

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1104

Final Reading

Introduced by Adams, 24.

Read first time January 19, 2012

Committee: Education

A BILL

1 FOR AN ACT relating to postsecondary education; to amend sections
2 85-1806, 85-1809, 85-1810, 85-1812, and 85-1814, Reissue
3 Revised Statutes of Nebraska, sections 85-1801, 85-1802,
4 85-1804, 85-1807, and 85-1808, Revised Statutes
5 Cumulative Supplement, 2010, sections 85-2403, 85-2405,
6 85-2406, 85-2408, 85-2409, 85-2412, 85-2413, 85-2414,
7 85-2415, 85-2416, 85-2417, and 85-2418, Revised Statutes
8 Supplement, 2011, and sections 77-3442 and 85-1517,
9 Revised Statutes Supplement, 2011, as amended by sections
10 10 and 18, respectively, Legislative Bill 946, One
11 Hundred Second Legislature, Second Session, 2012; to
12 change provisions relating to property tax levies for
13 community college areas and the Nebraska educational
14 savings plan program; to provide for recurrent
15 authorization to operate under the Postsecondary
16 Institution Act; to eliminate expired provisions; to

1 harmonize provisions; to repeal the original sections;
2 and to outright repeal sections 85-2410 and 85-2411,
3 Revised Statutes Supplement, 2011.
4 Be it enacted by the people of the State of Nebraska,

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

4 77-3442 (1) Property tax levies for the support of local
5 governments for fiscal years beginning on or after July 1, 1998,
6 shall be limited to the amounts set forth in this section except as
7 provided in section 77-3444.

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

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

19 (c) Except as provided in subdivision (2)(e) of this
20 section, for each fiscal year, school districts that are members of
21 learning communities may levy for purposes of such districts' general
22 fund budget and special building funds a maximum combined levy of the
23 difference of one dollar and five cents on each one hundred dollars
24 of taxable property subject to the levy minus the learning community
25 levies pursuant to subdivisions (2)(b) and (2)(g) of this section for

1 such learning community.

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

12 (e) Federal aid school districts may exceed the maximum
13 levy prescribed by subdivision (2)(a) or (2)(c) of this section only
14 to the extent necessary to qualify to receive federal aid pursuant to
15 Title VIII of Public Law 103-382, as such title existed on September
16 1, 2001. For purposes of this subdivision, federal aid school
17 district means any school district which receives ten percent or more
18 of the revenue for its general fund budget from federal government
19 sources pursuant to Title VIII of Public Law 103-382, as such title
20 existed on September 1, 2001.

21 (f) For school fiscal year 2002-03 through school fiscal
22 year 2007-08, school districts and multiple-district school systems
23 may, upon a three-fourths majority vote of the school board of the
24 school district, the board of the unified system, or the school board
25 of the high school district of the multiple-district school system

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

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

19 (h) For each fiscal year, learning communities may levy a
20 maximum levy of two cents on each one hundred dollars of taxable
21 property subject to the levy for elementary learning center facility
22 leases, for remodeling of leased elementary learning center
23 facilities, and for up to fifty percent of the estimated cost for
24 focus school or program capital projects approved by the learning
25 community coordinating council pursuant to section 79-2111.

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

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

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

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

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

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

16 (c) In addition, natural resources districts located in a
17 river basin, subbasin, or reach that has been determined to be fully
18 appropriated pursuant to section 46-714 or designated as
19 overappropriated pursuant to section 46-713 by the Department of
20 Natural Resources shall also have the power and authority to levy a
21 tax equal to the dollar amount by which their restricted funds
22 budgeted to administer and implement ground water management
23 activities and integrated management activities under the Nebraska
24 Ground Water Management and Protection Act exceed their restricted
25 funds budgeted to administer and implement ground water management

1 activities and integrated management activities for FY2005-06, not to
2 exceed three cents on each one hundred dollars of taxable valuation
3 on all of the taxable property within the district for fiscal year
4 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

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

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

21 (b) Incorporated cities and villages which are within the
22 boundaries of a municipal county may levy a maximum levy of ninety
23 cents per one hundred dollars of taxable valuation of property
24 subject to the levy. The maximum levy shall include amounts paid to a
25 municipal county for county services, amounts levied to pay for sums

1 to support a library pursuant to section 51-201, a museum pursuant to
2 section 51-501, a visiting community nurse, home health nurse, or
3 home health agency pursuant to section 71-1637, or a statue,
4 memorial, or monument pursuant to section 80-202.

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

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

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

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

24 (10) Property tax levies (a) for judgments, except
25 judgments or orders from the Commission of Industrial Relations,

1 obtained against a political subdivision which require or obligate a
2 political subdivision to pay such judgment, to the extent such
3 judgment is not paid by liability insurance coverage of a political
4 subdivision, (b) for preexisting lease-purchase contracts approved
5 prior to July 1, 1998, (c) for bonds as defined in section 10-134
6 approved according to law and secured by a levy on property except as
7 provided in section 44-4317 for bonded indebtedness issued by
8 educational service units and school districts, and (d) for payments
9 by a public airport to retire interest-free loans from the Department
10 of Aeronautics in lieu of bonded indebtedness at a lower cost to the
11 public airport are not included in the levy limits established by
12 this section.

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

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

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

24 (14) For school districts that file a binding resolution
25 on or before May 9, 2008, with the county assessors, county clerks,

1 and county treasurers for all counties in which the school district
2 has territory pursuant to subsection (7) of section 79-458, if the
3 combined levies, except levies for bonded indebtedness approved by
4 the voters of the school district and levies for the refinancing of
5 such bonded indebtedness, are in excess of the greater of (a) one
6 dollar and twenty cents per one hundred dollars of taxable valuation
7 of property subject to the levy or (b) the maximum levy authorized by
8 a vote pursuant to section 77-3444, all school district levies,
9 except levies for bonded indebtedness approved by the voters of the
10 school district and levies for the refinancing of such bonded
11 indebtedness, shall be considered unauthorized levies under section
12 77-1606.

