 percent of kindergartners this year. All of these are examples which Nebraska could consider using as a long-term goal, and we respectfully encourage the committee to advance this bill while also considering options to continue support for lower income families. Thanks. [LB296]

SENATOR SCHUMACHER: Any questions? Senator Pirsch. [LB296]

SENATOR PIRSCH: Do you know...I take it all three of these ideas were taken from other states, is that right where they're currently in? Obviously, the good one from Kansas and California, but with respect to the individuals given an opportunity to split tax refunds between checking and savings, where's that implemented and has that had an effect in those...if it has been implemented in other states, or...? [LB296]

COURTNAY VANDEVELDE: Yes. We have research on that. I'm not sure of all that on top of my head. I do know Alaska has a really good plan and they use that on their tax refund form because I know that was something we were working towards. [LB296]

SENATOR PIRSCH: Wonderful. But I'd just be...I'd just make a personal outreach to, if you wanted to share that... [LB296]

COURTNAY VANDEVELDE: Sure, I can get you that information. [LB296]

SENATOR PIRSCH: ...the information behind these three requests to my office if you want. [LB296]

COURTNAY VANDEVELDE: Definitely. [LB296]

SENATOR SCHUMACHER: I just got one or two questions here. Are you at all bothered by the fact that...let's say...let's just use the magic number of 360,000, that to that child the taxpayers will be making roughly $150,000 contribution to his education? I mean to have that much money, grandma and grandpa's got to be well-off, and probably the parents well-off, and the child who maybe his folks are making average Nebraska income of $50,000 aren't in a position to take advantage of this. And so the government is making a substantially lower contribution to their education and that continues to build income and wealth disparity in the country. [LB296]

COURTNAY VANDEVELDE: I'm sorry, I don't...I misunderstood your question. Can you clarify it? [LB296]

SENATOR SCHUMACHER: Are you concerned that this program being so very favorable to those who can afford it, is contributing to what has been identified as a problem between...an income disparity between the very wealthy and the...even the kind of wealthy and not so wealthy? [LB296]

COURTNAY VANDEVELDE: Definitely, yeah. [LB296]

SENATOR SCHUMACHER: Any other questions? Thank you. [LB296]

COURTNAY VANDEVELDE: Thanks. [LB296]

MICK MINES: Senator Schumacher, members of the committee, for the record, my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist representing the National Association of Insurance and Financial Advisors of Nebraska, or NAIFA. On behalf of our 1,100 member insurance agents and financial services professionals, we do support LB296. NAIFA professionals frequently include a 529 plan as an important component in grandparents planning for their grandchildren as well as young couples planning for their children's education. I won't go over everything that has been said, but we do believe that expanding the 529 from $5,000 to $10,000, as well as recognizing rollover contributions from other states, is certainly an advantage and will help families as they set aside funds for future college education. With that, I'd be glad to answer any questions. [LB296]

SENATOR SCHUMACHER: Any questions? [LB296]

MICK MINES: Thank you. [LB296]

SENATOR SCHUMACHER: Thank you, Mr. Mines, for your testimony today. Any other proponents? [LB296]

KEN KOOP: Thank you. My name is Ken Koop, last name is K-o-o-p. I'm a proponent of LB296. Wanted to thank you for this opportunity. For the last 22 years, I worked as a financial professional here in Lincoln. About 60 percent of the people I work with are residents. I would say that there is a real advantage to this plan both when you make these changes over the years I've seen. The top three things that I work with individuals on are saving for their home, saving for retirement, saving for college. And so, I just wanted to come down and say I really was excited when we saw this come forward. [LB296]

SENATOR SCHUMACHER: Any questions for Mr. Koop? Thank you very much for your testimony and appearing today. [LB296]

KEN KOOP: Thank you. [LB296]

SENATOR SCHUMACHER: More proponents? About time for opponents. [LB296]

