

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 547**

Introduced by Wishart, 27.

Read first time January 22, 2019

Committee:

1 A BILL FOR AN ACT relating to the Nebraska educational savings plan  
2 trust; to amend sections 72-1239.01, 77-2716, 85-1802, 85-1804,  
3 85-1806, 85-1809, 85-1812, and 85-1814, Reissue Revised Statutes of  
4 Nebraska; to create funds; to create the College Savings Plan  
5 Matching Grant Program and provide for state matching grants as  
6 prescribed; to harmonize provisions; and to repeal the original  
7 sections.  
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 72-1239.01, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 72-1239.01 (1)(a) The appointed members of the council shall have  
4 the responsibility for the investment management of the assets of the  
5 retirement systems administered by the Public Employees Retirement Board  
6 as provided in section 84-1503, the assets of the Nebraska educational  
7 savings plan trust created pursuant to sections 85-1801 to 85-1814 and  
8 sections 9 to 11 of this act, the assets of the achieving a better life  
9 experience program pursuant to sections 77-1401 to 77-1409, and beginning  
10 January 1, 2017, the assets of each retirement system provided for under  
11 the Class V School Employees Retirement Act. Except as provided in  
12 subsection (4) of this section, the appointed members shall be deemed  
13 fiduciaries with respect to the investment of the assets of the  
14 retirement systems, of the Nebraska educational savings plan trust, and  
15 of the achieving a better life experience program and shall be held to  
16 the standard of conduct of a fiduciary specified in subsection (3) of  
17 this section. The nonvoting, ex officio members of the council shall not  
18 be deemed fiduciaries.

19 (b) As fiduciaries, the appointed members of the council and the  
20 state investment officer shall discharge their duties with respect to the  
21 assets of the retirement systems, of the Nebraska educational savings  
22 plan trust, and of the achieving a better life experience program solely  
23 in the interests of the members and beneficiaries of the retirement  
24 systems or the interests of the participants and beneficiaries of the  
25 Nebraska educational savings plan trust and the achieving a better life  
26 experience program, as the case may be, for the exclusive purposes of  
27 providing benefits to members, members' beneficiaries, participants, and  
28 participants' beneficiaries and defraying reasonable expenses incurred  
29 within the limitations and according to the powers, duties, and purposes  
30 prescribed by law.

31 (2)(a) The appointed members of the council shall have the

1 responsibility for the investment management of the assets of state  
2 funds. The appointed members shall be deemed fiduciaries with respect to  
3 the investment of the assets of state funds and shall be held to the  
4 standard of conduct of a fiduciary specified in subsection (3) of this  
5 section. The nonvoting, ex officio members of the council shall not be  
6 deemed fiduciaries.

7 (b) As fiduciaries, the appointed members of the council and the  
8 state investment officer shall discharge their duties with respect to the  
9 assets of state funds solely in the interests of the citizens of the  
10 state within the limitations and according to the powers, duties, and  
11 purposes prescribed by law.

12 (3) The appointed members of the council shall act with the care,  
13 skill, prudence, and diligence under the circumstances then prevailing  
14 that a prudent person acting in like capacity and familiar with such  
15 matters would use in the conduct of an enterprise of a like character and  
16 with like aims by diversifying the investments of the assets of the  
17 retirement systems, the Nebraska educational savings plan trust, the  
18 achieving a better life experience program, and state funds so as to  
19 minimize risk of large losses, unless in light of such circumstances it  
20 is clearly prudent not to do so. No assets of the retirement systems, the  
21 Nebraska educational savings plan trust, or the achieving a better life  
22 experience program shall be invested or reinvested if the sole or primary  
23 investment objective is for economic development or social purposes or  
24 objectives.

25 (4) Neither the appointed members of the council nor the state  
26 investment officer shall be deemed fiduciaries with respect to  
27 investments of the assets of a retirement system provided for under the  
28 Class V School Employees Retirement Act made by or on behalf of the board  
29 of education as defined in section 79-978 or the board of trustees  
30 provided for in section 79-980. Neither the council nor any member  
31 thereof nor the state investment officer shall be liable for the action

1 or inaction of the board of education or the board of trustees with  
2 respect to the investment of the assets of a retirement system provided  
3 for under the Class V School Employees Retirement Act, the consequences  
4 of any such action or inaction of the board of education or the board of  
5 trustees, and any claims, suits, losses, damages, fees, and costs related  
6 to such action or inaction or consequences thereof.