13 Sec. 2. Section 85-1517, Revised Statutes Supplement,
14 2011, as amended by section 18, Legislative Bill 946, One Hundred
15 Second Legislature, Second Session, 2012, is amended to read:

16 85-1517 (1) For fiscal years 2011-12 and 2012-13:

17 (a) The board may certify to the county board of
18 equalization of each county within the community college area a tax
19 levy not to exceed ten and one-quarter cents on each one hundred
20 dollars on the taxable valuation of all property subject to the levy
21 within the community college area, uniform throughout the area, for
22 the purpose of supporting operating expenditures of the community
23 college area;

24 (b) In addition to the levies provided in subdivisions
25 (1)(a) and (c) of this section, the board may certify to the county

1 board of equalization of each county within the community college
2 area a tax levy not to exceed one cent on each one hundred dollars on
3 the taxable valuation of all property within the community college
4 area, uniform throughout such area, for the purposes of paying off
5 bonds issued under sections 85-1520 to 85-1527 and establishing a
6 capital improvement and bond sinking fund as provided in section
7 85-1515. The levy provided by this subdivision may be exceeded by
8 that amount necessary to retire the general obligation bonds assumed
9 by the community college area or issued pursuant to section 85-1515
10 according to the terms of such bonds or for any obligation pursuant
11 to section 85-1535 entered into prior to January 1, 1997; and

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

1 The proceeds of such tax levy shall be deposited in the capital
2 improvement and bond sinking fund provided for in section 85-1515 for
3 use in funding the projects authorized pursuant to this subdivision.

4 (2) For fiscal year 2013-14 and each fiscal year
5 thereafter:

6 (a) The board may certify to the county board of
7 equalization of each county within the community college area a tax
8 levy not to exceed the difference between eleven and one-quarter
9 cents and the ~~combined~~ rate levied for such fiscal year pursuant to
10 ~~subdivisions (b) and (c)~~ subdivision (b) of this subsection on each
11 one hundred dollars on the taxable valuation of all property subject
12 to the levy within the community college area, uniform throughout the
13 area, for the purpose of supporting operating expenditures of the
14 community college area. For purposes of calculating the amount of
15 levy authority available for operating expenditures pursuant to this
16 subdivision, the rate levied pursuant to subdivision (b) of this
17 subsection shall not include amounts to retire general obligation
18 bonds assumed by the community college area or issued pursuant to
19 section 85-1515 according to the terms of such bonds or for any
20 obligation pursuant to section 85-1535 entered into prior to January
21 1, 1997;

22 (b) In addition to the levies provided in subdivisions
23 (a) and (c) of this subsection, the board may certify to the county
24 board of equalization of each county within the community college
25 area a tax levy not to exceed two cents on each one hundred dollars

1 on the taxable valuation of all property within the community college
2 area, uniform throughout such area, for the purposes of paying off
3 bonds issued under sections 85-1520 to 85-1527 and establishing a
4 capital improvement and bond sinking fund as provided in section
5 85-1515. The levy provided by this subdivision may be exceeded by
6 that amount necessary to retire general obligation bonds assumed by
7 the community college area or issued pursuant to section 85-1515
8 according to the terms of such bonds or for any obligation pursuant
9 to section 85-1535 entered into prior to January 1, 1997; and

10 (c) In addition to the levies provided in subdivisions
11 (a) and (b) of this subsection, the board of a community college area
12 with a campus located on the site of a former ammunition depot may
13 certify to the county board of equalization of each county within the
14 community college area a tax levy not to exceed three-quarters of one
15 cent on each one hundred dollars on the taxable valuation of all
16 property within the community college area, uniform throughout such
17 area, ~~in the amount which will produce funds only in the amount~~
18 ~~necessary~~ to pay for funding accessibility barrier elimination
19 project costs and abatement of environmental hazards as such terms
20 are defined in section 79-10,110. Such tax levy shall not be so
21 certified unless approved by an affirmative vote of a majority of the
22 board taken at a public meeting of the board following notice and a
23 hearing. The board shall give at least seven days' notice of such
24 public hearing and shall publish such notice once in a newspaper of
25 general circulation in the area to be affected by the increase. The

1 proceeds of such tax levy shall be deposited in the capital
2 improvement and bond sinking fund provided for in section 85-1515 for
3 use in funding accessibility barrier elimination project costs and
4 abatement of environmental hazards as such terms are defined in
5 section 79-10,110.

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

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

13 85-1801 The Legislature finds that the general welfare
14 and well-being of the state are directly related to educational
15 levels and skills of the citizens of the state and that a vital and
16 valid public purpose is served by the creation and implementation of
17 programs which encourage and make possible the attainment of higher
18 education by the greatest number of citizens of the state. The state
19 has limited resources to provide additional programs for higher
20 education funding and the continued operation and maintenance of the
21 state's public institutions of higher education, and the general
22 welfare of the citizens of the state will be enhanced by establishing
23 a program which allows parents and others interested in the higher
24 education of our youth to invest money in a public trust for future
25 application to the payment of qualified higher education ~~costs~~.

1 expenses. The creation of the means of encouragement for persons to
2 invest in such a program represents the carrying out of a vital and
3 valid public purpose. In order to make available to parents and
4 others interested in the higher education of our youth an opportunity
5 to fund future higher education needs, it is necessary that a public
6 trust be established in which money may be invested for future
7 educational use.