SUSAN SPAHN: Good afternoon, Senator Schumacher, members of the hearing. My name is Susan Spahn, S-u-s-a-n S-p-a-h-n. I'm a private practice attorney in Omaha, and I'm here opposing a very small portion of the bill on behalf of the Nebraska State Bar Association. I've been in private practice in Omaha for over 20 years; and my practice has always focused in the estate planning area of law, estate and trust administration, and also in estate litigation. So I've literally seen the good, the bad, and the ugly. And what my focus here today to speak to you about is to potentially thwart a little bit of ugliness that could occur for some families. The focus of the bar's concern with this bill is only...the only concern they have is on page 14, and it concerns what happens when the person who set up the account dies. As the bill reads today, an account owner, the person that set up the account, put the money into the account, and named the beneficiary of the account. He also had the right to name a successor owner upon his death. If for some reason the person he named is unable to take ownership, be death or whatever reason, or if he fails to utilize that right, he says, well, I'll do that sometime later, then he never goes back and names a successor owner, then as the law reads today, the rights to control that estate would revert to his estate, his probate estate, and the personal representative would administer that account. The good thing about that is that you've now provided a forum and the personal representative owes a fiduciary duty to the beneficiaries. So you have a forum where people can come in to address what's the proper administration of that account. And I do understand the concerns that that brought about the proposed changes to this bill, but we do have a concern with changing the default ownership from the estate to a spouse, a surviving spouse. In 80 percent of the happy family situations where the husband and wife also are the parents for all of the children of the account owner, maybe this won't be a problem because the surviving spouse is going to, supposedly, have the best interest of the account beneficiary at heart if it's a typical situation where, let's say, the husband established an account for his children and those children are also his wife's children. But there are many...we have many blended families. We have second and third marriages, and the link between a stepparent and a stepchild may already be a tenuous link and that link may be lessened when the spouse dies that linked them together. And that is the bar's only concern with this bill is that by naming the spouse as the default, you have now given that spouse the right to take the money out of the account or to change the account beneficiary. And the concern we have is, if you think about it, the account beneficiary...if this account was established by his or her parent, be it a father or mother, not only have they lost their parent, their parents died. Now you have their means of obtaining a college education and trying to fulfill their hopes and dreams put at the hands of a stepparent who may not have their best interest at heart, who may have her own children that she wants to benefit from those monies. The bar's willing to work with options. It's automatically defaulting to the spouse that we find leaves that child so vulnerable and the account owner so vulnerable that we think that child should be protected. And we don't see it as administration of justice that that account beneficiary's rights to that money is put in the hands of someone who may not have their best interests at heart. So, you know, the bar's position is to promote the 529 plans. As an estate planner, we suggest our clients fund the plan. And for whatever reason it is that there isn't an account beneficiary named, sometimes it's intentional, sometimes it's just a slipup and they forget to do it, but we do have the common goal to make sure that that money is available for the named beneficiary, that the person who put the money in there, named to receive those funds when that person went to college. So that's our only concern we have about this bill. [LB296]

SENATOR SCHUMACHER: Any questions for Ms. Spahn? Senator Pirsch. [LB296]

SENATOR PIRSCH: So just to make sure that I understand, you think it may...the fact that somebody has not named a...or there is no successor account owner, maybe they were negligent but it also may be a purposeful act in which the original account owner does not necessarily intend for the...your hypotheticals, you know, second new spouse to be directing. So, you, by default, you would...your position is that it should go through probate then and...because that at least gives the guidance...there's a fiduciary duty to act in the best interest of the beneficiary. Is that...or might there be an alternative to probate? [LB296]

SUSAN SPAHN: I think I...I can understand why they went to probate when this bill was initially passed for the reasons that I suggest. I think that a way you could alleviate the bar's concern with this bill and alleviate the concern that brought about these proposed changes would simply be to take out the language of it going to the account owner's spouse, and instead just drop down directly to the account beneficiary. And in that way, the child for whom the account was established and for whom the money was placed into the account will now be the account owner. That would be one way of making sure that the deceased account owner's intent of assuring the education of the named beneficiary are going to be carried out. [LB296]

SENATOR PIRSCH: And in the instance, though, for...you know, just a hypothetical though, say the beneficiary who is a child...say a child of the first marriage or whatnot, so that would be...how would that effectively be controlled for, by the...would that be...? [LB296]

SUSAN SPAHN: There's two options what you could do. You could go into a guardianship/conservatorship for a one-time protective order and name a custodian to manage the child's interest in that account until the child attains the age of majority. That would be a very easy way and the least restrictive means of controlling that account for the child. I don't perceive that there would be a need for a full-blown conservatorship because the accounts are simply going to be there in that account and managed on behalf of the child. But a full conservatorship would be an option for a minor child or the judge could appoint a custodian to manage that account for the deceased child...for the minor account owner under Nebraska Transfers to Minors Act. And most states have UGMA, Uniform Gifts to Minors Act, in some form or another. So I don't think that would be a problem for out-of-state people that are using this account. [LB296]

SENATOR PIRSCH: Okay. Well, thank you for that. [LB296]

SUSAN SPAHN: Thank you. [LB296]