7 Sec. 2. Section 77-2716, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 77-2716 (1) The following adjustments to federal adjusted gross  
10 income or, for corporations and fiduciaries, federal taxable income shall  
11 be made for interest or dividends received:

12 (a)(i) There shall be subtracted interest or dividends received by  
13 the owner of obligations of the United States and its territories and  
14 possessions or of any authority, commission, or instrumentality of the  
15 United States to the extent includable in gross income for federal income  
16 tax purposes but exempt from state income taxes under the laws of the  
17 United States; and

18 (ii) There shall be subtracted interest received by the owner of  
19 obligations of the State of Nebraska or its political subdivisions or  
20 authorities which are Build America Bonds to the extent includable in  
21 gross income for federal income tax purposes;

22 (b) There shall be subtracted that portion of the total dividends  
23 and other income received from a regulated investment company which is  
24 attributable to obligations described in subdivision (a) of this  
25 subsection as reported to the recipient by the regulated investment  
26 company;

27 (c) There shall be added interest or dividends received by the owner  
28 of obligations of the District of Columbia, other states of the United  
29 States, or their political subdivisions, authorities, commissions, or  
30 instrumentalities to the extent excluded in the computation of gross  
31 income for federal income tax purposes except that such interest or

1 dividends shall not be added if received by a corporation which is a  
2 regulated investment company;

3 (d) There shall be added that portion of the total dividends and  
4 other income received from a regulated investment company which is  
5 attributable to obligations described in subdivision (c) of this  
6 subsection and excluded for federal income tax purposes as reported to  
7 the recipient by the regulated investment company; and

8 (e)(i) Any amount subtracted under this subsection shall be reduced  
9 by any interest on indebtedness incurred to carry the obligations or  
10 securities described in this subsection or the investment in the  
11 regulated investment company and by any expenses incurred in the  
12 production of interest or dividend income described in this subsection to  
13 the extent that such expenses, including amortizable bond premiums, are  
14 deductible in determining federal taxable income.

15 (ii) Any amount added under this subsection shall be reduced by any  
16 expenses incurred in the production of such income to the extent  
17 disallowed in the computation of federal taxable income.

18 (2) There shall be allowed a net operating loss derived from or  
19 connected with Nebraska sources computed under rules and regulations  
20 adopted and promulgated by the Tax Commissioner consistent, to the extent  
21 possible under the Nebraska Revenue Act of 1967, with the laws of the  
22 United States. For a resident individual, estate, or trust, the net  
23 operating loss computed on the federal income tax return shall be  
24 adjusted by the modifications contained in this section. For a  
25 nonresident individual, estate, or trust or for a partial-year resident  
26 individual, the net operating loss computed on the federal return shall  
27 be adjusted by the modifications contained in this section and any  
28 carryovers or carrybacks shall be limited to the portion of the loss  
29 derived from or connected with Nebraska sources.

30 (3) There shall be subtracted from federal adjusted gross income for  
31 all taxable years beginning on or after January 1, 1987, the amount of

1 any state income tax refund to the extent such refund was deducted under  
2 the Internal Revenue Code, was not allowed in the computation of the tax  
3 due under the Nebraska Revenue Act of 1967, and is included in federal  
4 adjusted gross income.

5 (4) Federal adjusted gross income, or, for a fiduciary, federal  
6 taxable income shall be modified to exclude the portion of the income or  
7 loss received from a small business corporation with an election in  
8 effect under subchapter S of the Internal Revenue Code or from a limited  
9 liability company organized pursuant to the Nebraska Uniform Limited  
10 Liability Company Act that is not derived from or connected with Nebraska  
11 sources as determined in section 77-2734.01.

12 (5) There shall be subtracted from federal adjusted gross income or,  
13 for corporations and fiduciaries, federal taxable income dividends  
14 received or deemed to be received from corporations which are not subject  
15 to the Internal Revenue Code.