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

10 85-1802 For purposes of sections 85-1801 to 85-1814:

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

13 (2) Beneficiary means the individual designated by a
14 participation agreement to benefit from advance payments of qualified
15 higher education ~~costs~~ expenses on behalf of the beneficiary;

16 (3) Benefits means the payment of qualified higher
17 education ~~costs~~ expenses on behalf of a beneficiary by the Nebraska
18 educational savings plan trust during the beneficiary's attendance at
19 ~~an institution of higher education;~~ eligible educational institution;

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

23 ~~(4)~~ (5) Expense fund means the College Savings Plan
24 Expense Fund created in section 85-1807;

25 ~~(5) Higher education costs means the certified costs of~~

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

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

13 ~~(7)-(6) Nebraska educational savings plan trust means the~~
14 ~~trust created in section 85-1804;~~

15 ~~(8) Nebraska institution of higher education means an~~
16 ~~institution described in section 529 of the Internal Revenue Code~~
17 ~~which is eligible to participate in the United States Department of~~
18 ~~Education's student aid program and which is located in Nebraska;~~

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

25 ~~(9)-(8) Participant or account owner means an individual,~~

1 an individual's legal representative, or any other legal entity
2 authorized to establish a savings account under section 529 of the
3 Internal Revenue Code who has entered into a participation agreement
4 for the advance payment of qualified higher education costs~~expenses~~
5 on behalf of a beneficiary;

6 ~~(10)~~(9) Participation agreement means an agreement
7 between a participant and the Nebraska educational savings plan trust
8 entered into under sections 85-1801 to 85-1814;

9 ~~(11)~~(10) Program fund means the College Savings Plan
10 Program Fund created in section 85-1807;

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

15 (11) Qualified higher education expenses means the
16 certified costs of tuition and fees, books, supplies, and equipment
17 required for enrollment or attendance at an eligible educational
18 institution. Reasonable room and board expenses, based on the minimum
19 amount applicable for the eligible educational institution during the
20 period of enrollment, shall be included as qualified higher education
21 expenses for those students enrolled on at least a half-time basis.
22 In the case of a special needs beneficiary, expenses for special
23 needs services incurred in connection with enrollment or attendance
24 at an eligible educational institution shall be included as qualified
25 higher education expenses. Expenses paid or incurred in 2009 or 2010

1 for the purchase of computer technology or equipment or Internet
2 access and related services, subject to the limitations set forth in
3 section 529 of the Internal Revenue Code, shall be included as
4 qualified higher education expenses. Qualified higher education
5 expenses does not include any amounts in excess of those allowed by
6 section 529 of the Internal Revenue Code;

7 ~~(13)-(12)~~ Section 529 of the Internal Revenue Code means
8 such section of the code and the regulations interpreting such
9 section; and ~~, as such section and regulations existed on April 18,~~
10 ~~2001; and~~

11 ~~(14)-(13)~~ Tuition and fees means the quarter or semester
12 charges imposed to attend an ~~institution of higher education and~~
13 ~~required as a condition of enrollment.~~ eligible educational
14 institution.

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

17 85-1804 The Nebraska educational savings plan trust is
18 created. The State Treasurer is the trustee of the trust and as such
19 is responsible for the administration, operation, and maintenance of
20 the program and has all powers necessary to carry out and effectuate
21 the purposes, objectives, and provisions of sections 85-1801 to
22 85-1814 pertaining to the administration, operation, and maintenance
23 of the trust and program, except that the state investment officer
24 shall have fiduciary responsibility to make all decisions regarding
25 the investment of the money in the administrative fund, expense fund,

1 and program fund, including the selection of all investment options
2 and the approval of all fees and other costs charged to trust assets
3 except costs for administration, operation, and maintenance of the
4 trust as appropriated by the Legislature, pursuant to the directions,
5 guidelines, and policies established by the Nebraska Investment
6 Council. The State Treasurer may adopt and promulgate rules and
7 regulations to provide for the efficient administration, operation,
8 and maintenance of the trust and program. The State Treasurer shall
9 not adopt and promulgate rules and regulations that in any way
10 interfere with the fiduciary responsibility of the state investment
11 officer to make all decisions regarding the investment of money in
12 the administrative fund, expense fund, and program fund. The State
13 Treasurer or his or her designee shall have the power to:

14 (1) Enter into agreements with any ~~institution of higher~~
15 ~~education, eligible educational institution,~~ the state, any federal
16 or other state agency, or any other entity to implement sections
17 85-1801 to 85-1814, except agreements which pertain to the investment
18 of money in the administrative fund, expense fund, or program fund;

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

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

25 (4) Participate in any federal, state, or local

1 governmental program for the benefit of the trust;

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

5 (6) Enter into participation agreements with
6 participants;

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

10 (8) Make ~~refunds~~ distributions to participants upon the
11 termination of participation agreements pursuant to the provisions,
12 limitations, and restrictions set forth in sections 85-1801 to
13 85-1814;

14 (9) Contract for goods and services and engage personnel
15 as necessary, including consultants, actuaries, managers, legal
16 counsels, and auditors for the purpose of rendering professional,
17 managerial, and technical assistance and advice regarding trust
18 administration and operation, except contracts which pertain to the
19 investment of the administrative, expense, or program funds; and

20 (10) Establish, impose, and collect administrative fees
21 and charges in connection with transactions of the trust, and provide
22 for reasonable service charges, including penalties for
23 cancellations, ~~refund penalties~~, and late payments with respect to
24 participation agreements.