SENATOR SCHUMACHER: I have just a couple of questions before you get away from us here, Ms. Spahn. When these gifts are made, they're made under what the $13,000 federal gift tax exclusion, so...? [LB296]

SUSAN SPAHN: Yes, that's correct. [LB296]

SENATOR SCHUMACHER: And yet although they're a gift, if I understood the prior testimony, the grantor retains the power to shift it back and forth between different people and even to use it himself? [LB296]

SUSAN SPAHN: It's too good to be true, but it is. That's correct. [LB296]

SENATOR SCHUMACHER: So you could designate a grandkid and then...do it...give it to yourself if you decided to go back to school? [LB296]

SUSAN SPAHN: That's correct. That's my understanding of it. Or let's say the one grandchild goes to trade school, doesn't want to go to college and goes to trade school and learns skills for a different job or opens their own business, then you can take the funds and name another child or grandchild as the account owner. [LB296]

SENATOR SCHUMACHER: So is this a vehicle for tax deductible tuition? [LB296]

SUSAN SPAHN: Well, it's a vehicle for... [LB296]

SENATOR SCHUMACHER: For yourself. [LB296]

SUSAN SPAHN: ...for yourself, sure. But even if you...if you have a child or grandchild attending college, you can pay those college funds directly and it can be above the annual exclusion amount. It is a great tool for utilizing an exemption when you have minor children that you want to benefit, be them your own children, or more likely, grandchildren. It's a great way to spend down your estate so that less...you have less to pay federal estate tax on upon death. [LB296]

SENATOR SCHUMACHER: Now the problem that the bar sees is...arises only in those situations where the grantor or the donor, whatever we want to call this person, I guess they're called participant. Is that the correct term? [LB296]

SUSAN SPAHN: That...yes, the account owner can participate. [LB296]

SENATOR SCHUMACHER: Okay, the account owner dies and has failed to name a successor account owner, that's the only time that we've got an issue. [LB296]

SUSAN SPAHN: That's the only time we have an issue with the changes that are suggested in this bill. The bar association opposes that the default new owner would be automatically the spouse of the deceased account owner. [LB296]

SENATOR SCHUMACHER: And...but this is relic or is it because if the person has got a good lawyer they will have named a successor owner if they're not satisfied with the spouse? [LB296]

SUSAN SPAHN: Well, sometimes clients will establish these accounts without telling us. Sometimes we won't be involved in completing the process or the forms that are necessary, and sometimes there's a lot of people out there that don't do estate planning through the attorney that thoroughly does their job. So for the ones that thoroughly do the job, those 10 percent there's not going to be a problem. But we need to protect the ones that don't thoroughly do their job. [LB296]

SENATOR SCHUMACHER: But if there's a...like in many cases, particularly now we've got a $5 million federal level, everything is in joint tenancy. There's no need to pay a lawyer to open an estate to do any of this, so...and probably people would like to have a little stash over here for their grandkids or whatever, and if they do neglect to name a successor and don't feel comfortable with their spouse, why would we want to make them open a probate? I mean, there's got to be a simpler way to do this. [LB296]

SUSAN SPAHN: The simpler way would be to take it from the probate as this bill suggests, but instead of naming the spouse, name the account beneficiary as the new owner. [LB296]

SENATOR SCHUMACHER: Then we get into the problem that Senator Pirsch highlighted and then we've got a...if you got a minor kid you're back in the courtroom with another lawyer. [LB296]

SUSAN SPAHN: Well, and sometimes lawyers are necessary...a necessary...I'm not even going to call us an evil. (Laughter) We're a necessary component of life and the guardianship/conservatorship statutes are there to provide state administration of the funds of a minor. And they do serve a good purpose when used properly and appropriately. [LB296]

SENATOR SCHUMACHER: When a guardianship would be created, would it be subject to the rules that are giving people a lot of grief now where a stack of papers got to be filled out each year? [LB296]

SUSAN SPAHN: Well, we're hoping...I am on the permanent Guardianship/Conservatorship Commission that the Chief Justice just announced. I will be serving on that and I'm hoping that through the next couple years we can streamline that process. I've been working on that for six months now with other members of the bar association. And this is the type of situation where we would hope that it would be streamlined. [LB296]

SENATOR SCHUMACHER: What if we just restrict the spouse's authority to name a different beneficiary in the event the first beneficiary dies and let the spouse functionally be the trustee or the owner, and her or his only power would be to change beneficiary in the event the beneficiary died? [LB296]

SUSAN SPAHN: That would be one option. That would be one option. [LB296]