16 (6) There shall be subtracted from federal taxable income a portion  
17 of the income earned by a corporation subject to the Internal Revenue  
18 Code of 1986 that is actually taxed by a foreign country or one of its  
19 political subdivisions at a rate in excess of the maximum federal tax  
20 rate for corporations. The taxpayer may make the computation for each  
21 foreign country or for groups of foreign countries. The portion of the  
22 taxes that may be deducted shall be computed in the following manner:

23 (a) The amount of federal taxable income from operations within a  
24 foreign taxing jurisdiction shall be reduced by the amount of taxes  
25 actually paid to the foreign jurisdiction that are not deductible solely  
26 because the foreign tax credit was elected on the federal income tax  
27 return;

28 (b) The amount of after-tax income shall be divided by one minus the  
29 maximum tax rate for corporations in the Internal Revenue Code; and

30 (c) The result of the calculation in subdivision (b) of this  
31 subsection shall be subtracted from the amount of federal taxable income

1 used in subdivision (a) of this subsection. The result of such  
2 calculation, if greater than zero, shall be subtracted from federal  
3 taxable income.

4 (7) Federal adjusted gross income shall be modified to exclude any  
5 amount repaid by the taxpayer for which a reduction in federal tax is  
6 allowed under section 1341(a)(5) of the Internal Revenue Code.

7 (8)(a) Federal adjusted gross income or, for corporations and  
8 fiduciaries, federal taxable income shall be reduced, to the extent  
9 included, by income from interest, earnings, and state contributions  
10 received from the Nebraska educational savings plan trust created in  
11 sections 85-1801 to 85-1814 and sections 9 to 11 of this act and any  
12 account established under the achieving a better life experience program  
13 as provided in sections 77-1401 to 77-1409.

14 (b) Federal adjusted gross income or, for corporations and  
15 fiduciaries, federal taxable income shall be reduced by any contributions  
16 as a participant in the Nebraska educational savings plan trust or  
17 contributions to an account established under the achieving a better life  
18 experience program made for the benefit of a beneficiary as provided in  
19 sections 77-1401 to 77-1409, to the extent not deducted for federal  
20 income tax purposes, but not to exceed five thousand dollars per married  
21 filing separate return or ten thousand dollars for any other return. With  
22 respect to a qualified rollover within the meaning of section 529 of the  
23 Internal Revenue Code from another state's plan, any interest, earnings,  
24 and state contributions received from the other state's educational  
25 savings plan which is qualified under section 529 of the code shall  
26 qualify for the reduction provided in this subdivision. For contributions  
27 by a custodian of a custodial account including rollovers from another  
28 custodial account, the reduction shall only apply to funds added to the  
29 custodial account after January 1, 2014.

30 (c) Federal adjusted gross income or, for corporations and  
31 fiduciaries, federal taxable income shall be increased by:

1 (i) The amount resulting from the cancellation of a participation  
2 agreement refunded to the taxpayer as a participant in the Nebraska  
3 educational savings plan trust to the extent previously deducted under  
4 subdivision (8)(b) of this section; and

5 (ii) The amount of any withdrawals by the owner of an account  
6 established under the achieving a better life experience program as  
7 provided in sections 77-1401 to 77-1409 for nonqualified expenses to the  
8 extent previously deducted under subdivision (8)(b) of this section.

9 (9)(a) For income tax returns filed after September 10, 2001, for  
10 taxable years beginning or deemed to begin before January 1, 2006, under  
11 the Internal Revenue Code of 1986, as amended, federal adjusted gross  
12 income or, for corporations and fiduciaries, federal taxable income shall  
13 be increased by eighty-five percent of any amount of any federal bonus  
14 depreciation received under the federal Job Creation and Worker  
15 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,  
16 under section 168(k) or section 1400L of the Internal Revenue Code of  
17 1986, as amended, for assets placed in service after September 10, 2001,  
18 and before December 31, 2005.

19 (b) For a partnership, limited liability company, cooperative,  
20 including any cooperative exempt from income taxes under section 521 of  
21 the Internal Revenue Code of 1986, as amended, limited cooperative  
22 association, subchapter S corporation, or joint venture, the increase  
23 shall be distributed to the partners, members, shareholders, patrons, or  
24 beneficiaries in the same manner as income is distributed for use against  
25 their income tax liabilities.