25 The Nebraska Investment Council may adopt and promulgate

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

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

11 85-1806 The Nebraska educational savings plan trust may
12 enter into participation agreements with participants on behalf of
13 beneficiaries pursuant to the following terms and conditions:

14 (1) A participation agreement shall ~~require~~ authorize a
15 participant to ~~agree to invest a specific amount of money in the~~
16 ~~trust for the benefit~~ make contributions to an account which is
17 established for the purpose of meeting the qualified higher education
18 expenses of a beneficiary as allowed by section 529 of the Internal
19 Revenue Code. A participant shall not be required to make an annual
20 contribution on behalf of a beneficiary, shall not be subject to
21 minimum contribution requirements, and shall not be required to
22 maintain a minimum account balance. The maximum contribution shall
23 not exceed the amount allowed under section 529 of the Internal
24 Revenue Code. The State Treasurer may set a maximum cumulative
25 contribution, as necessary, to maintain compliance with section 529

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

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

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

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

23 (5) A beneficiary under a participation agreement may be
24 changed as permitted under the rules and regulations adopted under
25 sections 85-1801 to 85-1814 and consistent with section 529 of the

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

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

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

14 85-1807 (1) The State Treasurer shall deposit money
15 received by the Nebraska educational savings plan trust into three
16 funds: The College Savings Plan Program Fund, the College Savings
17 Plan Expense Fund, and the College Savings Plan Administrative Fund.
18 The State Treasurer shall deposit money received by the trust into
19 the appropriate fund. The State Treasurer and Accounting
20 Administrator of the Department of Administrative Services shall
21 determine the state fund types necessary to comply with section 529
22 of the Internal Revenue Code and state policy. The money in the funds
23 shall be invested by the state investment officer pursuant to
24 policies established by the Nebraska Investment Council. The program
25 fund, the expense fund, and the administrative fund shall be

1 separately administered. The Nebraska educational savings plan trust
2 shall be operated with no General Fund appropriations.

3 (2) The College Savings Plan Program Fund is created. All
4 money paid by participants in connection with participation
5 agreements and all investment income earned on such money shall be
6 deposited as received into separate accounts within the program fund.
7 Contributions to the trust made by participants may only be made in
8 the form of cash. All funds generated in connection with
9 participation agreements shall be deposited into the appropriate
10 accounts within the program fund. A participant or beneficiary shall
11 not provide investment direction regarding program contributions or
12 earnings held by the trust. Money accrued by participants in the
13 program fund may be used for payments to any ~~institution of higher~~
14 education. eligible educational institution. Any money in the program
15 fund available for investment shall be invested by the state
16 investment officer pursuant to the Nebraska Capital Expansion Act and
17 the Nebraska State Funds Investment Act.

18 (3) The College Savings Plan Administrative Fund is
19 created. Money from the trust transferred from the expense fund to
20 the administrative fund in an amount authorized by an appropriation
21 from the Legislature shall be utilized to pay for the costs of
22 administering, operating, and maintaining the trust, to the extent
23 permitted by section 529 of the Internal Revenue Code. The
24 administrative fund shall not be credited with any money other than
25 money transferred from the expense fund in an amount authorized by an

1 appropriation by the Legislature or any interest income earned on the
2 balances held in the administrative fund. ~~The State Treasurer shall~~
3 ~~transfer any money in the administrative fund on July 1, 2010, to the~~
4 ~~expense fund on July 1, 2010, or as soon as administratively~~
5 ~~possible.~~ Any money in the administrative fund available for
6 investment shall be invested by the state investment officer pursuant
7 to the Nebraska Capital Expansion Act and the Nebraska State Funds
8 Investment Act.

9 (4) The College Savings Plan Expense Fund is created. The
10 expense fund shall be used to pay costs associated with the Nebraska
11 educational savings plan trust and shall be funded with fees assessed
12 to the program fund. The State Treasurer shall transfer from the
13 expense fund to the State Investment Officer's Cash Fund an amount
14 equal to the pro rata share of the budget appropriated to the
15 Nebraska Investment Council as permitted in section 72-1249.02, to
16 cover reasonable expenses incurred for investment management of the
17 Nebraska educational savings plan trust. Annually and prior to such
18 transfer to the State Investment Officer's Cash Fund, the State
19 Treasurer shall report to the budget division of the Department of
20 Administrative Services and to the Legislative Fiscal Analyst the
21 amounts transferred during the previous fiscal year. ~~The State~~
22 ~~Treasurer shall transfer any money in the endowment fund on July 1,~~
23 ~~2010, to the expense fund on such date.~~ Transfers may be made from
24 the expense fund to the General Fund at the direction of the
25 Legislature. Any money in the expense fund available for investment

1 shall be invested by the state investment officer pursuant to the
2 Nebraska Capital Expansion Act and the Nebraska State Funds
3 Investment Act.

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

6 85-1808 (1) A participant may cancel a participation
7 agreement at will. ~~The trustee shall determine and collect a refund~~
8 ~~penalty by deducting the refund penalty from the returned funds.~~
9 ~~Collected refund penalties shall be deposited in the expense fund. by~~
10 submitting a request to terminate the participation agreement.
11 Additionally, if a participant requests and obtains a nonqualified
12 withdrawal, the participation agreement shall be deemed canceled with
13 respect to the amount of the nonqualified withdrawal. A participation
14 agreement shall not be deemed canceled if a participant requests and
15 obtains a distribution of his or her entire account balance for
16 qualified higher education expenses and subsequently closes his or
17 her account. Furthermore, the State Treasurer shall have the power to
18 terminate, freeze, or suspend a participation agreement if he or she
19 determines that the participant provided false or misleading
20 information to the detriment of the Nebraska educational savings plan
21 trust, if the participant's account has a zero balance, or if the
22 State Treasurer is unable to verify the identity of the participant.