SENATOR SCHUMACHER: And so in that rare occasion when somebody doesn't name a successor account owner and it does end up in the spouse's hands, the spouse is restricted and can't give it to her kids or his kids instead. [LB296]

SUSAN SPAHN: They could still...they're still the ones that are calling the shots to authorize the distributions from the account to the institution of that child's choice. So, they're still...the powers...the purse string is still there, and... [LB296]

SENATOR SCHUMACHER: If we restricted though to that person and that person is alive and going to school, then what...they can sit on the money and cause it to become taxable and they can't transfer it to anybody else. [LB296]

SUSAN SPAHN: That's true. And they could do that. And that's the ugly part about my world is seeing the vindictiveness and the lack of consideration between a second spouse and the children of the first relationship. It is not pretty and I can...I see... [LB296]

SENATOR SCHUMACHER: What if we provide that ownership of that authority terminates when the kid becomes 19 and he has the power then? [LB296]

SUSAN SPAHN: Or what you could do...another option would be when the child attains the age of 14 or 16, let him name the account holder for himself. That would be another option because I think under family law when a child turns 14, they have a say in where they, the custodial parent, where they live. Fourteen-year-old, they pretty much know who has their back and who doesn't. So one option would be if the account beneficiary is 14 or over, listen to them to select who would be the custodian of their account and automatically establish a custodial account without needing to go through a guardianship or conservatorship, because I understand...I understand your frustrations with those statutes currently. [LB296]

SENATOR SCHUMACHER: Okay. Thank you for your testimony. We might want to work with you a little bit on an option or at least have you review if we cook up something on our own. [LB296]

SUSAN SPAHN: We would love to and there's a core group of us. I've been involved...I'm serving my third time on the House of Delegates which is the branch of the bar that makes the decision on these things. I've been involved in the legislative committee for about five or six years, so I've been working with the attorneys on this area for a while and we'd be more than happy to discuss any changes or tweaking that you have in mind. Thank you. [LB296]

SENATOR SCHUMACHER: Thank you very much for your testimony. Any other opposition? Anybody neutral? Seeing none, that looks like that closes the hearing on LB296. Oh, Senator Harr, I apologize. You were sitting there so quiet, I didn't... [LB296]

SENATOR HARR: Just a couple...just a little cleanup, if I may. First of all, it's always great to see the bar here and whenever a piece of legislation that the bar isn't supporting, they're always in opposition, so it's always nice to see them. I think to be honest, I think her testimony, of Ms. Spahn, is probably more neutral than opposition and it's something we can clean up and I think we can work together on. Your question earlier about the...someone donating or contributing $360,000. Remember, we're still limited to the number you can give per year. So it wouldn't be as subsidized quite to the degree I think you had indicated on the record. I want to thank everyone who came to testify today, especially the Treasurer. I think this is a good bill. I think this is very good public policy as we, as committee, look at what our tax policy is and our priorities. Obviously, our...to quote--it's almost been a year now, hard to believe--children are our future, treat them well and something else. But I think it's important that we...that this is good legislation and it's good public policy, and I would encourage that we pass this legislation. [LB296]

SENATOR SCHUMACHER: Senator Harr, if grandma and grandpa throw in ten a year, other grandma and grandpa throw in ten a year, parents throw in ten a year, that's thirty years, that's...do that for...or thirty thousand, do that for 12 years, you get to the $360,000. [LB296]

SENATOR HARR: You would if each give that amount. But under your scenario, as I understood it, it was one person giving $360,000 up-front. [LB296]

SENATOR SCHUMACHER: Well, but the state's contribution under that particular case, or the governments', federal government and state government, just for rough figures, 40 percent times the $360,000, you do come up with a number close to one hundred fifty. [LB296]

SENATOR HARR: I mean, we're making some assumptions there on what tax rates are. I think there are a lot of assumptions that go into that, but I do understand what you're saying. [LB296]

SENATOR SCHUMACHER: Any other questions for Senator Harr? Thank you. [LB296]

SENATOR HARR: Thanks. [LB296]

SENATOR SCHUMACHER: Thank you for your presenting that bill. All right, LB264, and we're ready to...Senator Bolz is here ready to present her bill. [LB296]