26 (c) For a corporation with a unitary business having activity both  
27 inside and outside the state, the increase shall be apportioned to  
28 Nebraska in the same manner as income is apportioned to the state by  
29 section 77-2734.05.

30 (d) The amount of bonus depreciation added to federal adjusted gross  
31 income or, for corporations and fiduciaries, federal taxable income by



1 this subsection shall be subtracted in a later taxable year. Twenty  
2 percent of the total amount of bonus depreciation added back by this  
3 subsection for tax years beginning or deemed to begin before January 1,  
4 2003, under the Internal Revenue Code of 1986, as amended, may be  
5 subtracted in the first taxable year beginning or deemed to begin on or  
6 after January 1, 2005, under the Internal Revenue Code of 1986, as  
7 amended, and twenty percent in each of the next four following taxable  
8 years. Twenty percent of the total amount of bonus depreciation added  
9 back by this subsection for tax years beginning or deemed to begin on or  
10 after January 1, 2003, may be subtracted in the first taxable year  
11 beginning or deemed to begin on or after January 1, 2006, under the  
12 Internal Revenue Code of 1986, as amended, and twenty percent in each of  
13 the next four following taxable years.

14 (10) For taxable years beginning or deemed to begin on or after  
15 January 1, 2003, and before January 1, 2006, under the Internal Revenue  
16 Code of 1986, as amended, federal adjusted gross income or, for  
17 corporations and fiduciaries, federal taxable income shall be increased  
18 by the amount of any capital investment that is expensed under section  
19 179 of the Internal Revenue Code of 1986, as amended, that is in excess  
20 of twenty-five thousand dollars that is allowed under the federal Jobs  
21 and Growth Tax Act of 2003. Twenty percent of the total amount of  
22 expensing added back by this subsection for tax years beginning or deemed  
23 to begin on or after January 1, 2003, may be subtracted in the first  
24 taxable year beginning or deemed to begin on or after January 1, 2006,  
25 under the Internal Revenue Code of 1986, as amended, and twenty percent  
26 in each of the next four following tax years.

27 (11)(a) For taxable years beginning or deemed to begin before  
28 January 1, 2018, under the Internal Revenue Code of 1986, as amended,  
29 federal adjusted gross income shall be reduced by contributions, up to  
30 two thousand dollars per married filing jointly return or one thousand  
31 dollars for any other return, and any investment earnings made as a

1 participant in the Nebraska long-term care savings plan under the Long-  
2 Term Care Savings Plan Act, to the extent not deducted for federal income  
3 tax purposes.

4 (b) For taxable years beginning or deemed to begin before January 1,  
5 2018, under the Internal Revenue Code of 1986, as amended, federal  
6 adjusted gross income shall be increased by the withdrawals made as a  
7 participant in the Nebraska long-term care savings plan under the act by  
8 a person who is not a qualified individual or for any reason other than  
9 transfer of funds to a spouse, long-term care expenses, long-term care  
10 insurance premiums, or death of the participant, including withdrawals  
11 made by reason of cancellation of the participation agreement, to the  
12 extent previously deducted as a contribution or as investment earnings.

13 (12) There shall be added to federal adjusted gross income for  
14 individuals, estates, and trusts any amount taken as a credit for  
15 franchise tax paid by a financial institution under sections 77-3801 to  
16 77-3807 as allowed by subsection (5) of section 77-2715.07.

17 (13)(a) For taxable years beginning or deemed to begin on or after  
18 January 1, 2015, under the Internal Revenue Code of 1986, as amended,  
19 federal adjusted gross income shall be reduced by the amount received as  
20 benefits under the federal Social Security Act which are included in the  
21 federal adjusted gross income if:

22 (i) For taxpayers filing a married filing joint return, federal  
23 adjusted gross income is fifty-eight thousand dollars or less; or

24 (ii) For taxpayers filing any other return, federal adjusted gross  
25 income is forty-three thousand dollars or less.

26 (b) For taxable years beginning or deemed to begin on or after  
27 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the  
28 Tax Commissioner shall adjust the dollar amounts provided in subdivisions  
29 (13)(a)(i) and (ii) of this section by the same percentage used to adjust  
30 individual income tax brackets under subsection (3) of section  
31 77-2715.03.

