

MINUTES OF THE HOUSE EDUCATION COMMITTEE K-12.

The meeting was called to order by Chairperson Ralph Tanner at 9:00 a.m. on March 20, 2002 in Room 313-S of the Capitol.

Committee staff present: Ben Barrett, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Ann Deitcher, Committee Secretary

Conferees appearing before the committee: Representative David Huff  
Peggy Hanna, State Treasurer's Office  
Elizabeth Rambacher, Program Manager,  
American Century Learning Quest  
Craig Grant, KNEA  
Mark Tallman, KASB

**HB 2777 - School districts; power to execute contracts, paying dues and claims.**

Representative Huff appeared before the Committee in regard to a balloon amendment to **HB 2777**. (Attachment 1).

A motion was made by Representative Crow and seconded by Representative Peterson to refer **HB 2777** to an interim committee of the LEPC and for them to report back in January of 2003.

A substitute motion was made by Representative Benlon and seconded by Representative Ray that **HB 2777** be passed favorably as amended. The motion carried on a voice vote.

**SB 403 - An act relating to savings account programs concerning the post secondary education savings program; establishing the family development account program.**

Speaking as a proponent of **SB 403** was Peggy Hanna. (Attachment 2).

Elizabeth Rambacher testified in support of **SB 403**. (Attachment 3).

The hearing on **SB 403** was closed.

It was moved by Representative Lloyd to pass **SB 403** as amended. Representative Mason seconded the motion.

Representative Morrison moved that everything in **SB 403** preceding section 8 be removed. Representative Mason seconded the motion.

Representative Lloyd withdrew the motion to pass **SB 403** favorably out of Committee. The second on the motion, Representative Mason agreed to withdraw.

A vote was cast on Representative Morrison's amendment to **SB 403**. Division was called for and the motion passed by a show of hands.

A motion was made by Representative Lloyd and seconded by Representative Horst to amend **SB 403** with the balloon amendment. The motion carried on a voice vote.

CONTINUATION SHEET

MINUTES OF THE HOUSE EDUCATION COMMITTEE K-12 at on March 20, 2002 in Room 313-S of the Capitol.

A motion to pass **SB 403** favorably, as amended, was made by Representative Lloyd and seconded by Representative Mason. The motion carried on a voice vote.

**SB 409 - Schools; contingency reserve fund; no-fund warrants; local option budgets.**

Ben Barrett explained **SB 409**.

A proposed amendment to **SB 409** was offered by Chairman Tanner. It would give local school districts and faculties some latitude regarding notification dates. (Attachment 4).

Representative Storm moved and Representative Benlon seconded the motion that this amendment be made to **SB 409**.

Craig Grant and Mark Tallman both spoke to the Committee regarding **SB 409**.

Following this discussion, the Chair withdrew his proposal of amending **SB 409**.

The Committee agreed to table **SB 409** until the meeting of Thursday, March 21, 2002, at which time the Committee would continue consideration.

The meeting was adjourned at 10:50 a.m. The next meeting is scheduled for Thursday, March 21, 2002.

**HOUSE BILL No. 2777**

By Representative Huff

2-5

AN ACT concerning [schools; relating to teachers; providing for an alternative teacher preparation program; relating to] payments by school districts; amending K.S.A. 12-105b and 72-5326 and K.S.A. 2001 Supp. 72-8201 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 12-105b is hereby amended to read as follows: 12-105b. (a) All claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section. A claim may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information.

(b) Claims for salaries or wages of officers or employees need not be signed by the officer or employee if a payroll claim is certified to by the administrative head of a department or group of officers or employees or an authorized representative that the salaries or wages stated therein were contracted or incurred for the municipality under authority of law, that the amounts claimed are correct, due and unpaid and that the amounts are due as salaries and wages for services performed by the person named.

(c) No costs shall be recovered against a municipality in any action brought against it for any claims allowed in part unless the recovery shall be for a greater sum than the amount allowed, with the interest due. Subject to the terms of applicable insurance contracts, judgments and settlements obtained for claims recoverable pursuant to the Kansas tort claims act shall be presented for payment in accordance with this section or in such manner as the governing body may designate.

(d) Any person having a claim against a municipality which could give rise to an action brought under the Kansas tort claims act shall file a written notice as provided in this subsection before commencing such action. The notice shall be filed with the clerk or governing body of the municipality and shall contain the following: (1) The name and address of the claimant and the name and address of the claimant's attorney, if any; (2) a concise statement of the factual basis of the claim, including the date, time, place and circumstances of the act, omission or event

Proposed amendment  
Representative Huff  
March 19, 2002

House Education Committee

Date: 3/20/02

Attachment # 1-1

1 complained of; (3) the name and address of any public officer or employee  
2 involved, if known; (4) a concise statement of the nature and the extent  
3 of the injury claimed to have been suffered; and (5) a statement of the  
4 amount of monetary damages that is being requested. In the filing of a  
5 notice of claim, substantial compliance with the provisions and require-  
6 ments of this subsection shall constitute valid filing of a claim. The con-  
7 tents of such notice shall not be admissible in any subsequent action  
8 arising out of the claim. Once notice of the claim is filed, no action shall  
9 be commenced until after the claimant has received notice from the mu-  
10 nicipality that it has denied the claim or until after 120 days has passed  
11 following the filing of the notice of claim, whichever occurs first. A claim  
12 is deemed denied if the municipality fails to approve the claim in its  
13 entirety within 120 days unless the interested parties have reached a set-  
14 tlement before the expiration of that period. No person may initiate an  
15 action against a municipality unless the claim has been denied in whole  
16 or part. Any action brought pursuant to the Kansas tort claims act shall  
17 be commenced within the time period provided for in the code of civil  
18 procedure or it shall be forever barred, except that, if compliance with  
19 the provisions of this subsection would otherwise result in the barring of  
20 an action, such time period shall be extended by the time period required  
21 for compliance with the provisions of this subsection.