SENATOR BOLZ: (Exhibits 3-5) Well, good afternoon. My name is Kate Bolz, that's K-a-t-e B-o-l-z and I represent District 29 in the Nebraska Legislature. I'm pleased to introduce LB264 which provides tax relief for families who support a senior loved one in their home. It is an idea that has been explored by the Nebraska Unicameral in the past by my predecessor, then Senator Tony Fulton. I would like to thank him for his assistance with this bill, and I bring with me a letter of support from Mr. Fulton, from his perspective as the owner of Guardian Angels Home Care. The bill would provide tax credits for people providing care in their homes for elderly persons. LB264 provides a $500 elder tax credit to qualified middle-class residents who provide in-home care to a loved one who is 65 or older. The senior loved one must have a self-care disability, have an annual adjusted gross income of 250 percent of the federal poverty level or less, that's $27,925, and must reside throughout the year in the taxpayer's principal home. A self-care disability is defined by the U.S. Census Bureau as a physical, mental, or emotional condition lasting at least 180 days that makes it difficult for one to dress, bathe, or get around inside the home. And this language is reflected in the bill. Families frequently care for loved ones who have more challenging needs as well, such as dementia. Nebraska had 219,000 family caregivers in 2009; in 2011, 237,000 Nebraskans were 65 and older; and 12,664 were deemed to have a self-care disability. The tax credit is directed towards the caregiver. The credit is refundable for caregivers earning up to 250 percent of the federal poverty line or $57,000 for a family of four, and is nonrefundable for those earning up to 500 percent of the federal poverty line or about $115,000 for a family of four. I have brought with me this afternoon an amendment to clarify that only one caregiver in a household may qualify for the credit. The household must deem one individual in the household to be the caregiver and that person may qualify. Nebraska has an aging population. Cost-effective, long-term solutions must be found and assuring our tax code reflects family effort to care for aging loved ones is a part of the solution. A modest tax credit will help families to continue to care for the elderly in their homes. Such a credit might purchase a bathroom remodel for someone with mobility issues, purchase nutritional supplements, or hours of respite care. It is in the state's good financial interest to encourage home-based care and it is also frequently the preference of aging Nebraskans. Providers tell me that low-income Nebraskans will quickly spend down their assets and become Medicaid eligible, and moderate-income people may spend down in about 18 months. The average cost of a year's worth of nursing home care under Medicaid in Nebraska is $56,000, and 52.9 percent of Nebraska nursing home residents rely on Medicaid for their care. Medicaid costs per recipient of nursing home care is three times the cost of in-home care. Nebraskans caring for elderly relatives deserve tax fairness. The tax code reflects a variety of circumstances that Americans face such as paying for childcare, education. While tax credits are specifically available for adult day-care expenses, and for those caring for elders with significant medical costs, our tax code does not reflect the additional contributions such families make in caring for a variety of elder care needs, ranging from transportation to nutritional needs. LB...this bill recognizes the growing demographic shift, supports the efforts of family members, and will save tax dollars by delaying entry into nursing homes. It particularly helps people who may struggle to afford to care for a loved one by providing a modest tax credit for the lowest income...modest refundable tax credit for the lowest income families. I ask you to advance LB264. [LB264]

SENATOR SCHUMACHER: Any questions for Senator Bolz? Senator Pirsch. [LB264]

SENATOR PIRSCH: And thank you very much for bringing this concept to the committee's attention. I...and it is a big problem that Nebraska faces in aging population that makes sense, both in terms of quality of life for that individual staying in the home is a very important thing, and having that care certainly can help extend that period of time in which that individual can stay in the home. And it's a potential win for the state because alternative sources of care typically cost the state and the taxpayers a great deal more money. Let me just ask you, was this based upon...this was the same statutory language that Senator Fulton had introduced before, is that correct? [LB264]

SENATOR BOLZ: It is the same with the addition of the amendment I mentioned. [LB264]

SENATOR PIRSCH: Okay. And maybe I'd better look at the...well, and here's just a question, and was this based off some other model language or some other state, do you know? [LB264]

SENATOR BOLZ: I do know that other states have such tax credits. I followed the language that had been introduced in the body before. [LB264]

SENATOR PIRSCH: Wonderful. And is in...so in the way that it's structured both in the amendment, with the amendatory language, I think, AM110 in the original, and in the original on page 6, it speaks to who is eligible for the incentive, and so we're talking about the caregiver and to whom may be eligible a credit of $500. And says, "qualified resident individual's"...that individual had to have a federal adjusted gross income exceeding 250 percent of the federal poverty guidelines, is that right? [LB264]

SENATOR BOLZ: I'm not sure if I'm following exactly what you're referencing, but the person for whom the care is being given, the elderly person, it is targeted for folks who are caring for a low-income elderly person, a person who's most likely to enter a nursing home and quickly become Medicaid eligible. [LB264]