23 (2) If a participation agreement is canceled for any of
24 the causes listed in this subsection, the participant shall be
25 entitled to receive the principal amount of all contributions made by

1 the participant under the participation agreement plus the actual
2 program fund investment income earned on the contributions, less any
3 losses incurred on the investment, and such distribution will
4 generally not be subject to federal tax penalty:

5 ~~(2) Upon the occurrence of any of the following~~
6 ~~circumstances, no refund penalty shall be levied by the trust in the~~
7 ~~event of a refund or termination of a participation agreement:~~

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

11 (b) Permanent disability or mental incapacity of the
12 beneficiary;

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

17 (d) A qualified rollover is made as permitted by section
18 529 of the Internal Revenue Code, except that if a qualified rollover
19 is made into a plan sponsored by another state or entity, the
20 participation agreement shall be deemed to have been canceled for
21 purposes of subdivision (8)(c) of section 77-2716 and federal
22 adjusted gross income shall be increased to the extent previously
23 deducted as a contribution to the trust.

24 ~~(3) In the event of cancellation of a participation~~
25 ~~agreement for any of the causes listed in subsection (2) of this~~

1 ~~section, the participant shall be entitled to receive the principal~~
2 ~~amount of all contributions made by the participant under the~~
3 ~~participation agreement plus the actual program fund investment~~
4 ~~income earned on the contributions, less any losses incurred on the~~
5 ~~investment.~~ Notwithstanding any other provisions of this section,
6 under no circumstances shall a participant or beneficiary receive a
7 ~~refund or distribution~~ that is more than the fair market value of the
8 specific account on the applicable liquidation date.

9 (4) If a participant cancels a participation agreement,
10 obtains a rollover into a plan sponsored by another state or entity,
11 or obtains a distribution, a portion of which constitutes a
12 nonqualified withdrawal, the amount of the distribution, rollover, or
13 withdrawal will be subject to recapture of previous Nebraska state
14 income tax deductions as set forth in subdivision (8)(c) of section
15 77-2716. The transfer of assets among plans sponsored by the State of
16 Nebraska shall be considered an investment option change and not a
17 rollover.

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

20 85-1809 (1) A participant retains ownership of all
21 contributions made under a participation agreement up to the date of
22 utilization for payment of qualified higher education costs ~~expenses~~
23 for the beneficiary. Notwithstanding any other provision of law, any
24 amount credited to any account is not susceptible to any levy,
25 execution, judgment, or other operation of law, garnishment, or other

1 judicial enforcement, and the amount is not an asset or property of
2 either the participant or the beneficiary for the purposes of any
3 state insolvency or inheritance tax laws. All income derived from the
4 investment of the contributions made by the participant shall be
5 considered to be held in trust for the benefit of the beneficiary.

6 (2) If the program created by sections 85-1801 to 85-1814
7 is terminated prior to payment of qualified higher education costs
8 expenses for the beneficiary, the participant is entitled to receive
9 the fair market value of the account established in the program, ~~7~~
10 ~~less any assessed refund penalty.~~

11 (3) If the beneficiary graduates from an ~~institution of~~
12 ~~higher education~~ eligible educational institution and a balance
13 remains in the participant's account, any remaining funds may be
14 transferred as allowed by rule or regulation, subject to the
15 provisions of section 529 of the Internal Revenue Code, as well as
16 any other applicable state or federal laws or regulations.

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

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

24 (6) A participant may transfer ownership rights to
25 another eligible participant, including a gift of the ownership

1 rights to a minor beneficiary. The transfer shall be made and the
2 property distributed in accordance with the rules and regulations or
3 with the terms of the participation agreement.

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

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

11 (9) A participant may designate a successor account owner
12 to succeed to all of the participant's rights, title, and interest in
13 an account, including the right to change the account beneficiary,
14 upon the death or legal incapacity of the participant. If a
15 participant dies or becomes legally incapacitated and has failed to
16 name a successor account owner, the participant's estate, acting
17 through the participant's personal representative, shall be named the
18 successor participant.

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

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

25 85-1810 A student loan program, student grant program, or

1 other program administered by any agency of the state, except as may
2 be otherwise provided by federal law or the provisions of any
3 specific grant applicable to the federal law, shall not take into
4 account and shall not consider amounts available for the payment of
5 qualified higher education costs—expenses pursuant to the Nebraska
6 educational savings plan trust in determining need and eligibility
7 for student aid.

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

10 85-1812 (1) For federal income tax purposes, the Nebraska
11 educational savings plan trust shall be considered a qualified state
12 tuition program exempt from taxation pursuant to section 529 of the
13 Internal Revenue Code. The trust meets the requirements of section
14 529(b) of the Internal Revenue Code as follows:

15 (a) Pursuant to section 85-1806, a participant may make
16 contributions to an account which is established for the purpose of
17 meeting the qualified higher education costs—expenses of the
18 designated beneficiary of the account;

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

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

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

25 (e) Pursuant to section 85-1807, a participant or

1 beneficiary shall not provide investment direction regarding program
2 contributions or earnings held by the trust;

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

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

16 (2) State income tax treatment of the Nebraska
17 educational savings plan trust shall be as provided in section
18 77-2716.

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

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

24 85-1814 Nothing in sections 85-1801 to 85-1813 shall be
25 deemed to prohibit both resident and nonresident participants and

1 designated beneficiaries from being eligible to participate in and
2 benefit from the Nebraska educational savings plan trust and program.
3 It is the intent of the Legislature that funds and income credited to
4 the program fund are fully portable and may be used at any
5 ~~institution of higher education.~~ eligible educational institution.