1           (14) For taxable years beginning or deemed to begin on or after  
2 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an  
3 individual may make a one-time election within two calendar years after  
4 the date of his or her retirement from the military to exclude income  
5 received as a military retirement benefit by the individual to the extent  
6 included in federal adjusted gross income and as provided in this  
7 subsection. The individual may elect to exclude forty percent of his or  
8 her military retirement benefit income for seven consecutive taxable  
9 years beginning with the year in which the election is made or may elect  
10 to exclude fifteen percent of his or her military retirement benefit  
11 income for all taxable years beginning with the year in which he or she  
12 turns sixty-seven years of age. For purposes of this subsection, military  
13 retirement benefit means retirement benefits that are periodic payments  
14 attributable to service in the uniformed services of the United States  
15 for personal services performed by an individual prior to his or her  
16 retirement.

17           Sec. 3. Section 85-1802, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19           85-1802 For purposes of sections 85-1801 to 85-1814 and sections 9  
20 to 11 of this act:

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

23           (2) Beneficiary means the individual designated by a participation  
24 agreement to benefit from advance payments of qualified higher education  
25 expenses on behalf of the beneficiary;

26           (3) Benefits means the payment of qualified higher education  
27 expenses on behalf of a beneficiary by the Nebraska educational savings  
28 plan trust during the beneficiary's attendance at an eligible educational  
29 institution;

30           (4) Eligible educational institution means an institution described  
31 in 20 U.S.C. 1088 which is eligible to participate in a program under

1 Title IV of the federal Higher Education Act of 1965;

2 (5) Expense fund means the College Savings Plan Expense Fund created  
3 in section 85-1807;

4 (6) Nebraska educational savings plan trust means the trust created  
5 in section 85-1804;

6 (7) Nonqualified withdrawal refers to (a) a distribution from an  
7 account to the extent it is not used to pay the qualified higher  
8 education expenses of the beneficiary or (b) a qualified rollover  
9 permitted by section 529 of the Internal Revenue Code where the funds are  
10 transferred to a qualified tuition program sponsored by another state or  
11 entity;

12 (8) Participant or account owner means an individual, an  
13 individual's legal representative, or any other legal entity authorized  
14 to establish a savings account under section 529 of the Internal Revenue  
15 Code who has entered into a participation agreement for the advance  
16 payment of qualified higher education expenses on behalf of a  
17 beneficiary. For purposes of section 77-2716, as to contributions by a  
18 custodian to a custodial account established pursuant to the Nebraska  
19 Uniform Transfers to Minors Act or similar law in another state, which  
20 account has been established under a participation agreement, participant  
21 includes the parent or guardian of a minor, which parent or guardian is  
22 also the custodian of the account;

23 (9) Participation agreement means an agreement between a participant  
24 and the Nebraska educational savings plan trust entered into under  
25 sections 85-1801 to 85-1814 and sections 9 to 11 of this act;

26 (10) Program fund means the College Savings Plan Program Fund  
27 created in section 85-1807;

28 (11) Qualified higher education expenses means the certified costs  
29 of tuition and fees, books, supplies, and equipment required for  
30 enrollment or attendance at an eligible educational institution.  
31 Reasonable room and board expenses, based on the minimum amount

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

13 (12) Section 529 of the Internal Revenue Code means such section of  
14 the code and the regulations interpreting such section; and

15 (13) Tuition and fees means the quarter or semester charges imposed  
16 to attend an eligible educational institution.

17 Sec. 4. Section 85-1804, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 85-1804 The Nebraska educational savings plan trust is created. The  
20 State Treasurer is the trustee of the trust and as such is responsible  
21 for the administration, operation, and maintenance of the program and has  
22 all powers necessary to carry out and effectuate the purposes,  
23 objectives, and provisions of sections 85-1801 to 85-1814 and sections 9  
24 to 11 of this act pertaining to the administration, operation, and  
25 maintenance of the trust and program, except that the state investment  
26 officer shall have fiduciary responsibility to make all decisions  
27 regarding the investment of the money in the administrative fund, expense  
28 fund, and program fund, including the selection of all investment options  
29 and the approval of all fees and other costs charged to trust assets  
30 except costs for administration, operation, and maintenance of the trust  
31 as appropriated by the Legislature, pursuant to the directions,