SENATOR PIRSCH: Right, oh, sure. And I think it speaks to...so there's two individuals involved, the individual who provides care and the presumably aged person who receives the care. And it speaks to, in your original bill, line 10 down, the person who receives the care, they have to reside in the same principal place of abode during the taxable year; have to be 65 years old; have a physical, mental, emotional condition, etcetera. But previous to that in subsection...in 6(a) it talks about the person who is providing the care and it says...I think it is anyhow and that's why I just want to clarify it. It says: There shall be allowed...so let me just start with at the top of page 6 of the original bill and it says, there shall be allowed to what you call a qualified resident individuals as a nonrefundable credit against their income tax, a credit of $500 if the qualified resident who individual's federal adjusted gross income exceeds 250 percent of the federal poverty level but not to exceed 500 percent. So in other words, am I getting it right that it matters the income of the person who is providing the care, right? [LB264]

SENATOR BOLZ: That's right. In the simplest terms, we were attempting to target this tax credit to the folks who could most benefit from it. Folks who are quite well-off may not need such a tax credit, may not make a difference in their ability to care for a loved one in their home. [LB264]

SENATOR PIRSCH: Right. [LB264]

SENATOR BOLZ: And we further targeted it by making it refundable for moderate income...sorry, nonrefundable for moderate-income families and refundable for low-income families who might have the most difficulty in purchasing Depends or modifying an entryway. [LB264]

SENATOR PIRSCH: Okay. And maybe I'm just not...I didn't have a chance to read in its totality, but is there...this specific passage that I just glanced over here said that you have to be a caregiver who receives benefit from this, you have to exceed 250 percent of the federal poverty level guideline. In other words, is that because that floor that you have to hit...you have to have income that exceeds that amount before you receive a benefit, is that just part of another...is it addressed elsewhere in the bill that you have...I think and maybe you said that, that it's refundable if you're earning below 250 percent, is that what...is that your...? [LB264]

SENATOR BOLZ: That's right. [LB264]

SENATOR PIRSCH: Okay. Well, that makes sense then and I just have not come to that language or is that part of the amendment? [LB264]

SENATOR BOLZ: That's in the original bill. The amendment refers only to... [LB264]

SENATOR PIRSCH: Oh, here we are, part seven. [LB264]

SENATOR BOLZ: ...the effort to tighten up who may apply. [LB264]

SENATOR PIRSCH: Okay. Here it is. Yeah, on the bottom of page 6. Thank you. [LB264]

SENATOR BOLZ: Sure. [LB264]

SENATOR SCHUMACHER: I just have a couple of questions, Senator Bolz. First of all, this is a tax bill, so it's the folks over in the tax department that will make the decision whether it's to allow this and whether to issue the refunds and everything. How do they determine who has a physical, mental, or emotional condition that lasted 180 days and that it made them...made it difficult for them to bathe, dress, or get around inside the home? How do they...what is that...what does that mean, and how do they know when they're sitting in Lincoln opening tax returns? [LB264]

SENATOR BOLZ: That's a fair question, Senator. That definition is something that we took from the U.S. Census Bureau. The U.S. Census Bureau tracks a number of those folks. And I agree there might be some opportunity to clarify or tighten up that language to make it practical. I don't know if it's something that you could do through attestation or whether someone could prove that they have arthritis. That's certainly something that I would be happy to work on as an improvement to the bill. [LB264]

SENATOR SCHUMACHER: And then the next question is, and thank you for clarifying the...that there's only one of these in a household, but that triggered another thought and that is, can a spouse...can you crisscross? Can each spouse be for the other and get a thousand bucks? [LB264]

SENATOR BOLZ: Right, that is not my intention and I think that one person would have to be designated the "care-or" and one person designated the "care-ee." Again, I'd be happy to take a look at it and see if we could tighten it up to make sure that we wouldn't be cross-allowing the tax credit. [LB264]

SENATOR SCHUMACHER: Thank you very much for your testimony. [LB264]

SENATOR BOLZ: Sure. [LB264]

SENATOR SCHUMACHER: Any other questions? Oh, Senator Pirsch. [LB264]

SENATOR PIRSCH: Just a brief one. How much is 250 percent of the federal poverty level? Do you know offhand? [LB264]

SENATOR BOLZ: For an individual, it's $27,925. [LB264]

SENATOR PIRSCH: Okay. And for married... [LB264]

SENATOR BOLZ: For a family of four, it's $57,000, about. [LB264]

SENATOR PIRSCH: Okay. [LB264]