6 Sec. 13. Section 85-2403, Revised Statutes Supplement,
7 2011, is amended to read:

8 85-2403 For purposes of the Postsecondary Institution
9 Act:

10 (1) Authorization to operate means ~~approval by the~~
11 ~~commission to operate a postsecondary institution in this state;~~
12 either an authorization to operate on a continuing basis or a
13 recurrent authorization to operate;

14 (2) Authorization to operate on a continuing basis means
15 approval by the commission to operate a postsecondary institution in
16 this state without a renewal requirement;

17 (3) Commission means the Coordinating Commission for
18 Postsecondary Education;

19 (4)(a) Establishing a physical presence means:

20 (i) Offering a course for college credit or a degree
21 program in this state that leads to an associate, baccalaureate,
22 graduate, or professional degree, including:

23 (A) Establishing a physical location in this state where
24 a student may receive synchronous or asynchronous instruction; or

25 (B) Offering a course or program that requires students

1 to physically meet in one location for instructional purposes more
2 than once during the course term; or

3 (ii) Establishing an administrative office in this state,
4 including:

5 (A) Maintaining an administrative office in this state
6 for purposes of enrolling students, providing information to students
7 about the institution, or providing student support services;

8 (B) Providing office space to staff, whether
9 instructional or noninstructional staff; or

10 (C) Establishing a mailing address in this state.

11 (b) Physical presence does not include:

12 (i) Course offerings in the nature of a short course or
13 seminar if instruction for the short course or seminar takes no more
14 than twenty classroom hours and the institution offers no more than
15 two courses as defined by the commission in a calendar year;

16 (ii) Course offerings on a military installation solely
17 for military personnel or civilians employed on such installation;

18 (iii) An educational experience arranged for an
19 individual student, such as a clinical, practicum, residency, or
20 internship; or

21 (iv) Courses offered online or through the United States
22 mail or similar delivery service which do not require the physical
23 meeting of a student with instructional staff;

24 (5) Executive director means the executive director of
25 the commission or his or her designee;

1 (6) Nebraska public postsecondary institution means any
2 public institution established, operated, and governed by this state
3 or any of its political subdivisions that provides postsecondary
4 education;

5 (7) Out-of-state public postsecondary institution means
6 any public institution with a physical presence in Nebraska that is
7 established, operated, and governed by another state or any of its
8 political subdivisions and that provides postsecondary education;

9 (8) Postsecondary institution means any private
10 postsecondary institution, out-of-state public postsecondary
11 institution, or Nebraska public postsecondary institution exempt from
12 the Private Postsecondary Career School Act; ~~and~~

13 (9) Private postsecondary institution means any Nebraska
14 or out-of-state nonpublic postsecondary institution with a physical
15 presence in Nebraska, including any for-profit or nonprofit
16 institution, that provides postsecondary education; and -

17 (10) Recurrent authorization to operate means approval by
18 the commission to operate a postsecondary institution in this state
19 until a renewal of such authorization is required.

20 Sec. 14. Section 85-2405, Revised Statutes Supplement,
21 2011, is amended to read:

22 85-2405 The commission has the following powers and
23 duties:

24 (1) To establish levels ~~of authorization for recurrent~~
25 authorizations to operate based on institutional offerings;

1 (2) To receive, investigate as it may deem necessary, and
2 act upon applications for a recurrent authorization to operate and
3 applications to renew ~~an~~ a recurrent authorization to operate;

4 (3) To establish reporting requirements by campus
5 location either through the federal Integrated Postsecondary
6 Education Data System, 20 U.S.C. 1094(a)(17), as such section existed
7 on January 1, 2011, and 34 C.F.R. 668.14(b)(19), as such regulation
8 existed on January 1, 2011, or directly to the commission for any
9 postsecondary institution ~~authorized~~ which has an authorization to
10 operate;

11 (4) To maintain a list of postsecondary institutions
12 ~~authorized~~ which have authorization to operate, which shall be made
13 available to the public;

14 (5) To establish a notification process when ~~an~~
15 ~~authorized postsecondary institution~~ a postsecondary institution
16 which has an authorization to operate changes its address or adds
17 instructional sites within this state;

18 (6) To conduct site visits of postsecondary institutions
19 to carry out the Postsecondary Institution Act;

20 (7) To establish fees for applications for a recurrent
21 authorization to operate and applications to renew a recurrent
22 authorization to operate, which shall be not more than the cost of
23 reviewing and evaluating the applications;

24 (8) To investigate any violations of the act by a
25 postsecondary institution; and

1 (9) To adopt and promulgate rules, regulations, and
2 procedures to administer the act.

3 Sec. 15. Section 85-2406, Revised Statutes Supplement,
4 2011, is amended to read:

5 85-2406 The commission shall adopt and promulgate rules
6 and regulations to establish minimum standards according to which a
7 postsecondary institution shall ~~be authorized~~ have a recurrent
8 authorization to operate within the state, and upon failure to
9 operate according to such standards, the postsecondary institution
10 shall be subject to the suspension or revocation of the authorization
11 to operate. An institution shall demonstrate that it can be
12 maintained and operated in accordance with such standards. The
13 standards shall include, but not be limited to:

14 (1) The financial soundness of the institution and its
15 capability to fulfill its proposed commitments and sustain its
16 operations;

17 (2) The quality and adequacy of teaching faculty, library
18 services, and support services;

19 (3) The quality of the programs offered, including
20 courses, programs of instruction, degrees, any necessary clinical
21 placements, and the institution's ability to generate and sustain
22 enrollment;

23 (4) The specific locations where programs will be offered
24 or planned locations and a demonstration that facilities are adequate
25 at the locations for the programs to be offered;

1 (5) Assurances regarding transfer of credits earned in
2 the program to the main campus of such institution and clear and
3 accurate representations about the transferability of credits to
4 other institutions located in Nebraska and elsewhere;

5 (6) Whether such institution and, when appropriate, the
6 program, are fully accredited, or seeking accreditation, by an
7 accrediting body recognized by the United States Department of
8 Education;

9 (7) The institution's policies and procedures related to
10 students, including, but not limited to, recruiting and admissions
11 practices;

12 (8) The tuition refund policy for an institution that
13 does not participate in federal financial aid programs described in
14 Title IV of the federal Higher Education Act of 1965, 20 U.S.C. 1001
15 et seq., as such act existed on January 1, 2011; and

16 (9) Any other standards deemed necessary by the
17 commission.