1 guidelines, and policies established by the Nebraska Investment Council.  
2 The State Treasurer may adopt and promulgate rules and regulations to  
3 provide for the efficient administration, operation, and maintenance of  
4 the trust and program. The State Treasurer shall not adopt and promulgate  
5 rules and regulations that in any way interfere with the fiduciary  
6 responsibility of the state investment officer to make all decisions  
7 regarding the investment of money in the administrative fund, expense  
8 fund, and program fund. The State Treasurer or his or her designee shall  
9 have the power to:

10 (1) Enter into agreements with any eligible educational institution,  
11 the state, any federal or other state agency, or any other entity to  
12 implement sections 85-1801 to 85-1814 and sections 9 to 11 of this act,  
13 except agreements which pertain to the investment of money in the  
14 administrative fund, expense fund, or program fund;

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

16 (3) Carry out studies and projections to advise participants  
17 regarding present and estimated future qualified higher education  
18 expenses and levels of financial participation in the trust required in  
19 order to enable participants to achieve their educational funding  
20 objectives;

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

23 (5) Procure insurance against any loss in connection with the  
24 property, assets, or activities of the trust as provided in section  
25 81-8,239.01;

26 (6) Enter into participation agreements with participants;

27 (7) Make payments to eligible educational institutions pursuant to  
28 participation agreements on behalf of beneficiaries;

29 (8) Make distributions to participants upon the termination of  
30 participation agreements pursuant to the provisions, limitations, and  
31 restrictions set forth in sections 85-1801 to 85-1814 and sections 9 to

1 11 of this act;

2 (9) Contract for goods and services and engage personnel as  
3 necessary, including consultants, actuaries, managers, legal counsels,  
4 and auditors for the purpose of rendering professional, managerial, and  
5 technical assistance and advice regarding trust administration and  
6 operation, except contracts which pertain to the investment of the  
7 administrative, expense, or program funds; and

8 (10) Establish, impose, and collect administrative fees and charges  
9 in connection with transactions of the trust, and provide for reasonable  
10 service charges, including penalties for cancellations and late payments  
11 with respect to participation agreements.

12 The Nebraska Investment Council may adopt and promulgate rules and  
13 regulations to provide for the prudent investment of the assets of the  
14 trust. The council or its designee also has the authority to select and  
15 enter into agreements with individuals and entities to provide investment  
16 advice and management of the assets held by the trust, establish  
17 investment guidelines, objectives, and performance standards with respect  
18 to the assets held by the trust, and approve any fees, commissions, and  
19 expenses, which directly or indirectly affect the return on assets.

20 Sec. 5. Section 85-1806, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 85-1806 The Nebraska educational savings plan trust may enter into  
23 participation agreements with participants on behalf of beneficiaries  
24 pursuant to the following terms and conditions:

25 (1) A participation agreement shall authorize a participant to make  
26 contributions to an account which is established for the purpose of  
27 meeting the qualified higher education expenses of a beneficiary as  
28 allowed by section 529 of the Internal Revenue Code. A participant shall  
29 not be required to make an annual contribution on behalf of a  
30 beneficiary, shall not be subject to minimum contribution requirements,  
31 and shall not be required to maintain a minimum account balance. The

1 maximum contribution shall not exceed the amount allowed under section  
2 529 of the Internal Revenue Code. The State Treasurer may set a maximum  
3 cumulative contribution, as necessary, to maintain compliance with  
4 section 529 of the Internal Revenue Code. Participation agreements may be  
5 amended to provide for adjusted levels of contributions based upon  
6 changed circumstances or changes in educational plans or to ensure  
7 compliance with section 529 of the Internal Revenue Code or any other  
8 applicable laws and regulations;

9 (2) Beneficiaries designated in participation agreements shall meet  
10 the requirements established by the trustee and section 529 of the  
11 Internal Revenue Code;

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

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

24 (5) A beneficiary under a participation agreement may be changed as  
25 permitted under the rules and regulations adopted under sections 85-1801  
26 to 85-1814 and sections 9 to 11 of this act and consistent with section  
27 529 of the Internal Revenue Code upon written request of the participant  
28 as long as the substitute beneficiary is eligible for participation.  
29 Participation agreements may otherwise be freely amended throughout their  
30 term in order to enable participants to increase or decrease the level of  
31 participation, change the designation of beneficiaries, and carry out



1 similar matters as authorized by rule and regulation; and

2 (6) Each participation agreement shall provide that the  
3 participation agreement may be canceled upon the terms and conditions and  
4 upon payment of applicable fees and costs set forth and contained in the  
5 rules and regulations.