SENATOR BOLZ: $57,625 for a family of four is 250. [LB264]

SENATOR PIRSCH: Thank you. It's wonderful. [LB264]

SENATOR BOLZ: Thank you. [LB264]

SENATOR SCHUMACHER: Thank you. Next proponent. [LB264]

SUSAN CAMPBELL: Hi. My name is Susan Campbell. It's S-u-s-a-n C-a-m-p-b-e-l-l, and I'm a volunteer caregiver advocate at the very grass-roots level. I became a caregiver in 1972 when my mother was killed in an automobile accident and my father was unable to live by himself. So my husband...we moved to a very rural area with our four small children, four sons, and I cared for my father for the remaining six years of his life. Didn't...I don't think the word "respite" had been coined at that time. I'd certainly never heard of it. I did the best I could with what I knew. Later, I became...I worked with older persons first in Ashland as the senior center manager, then I took over the county aging programs, and then I moved to an office here in Lincoln and was director with the Senior Companion Program for 15 years. I worked with a lot of people and senior companions are at 125 percent of poverty to be a senior companion under the federal program. I worked with a lot of caregivers in that regard with the clients because they needed relief. Respite is just relief, and it takes many forms. It depends on what you consider relief. When I was caring for my father in a rural area, I...my relief was go, when my husband came home from work after supper, I would go into the bathroom, lock the door, sit in the bathtub and read. That was my relief. Also I learned...my husband was ill 16 years before he passed away and while insurance paid, he had cancer to begin with and then a lot of medical problems after that and had some good years in-between there, but he also inherited a degenerative heart disease from his father, so we dealt with that too. And there are so many hidden costs in caregiving that you don't think about: that he had to have shots, and we lived in Ashland, he doctored in Omaha, so we had to drive to Omaha, in the beginning sometimes as often as three times a week. Then it came down to once a week. And while insurance paid for the shots which were $1,900, it didn't pay for some of the other medical things we had to have. He had to have different clothing to accommodate some medical apparatus. There's just a myriad of things that you have to have. While doing this, then, I became aware of other people struggling with caregiving issues and so and too having those same, same issues of not always having enough money maybe to buy what they needed. And we were very blessed. I'm not saying we would have benefited from this, but I'm speaking for the people who would because there are many people who could not afford to pay for the gas to drive back and forth; who could not, perhaps, afford to buy different clothing and so on. And it has already been stated about keeping people in their own home what a cost-saving that is to the state and it is. Because even if you have in-home healthcare, it's still less expensive than being in a facility. The other thing I wanted to say was, we...there are pockets of respite relief available, but...to healthcare givers, but there isn't a total answer. So this would just be a piece of the puzzle, and that's how any journey begins with one step. There are pockets we actually as caregiver chicks...we set up an endowment through the Lincoln Community Foundation to give monies to caregivers and the endowment is now funded, and last November we helped two caregivers which was really thrilling for us. There are six caregiver chicks and we're just volunteers. I still work with caregivers out of my home although I'm not a licensed social worker anymore. It's all volunteer. And I'm losing my train of thought because I'm such a blabbermouth. (Laughter) No, I am, I am. I'm losing my train of thought. Oh, we set up this endowment and this $500 would just be another piece. When you think of a puzzle and you plug in pieces because there...we set up this endowment because knowing that if you had Alzheimer's or some other dementia, you can have some dollars from...from the Alzheimer's Association. There is a state subsidy that you can have some dollars, but if you don't fit into those, where do you go for help? So that's why we set up this endowment and I think this is a very important...and I think it would be responsible on your part to pass this bill so that at least they would have this $500. And whether they chose to use it for respite, I think the average cost of respite is like $10, so you'd have $50 worth of respite you could have. Maybe they'd spend it on gasoline, maybe they'd spend it...whatever would make relief for that caregiver because the statistics are, I was going with when I was in the workforce, it was 37 percent of caregivers pass away before the recipient of care. Then I heard just recently, 47 percent, and now I heard 60 percent. That's alarming. So it is vitally important that that caregiver do have some relief so they can continue to care for their loved one in the home setting. So, I would encourage you really to think favorably in passing this, and I think that's all I was going to say. I'm not as...I don't have it all written out and well prepared as some people, but... [LB264]

SENATOR SCHUMACHER: Great job. Any questions? We know when you don't have it written out, you're speaking from your heart, that's good. [LB264]

SUSAN CAMPBELL: I am. I am. Thank you for listening to me. [LB264]

SENATOR SCHUMACHER: Thank you for your testimony. Any more proponents? [LB264]