18 Sec. 16. Section 85-2408, Revised Statutes Supplement,
19 2011, is amended to read:

20 85-2408 ~~No~~ Except as provided in section 85-2407, no
21 postsecondary institution shall operate in the State of Nebraska by
22 establishing a physical presence in this state until it has received
23 an authorization to operate by the commission.

24 Sec. 17. Section 85-2409, Revised Statutes Supplement,
25 2011, is amended to read:

1 85-2409 No postsecondary institution ~~authorized with an~~
2 authorization to operate under the Postsecondary Institution Act
3 shall charge tuition or fees for more than one academic term or
4 require a student to sign loan documents for more than one academic
5 year.

6 Sec. 18. Section 85-2412, Revised Statutes Supplement,
7 2011, is amended to read:

8 85-2412 (1) Except as otherwise provided in this section,
9 after review of an initial application for a recurrent authorization
10 to operate, including any further information submitted by the
11 applicant as required by the commission and any investigation of the
12 applicant as the commission may deem necessary or appropriate, the
13 commission shall grant or deny the application for an initial
14 recurrent authorization to operate. A grant of an initial recurrent
15 authorization to operate may be on such terms and conditions as the
16 commission may specify. Such authorization shall be for a five-year
17 period unless the commission determines that a shorter period of time
18 is appropriate based on the standards established pursuant to section
19 85-2406.

20 (2) After review of an application to renew ~~an~~
21 recurrent authorization to operate, ~~including which shall include any~~
22 further information submitted by the applicant as required by the
23 commission and any investigation of the applicant as the commission
24 may deem necessary or appropriate, the commission shall grant or deny
25 the application. ~~for renewal of an authorization to operate. Renewal~~

1 of ~~an~~ a recurrent authorization to operate may be on such terms and
2 conditions as the commission may specify. Such authorization shall be
3 for a five-year period unless the commission determines that a
4 shorter renewal period is appropriate based on the standards
5 established pursuant to section 85-2406.

6 (3) If the ~~applicant~~ an institution has, for at least

7 twenty academic years under the same ownership, continuously offered

8 one or more graduate or four-year undergraduate programs with a

9 physical presence in Nebraska in compliance with state and federal

10 law, the institution may request authorization to operate on a

11 continuing basis. After review of the request which shall include any

12 further information submitted by the applicant as required by the

13 commission and any investigation of the institution as the commission

14 may deem necessary or appropriate, the commission shall grant

15 authorization to operate on a continuing basis unless the commission

16 determines that an additional ~~review period~~ recurrent authorization

17 to operate is appropriate based on the level of compliance with the

18 standards established pursuant to section 85-2406.

19 ~~(3)~~ (4) Except as otherwise provided in this section,

20 modifications, as defined by the commission in rules and regulations,

21 to an existing recurrent authorization to operate, but not to an

22 authorization to operate on a continuing basis, shall require an

23 application to the commission. After review of the application,

24 including any further information submitted by the applicant as

25 required by the commission and any investigation of the applicant as

1 the commission may deem necessary or appropriate, the commission
2 shall grant or deny the application. Approval of the application may
3 be on such terms and conditions as the commission may specify. Such
4 ~~authorization shall replace the existing authorization to operate and~~
5 recurrent authorization to operate shall replace the existing
6 recurrent authorization to operate and shall be for a five-year
7 period unless the commission determines that a shorter period of time
8 is appropriate based on the standards established pursuant to section
9 85-2406.

10 (4)—(5) If an application for an initial recurrent
11 authorization to operate or a modification to an existing recurrent
12 authorization to operate includes a request to establish a new campus
13 in this state, as defined by the commission in rules and regulations,
14 the commission shall hold a public hearing. The hearing shall be
15 scheduled following a completed review of the application for a
16 recurrent authorization to operate or the modification of ~~an~~a
17 recurrent authorization to operate, including any further information
18 submitted by the applicant as required by the commission and any
19 investigation of the applicant as the commission may deem necessary
20 or appropriate, and shall be conducted according to the
21 Administrative Procedure Act. After the public hearing, the
22 commission shall grant or deny the application. A grant of a
23 recurrent authorization to operate or the modification of ~~an~~a
24 recurrent authorization to operate may be on such terms and
25 conditions as the commission may specify. Such authorization or

1 modification shall be for a five-year period unless the commission
2 determines that a shorter period of time is appropriate based on the
3 standards established pursuant to section 85-2406.

4 Sec. 19. Section 85-2413, Revised Statutes Supplement,
5 2011, is amended to read:

6 85-2413 ~~An~~ A recurrent authorization to operate shall be
7 in a form approved by the commission and shall state in a clear and
8 conspicuous manner at least the following information:

9 (1) The date of issuance, effective date, and term of the
10 authorization to operate;

11 (2) The full and correct name and address of the
12 institution authorized to operate;

13 (3) The authority for authorization to operate and the
14 conditions thereof; and

15 (4) Any limitation of authorization to operate as deemed
16 necessary by the commission.