6 Sec. 6. Section 85-1809, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

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

19 (2) If the program created by sections 85-1801 to 85-1814 and  
20 sections 9 to 11 of this act is terminated prior to payment of qualified  
21 higher education expenses for the beneficiary, the participant is  
22 entitled to receive the fair market value of the account established in  
23 the program.

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

29 (4) The eligible educational institution shall obtain ownership of  
30 the payments made for the qualified higher education expenses paid to the  
31 institution at the time each payment is made to the institution.

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

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

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

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

15 (9) A participant may designate a successor account owner to succeed  
16 to all of the participant's rights, title, and interest in an account,  
17 including the right to change the account beneficiary, upon the death or  
18 legal incapacity of the participant. If a participant dies or becomes  
19 legally incapacitated and has failed to name a successor account owner,  
20 the account beneficiary shall become the account owner.

21 (10) Upon the death of a beneficiary, the participant may change the  
22 beneficiary on the account, transfer assets to another beneficiary who is  
23 a member of the family of the former beneficiary, or request a  
24 nonqualified withdrawal.

25 Sec. 7. Section 85-1812, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 85-1812 (1) For federal income tax purposes, the Nebraska  
28 educational savings plan trust shall be considered a qualified state  
29 tuition program exempt from taxation pursuant to section 529 of the  
30 Internal Revenue Code. The trust meets the requirements of section 529(b)  
31 of the Internal Revenue Code as follows:

1 (a) Pursuant to section 85-1806, a participant may make  
2 contributions to an account which is established for the purpose of  
3 meeting the qualified higher education expenses of the designated  
4 beneficiary of the account;

5 (b) Pursuant to section 85-1806, a maximum contribution level is  
6 established;

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

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

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

14 (f) Penalties are provided on distributions of earnings which are:  
15 (i) Not used for qualified higher education expenses of the beneficiary;  
16 (ii) made on account of the death of the designated beneficiary if the  
17 distribution is not transferred to another beneficiary or paid to the  
18 estate of the beneficiary; (iii) not made on account of the permanent  
19 disability or mental incapacity of the designated beneficiary; or (iv)  
20 made due to scholarship, allowance, or payment receipt in excess of the  
21 scholarship, allowance, or payment receipt; and

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

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

26 (3) For purposes of federal gift and generation-skipping transfer  
27 taxes, contributions to an account are considered a completed gift from  
28 the contributor to the beneficiary. This subsection shall not apply to  
29 any state matching grants made pursuant to section 11 of this act.

30 Sec. 8. Section 85-1814, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           85-1814 Nothing in sections 85-1801 to 85-1814 and sections 9 to 11  
2 of this act ~~85-1813~~ shall be deemed to prohibit both resident and  
3 nonresident participants and designated beneficiaries from being eligible  
4 to participate in and benefit from the Nebraska educational savings plan  
5 trust and program. It is the intent of the Legislature that funds and  
6 income credited to the program fund are fully portable and may be used at  
7 any eligible educational institution.

8           Sec. 9.   (1) For purposes of this section, qualified private  
9 contribution means a contribution from an individual or private entity  
10 which is made for the purpose of providing an ongoing source of funding  
11 for the College Savings Plan Matching Grant Program established in  
12 section 11 of this act.

13           (2) There is hereby established in the state treasury a trust fund  
14 to be known as the College Savings Plan Endowment Fund. The fund shall be  
15 administered by the State Treasurer and shall consist of qualified  
16 private contributions and any amounts appropriated or transferred to the  
17 fund by the Legislature. Any money in the fund available for investment  
18 shall be invested by the state investment officer pursuant to the  
19 Nebraska Capital Expansion Act and the Nebraska State Funds Investment  
20 Act. No portion of the principal of the fund shall be expended for any  
21 purpose except investment pursuant to this subsection.