MARK INTERMILL: (Exhibit 6) Good afternoon, Senators. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP to support LB264. I really don't have too much to add to what you've already heard. We think this is an important bill because of the amount of good that caregivers do for our state. In my statement I talk about the issue of spend down and every day that a caregiver continues to function in that role is a day that we delay the spend down of a nursing home resident to Medicaid eligibility. So I think there is a fiscal impact, a positive fiscal impact of encouraging caregivers. As Ms. Campbell said, caregivers shoulder a big burden and that burden can manifest itself into other healthcare conditions that need to be addressed. So if we can provide some means of providing those caregivers with a means of respite, that is beneficial both to them and also to society in general. We are on the cusp of demographic transformation. I'm 56 years old. I will be 80 years old in the year 2035. And in that year, there will be about 130,000 people that will be older than I am in Nebraska. Right now there are about 80,000, so we are facing a large increase in the numbers of people who are of the age that they may require some long-term care services. So it behooves us to get our long-term care house in order, begin to do this now. We see this as a step in that process. As...there have been a number of steps. The Long-Term Care Savings Plan was referenced earlier today, that's one of them. We have home and community-based services that play a key role. There are many different types of long-term care situations. Each of them requires a little bit different response. So we do see the establishment of the caregiver tax credit as a step towards building that long-term care system that we'll need to have in order to deal with the likes of me in about 20-some years. Be happy to try to answer any questions you might have. [LB264]

SENATOR SCHUMACHER: Any questions? I got a couple of them. This particular bill doesn't have in it and a...you could be a multimillionaire with ten farms and with ample ability to pay your caregiver a fair wage and time off and still get...the caregiver would still get the $500 bonus under this. Should we be looking at some eligibility or am I misunderstanding something? [LB264]

MARK INTERMILL: There's a limit of...for the refundable...the nonrefundable tax credit of 500 percent of poverty. So if the individual has income, and I think 500 percent of poverty--I'm just doing this off the top of my head--would be about $60,000...$60,000 to $70,000 that that would be the limitation. If your income was above that level, you wouldn't be eligible for this particular credit. And this is one of the things that we find attractive to this bill is that it is targeted both in terms of the people who can qualify for the credit or receive the credit as well as the care recipient, which I think that is 250 percent. [LB264]

SENATOR SCHUMACHER: I see that in there now. Thank you for that clarification. Any other questions? Thank you for your testimony today. [LB264]

MARK INTERMILL: Thank you. [LB264]

SENATOR SCHUMACHER: Any other proponents? Any opponents? Anybody neutral? Senator Bolz, you're closing? [LB264]

SENATOR BOLZ: I will make two very brief remarks in closing. The first is, I think it's significant Ms. Campbell happens to be a constituent and this is an issue I heard from my constituents. This is something I heard from the residents of Nebraska. And second, Mr. Intermill touched on the fact that each individual case is different, and the flexibility the tax credit allows to meet the individual family's particular needs, whether it's a new ramp for a particular home or a nutritional supplement for a particular person, I think is appealing to that. That's all I'll share. [LB264]

SENATOR SCHUMACHER: Just have one question. This $500 bonus is contingent and figured on an income basis and not an asset basis. Suppose you have ten farms, you don't look at all what assets people have, just the income? [LB264]

SENATOR BOLZ: That's something I had not thought of, Mr. Schumacher, and I'm happy to look at that issue. [LB264]

SENATOR SCHUMACHER: Thank you very much. That concludes the hearing today on LB264. Next up on the agenda is LB389. [LB264]

SENATOR BOLZ: Good afternoon and good Friday afternoon. My name again is Kate Bolz. That's K-a-t-e B-o-l-z. I feel very strongly that Nebraska should do all we can to support people who make state wards a part of their families through adoption or guardianship. That is why when I learned that federal level tax credits for such families had been eliminated at the end of 2012, I introduced LB389. However, in a positive turn of events, both for families and for the schedule of this committee this afternoon, the federal level tax credits have been extended in recent negotiations. These tax credits are quite generous. Therefore, it is my recommendation to the committee that this bill be indefinitely postponed as it is not my intention to pursue it further, and I'm pleased to see the generous tax credits on the federal level. I look forward to future efforts to help adoptive and guardianship families in Nebraska. [LB389]

SENATOR SCHUMACHER: That was easy, and holy mackerel, that never happens. (Laughter) Efficiency so early in a legislative career. (Laughter) Thank you very much, Senator Bolz. Seeing no other items on the agenda, that concludes our hearings for today. [LB389]