17 Sec. 20. Section 85-2414, Revised Statutes Supplement,
18 2011, is amended to read:

19 85-2414 Any postsecondary institution ~~authorized with a~~
20 recurrent authorization to operate which ceases to meet any of the
21 requirements of the Postsecondary Institution Act, any rules or
22 regulations adopted and promulgated under the act, or any terms or
23 conditions specified by the commission for authorization to operate
24 under the act shall be notified in writing of any such specific
25 deficiency by certified mail. A hearing shall be scheduled requiring

1 the institution to show cause why the authorization to operate should
2 not be suspended or revoked. The hearing shall be held according to
3 the Administrative Procedure Act. After the hearing, if the
4 commission determines that any requirements, rules or regulations, or
5 terms and conditions have been violated, the commission may suspend
6 or revoke the recurrent authorization to operate or may require
7 action as a condition of continued authorization. ~~to operate.~~

8 Sec. 21. Section 85-2415, Revised Statutes Supplement,
9 2011, is amended to read:

10 85-2415 The recurrent authorization to operate or
11 authorization to operate on a continuing basis shall be issued to the
12 owner or governing body of the postsecondary institution and shall be
13 nontransferable. If there is a change in ownership, as defined by the
14 commission in rules and regulations, the new owner or governing body
15 shall, within thirty days after the change of ownership, apply for a
16 new recurrent authorization to operate under the Postsecondary
17 Institution Act, and if the institution fails to apply within such
18 time period, the original authorization to operate shall terminate.
19 An application for a new recurrent authorization to operate may be
20 deemed an application for renewal of the institution's original
21 authorization, except that such renewal shall be given in the form of
22 a recurrent authorization to operate even if the original
23 authorization was an authorization to operate on a continuing basis.
24 ~~to operate.~~ Verification that all student records are transferred
25 intact and in good condition to the new owner shall accompany the

1 application.

2 Sec. 22. Section 85-2416, Revised Statutes Supplement,
3 2011, is amended to read:

4 85-2416 At least ninety days prior to the expiration of
5 its recurrent authorization to operate, a postsecondary institution
6 shall complete and file with the commission an application form for
7 renewal of its recurrent authorization to operate or a request for an
8 authorization to operate on a continuing basis. Financial stability
9 information shall accompany the application.

10 Sec. 23. Section 85-2417, Revised Statutes Supplement,
11 2011, is amended to read:

12 85-2417 (1) Any institution denied ~~an~~a recurrent
13 authorization to operate, a renewal of ~~an~~a recurrent authorization
14 to operate, or an authorization to operate on a continuing basis by
15 the commission shall have the right to a hearing and a review of such
16 decision by the commission. If upon written notification of a denial
17 the aggrieved party desires a hearing and review, such party shall
18 notify the commission in writing within ten business days after
19 receipt of notice by the commission. If the aggrieved party does not
20 notify the commission pursuant to this section, the action shall be
21 deemed final. Upon receipt of such notice from the aggrieved party,
22 the commission shall fix the time and place for a hearing and shall
23 notify the aggrieved party of such by certified mail. The hearing
24 shall be conducted according to the Administrative Procedure Act.

25 (2) A decision of the commission following such hearing

1 shall be deemed final subject to the right of judicial review
2 provided in the Administrative Procedure Act. All matters presented
3 at any such hearing shall be acted upon promptly by the commission,
4 and the commission shall notify all parties in writing of its
5 decision, which shall include a statement of findings and conclusions
6 upon all material issues of fact, law, or discretion presented at the
7 hearing and the appropriate rule, regulation, order, sanction,
8 relief, or denial thereof.

9 Sec. 24. Section 85-2418, Revised Statutes Supplement,
10 2011, is amended to read:

11 85-2418 (1) Any person claiming damage or loss as a
12 result of any act or practice by a postsecondary institution which is
13 a violation of the Postsecondary Institution Act, of the rules and
14 regulations adopted and promulgated under the act, or of standards
15 established pursuant to section 85-2406 may file with the commission
16 a complaint against such institution. The complaint shall set forth
17 the alleged violation and shall contain such other information as may
18 be required by the commission. A complaint may also be filed with the
19 commission by the executive director or the Attorney General.

20 (2) If efforts by the commission to resolve the complaint
21 are not successful and if the commission deems it appropriate, the
22 commission may hold a hearing on such complaint after ten days'
23 written notice by certified mail, return receipt requested, to such
24 institution, giving notice of a time and place for the hearing on
25 such complaint. Such hearing shall be conducted in accordance with

1 the Administrative Procedure Act. If, upon all evidence at the
2 hearing, the commission finds that a postsecondary institution has
3 engaged in or is engaging in any act or practice which violates the
4 Postsecondary Institution Act, the rules and regulations adopted and
5 promulgated under the act, or the standards established pursuant to
6 section 85-2406, the commission shall issue and cause to be served
7 upon such institution an order requiring such institution to cease
8 and desist from such act or practice. The commission may also, as
9 appropriate, based on its own investigation or the evidence adduced
10 at such hearing or both, commence an action:

11 (a) To revoke an institution's recurrent authorization to
12 operate; ~~or if the institution does not have an authorization to~~
13 ~~operate on a continuing basis; or~~

14 (b) To refer the complaint and all related evidence to
15 the Attorney General.

16 Sec. 25. Original sections 85-1806, 85-1809, 85-1810,
17 85-1812, and 85-1814, Reissue Revised Statutes of Nebraska, sections
18 85-1801, 85-1802, 85-1804, 85-1807, and 85-1808, Revised Statutes
19 Cumulative Supplement, 2010, sections 85-2403, 85-2405, 85-2406,
20 85-2408, 85-2409, 85-2412, 85-2413, 85-2414, 85-2415, 85-2416,
21 85-2417, and 85-2418, Revised Statutes Supplement, 2011, and sections
22 77-3442 and 85-1517, Revised Statutes Supplement, 2011, as amended by
23 sections 10 and 18, respectively, Legislative Bill 946, One Hundred
24 Second Legislature, Second Session, 2012, are repealed.

25 Sec. 26. The following sections are outright repealed:

1 Sections 85-2410 and 85-2411, Revised Statutes Supplement, 2011.