22           (3) Until July 1, 2020, the State Treasurer shall accept qualified  
23 private contributions and shall credit all such contributions received to  
24 the College Savings Plan Endowment Fund. On such date, the State  
25 Treasurer shall determine the total amount of qualified private  
26 contributions received under this subsection and shall transfer an equal  
27 amount from the General Fund to the College Savings Plan Endowment Fund.

28           (4) All investment earnings from the College Savings Plan Endowment  
29 Fund shall be credited to the College Savings Plan Cash Fund.

30           Sec. 10.   (1) The College Savings Plan Cash Fund is created. The  
31 fund shall be administered by the State Treasurer and shall consist of

1 all funds credited from the College Savings Plan Endowment Fund pursuant  
2 to section 9 of this act and any other money appropriated or transferred  
3 to the fund by the Legislature.

4 (2) The College Savings Plan Cash Fund shall be used to provide  
5 state matching grants under the College Savings Plan Matching Grant  
6 Program established in section 11 of this act. Any money in the fund  
7 available for investment shall be invested by the state investment  
8 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
9 State Funds Investment Act.

10 Sec. 11. (1) There is hereby established the College Savings Plan  
11 Matching Grant Program. The purpose of the program is to encourage  
12 contributions to accounts established under the Nebraska educational  
13 savings plan trust for the benefit of individuals with limited means. The  
14 State Treasurer shall implement and administer the program.

15 (2) A participant shall be eligible for the program if the  
16 beneficiary for whom contributions are made is part of a family whose  
17 household income for the most recently completed taxable year is not more  
18 than three hundred percent of the federal poverty level.

19 (3) Applications for participation in the program shall be submitted  
20 to the State Treasurer on forms prescribed by the State Treasurer. If the  
21 requirements of subsection (2) of this section are met, the State  
22 Treasurer shall approve the application and notify the applicant of the  
23 approval.

24 (4) Any participant who is approved for the program under subsection  
25 (3) of this section must resubmit an application each year thereafter and  
26 be reapproved in order to continue participation in the program.

27 (5) If a participant is approved for the program, any contribution  
28 made by such participant under the program shall be matched with grant  
29 funds provided by the State of Nebraska. The matching grant shall be  
30 equal to:

31 (a) One hundred percent of the participant's contribution if the

1 beneficiary for whom the contribution is made is part of a family whose  
2 household income for the most recently completed taxable year is more  
3 than two hundred percent of the federal poverty level but not more than  
4 three hundred percent of the federal poverty level; or

5 (b) Two hundred percent of the participant's contribution if the  
6 beneficiary for whom the contribution is made is part of a family whose  
7 household income for the most recently completed taxable year is not more  
8 than two hundred percent of the federal poverty level.

9 (6) Between January 1 and January 31 of each year, the State  
10 Treasurer shall transfer from the College Savings Plan Cash Fund to the  
11 College Savings Plan Program Fund the amount necessary to meet the  
12 matching obligations of this section for the preceding calendar year.  
13 Such amount shall be deposited into the appropriate accounts of the  
14 participants making contributions under the program.

15 (7) The State Treasurer shall prepare and submit to the Governor and  
16 the Legislature a report on the program on or before January 31 of each  
17 year. The report submitted to the Legislature shall be submitted  
18 electronically. The report shall include (a) the number of accounts  
19 opened under the program, (b) the amount of funds contributed to such  
20 accounts by the participants who are part of the program, (c) the amount  
21 of matching grant funds provided under the program, (d) the average  
22 household income of the beneficiaries for whom contributions are made  
23 under the program, (e) an analysis of the success of the program in  
24 meeting the purpose of the program, and (f) any other information deemed  
25 appropriate by the State Treasurer.

26 (8) The State Treasurer may adopt and promulgate rules and  
27 regulations to carry out the College Savings Plan Matching Grant Program.

28 Sec. 12. Original sections 72-1239.01, 77-2716, 85-1802, 85-1804,  
29 85-1806, 85-1809, 85-1812, and 85-1814, Reissue Revised Statutes of  
30 Nebraska, are repealed.