22 (e) Claims against a municipality which provide for a discount for  
23 early payment ~~or, provide for the assessment of a penalty for late payment~~  
24 ~~or require action prior to the next board meeting~~ may be authorized to  
25 be paid in advance of approval thereof by the governing body in accord-  
26 ance with the provisions of this subsection. The governing body may des-  
27 ignate and authorize one or more of its officers or employees to pay any  
28 such claim made against the municipality in advance of its presentation  
29 to and approval by the governing body if payment of the amount of such  
30 claim is required before the next scheduled regular meeting of the gov-  
31 erning body ~~in order for the municipality to benefit from the discount~~  
32 ~~provided for early payment or to avoid assessment of the penalty for late~~  
33 ~~payment.~~ Any officer or employee authorized to pay claims under this  
34 subsection shall keep an accurate record of all moneys paid and the pur-  
35 pose for which expended, and shall submit the record to the governing  
36 body at the next meeting thereof. Payments of claims by an officer or  
37 employee of the municipality under authority of this subsection are valid  
38 to the same extent as if the claims had been approved and ordered to be  
39 paid by the governing body.

40 (f) When an employee is required to travel on behalf of a munici-  
41 lity, the employee shall be entitled, upon complying with the provisions  
42 of the municipality's policies and regulations on employee travel, to timely  
43 payment of subsistence allowances and reimbursement for transportation

1 and other related travel expenses incurred by the employee while on an  
 2 approved travel status. When reimbursement through the regular claims  
 3 approval process of the municipality will require more than 15 days from  
 4 the date the reimbursement claim is filed, the claim may be authorized  
 5 to be paid in advance of approval thereof by the governing body in ac-  
 6 cordance with the provisions of this subsection. The governing body may  
 7 designate and authorize one or more of its officers or employees to pay  
 8 any such claim made against the municipality in advance of its presen-  
 9 tation to and approval by the governing body if payment of the amount  
 0 of such claim is required before the next scheduled regular meeting of  
 1 the governing body. Any officer or employee authorized to pay claims  
 2 under this subsection shall keep an accurate record of all moneys paid  
 3 and the purpose for which expended, and shall submit the record to the  
 4 governing body at the next meeting thereof. Payments of claims by an  
 5 officer or employee of the municipality under authority of this subsection  
 6 are valid to the same extent as if the claims had been approved and  
 7 ordered to be paid by the governing body.

8 (g) Claims submitted by members of a municipality's self-insured  
 9 health plan may be authorized to be paid in advance of approval thereof  
 0 by the governing body. Such claims shall be submitted to the administra-  
 1 tive officer of such insurance plan.

2 (h) Claims against a school district for the purchase of food or gaso-  
 3 line while students are on a co-curricular or extra-curricular activity out-  
 4 side of the school boundaries may be paid in advance of approval thereof  
 5 by the governing body in accordance with the provisions of this subsec-  
 6 tion. The governing body may designate and authorize one or more of its  
 7 officers or employees to pay any such claim made against the school dis-  
 8 trict in advance of its presentation to and approval by the governing body.

9 (i) Except as otherwise provided, before any claim is presented to the  
 0 governing body or before any claim is paid by any officer or employee of  
 1 the municipality under subsection (e) or (f), it shall be audited by the  
 2 clerk, secretary, manager, superintendent, finance committee or finance  
 3 department or other officer or officers charged by law to approve claims  
 4 affecting the area of government concerned in the claim, and thereby  
 5 approved in whole or in part as correct, due and unpaid.

6 Sec. 2. K.S.A. 72-5326 is hereby amended to read as follows: 72-  
 7 5326. The board of education of any school district or the board of trus-  
 8 tees of any community junior college is hereby authorized to appropriate  
 9 ~~out of its general fund~~ to pay the annual dues in the Kansas as-  
 0 sociation of school boards ~~[and any other organization].~~

1 Sec. 3. K.S.A. 2001 Supp. 72-8201 is hereby amended to read as  
 2 follows: 72-8201. Each unified school district shall be designated by the  
 3 name and style of "unified school district No. \_\_\_\_\_ (the number des-

, national science foundation, national forensic  
 league, distributive educations clubs of America,  
 midwest international baccalaureate, national  
 braille association, association for supervision  
 curriculum, association of school business officials,  
 regional clean cities coalition and any athletic  
 league

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1 ignated by the state board of education), \_\_\_\_\_ county (naming  
2 the home county of the unified school district), state of Kansas," and by  
3 such name may sue and be sued, execute contracts and hold such real  
4 and personal property as it may acquire. Every unified school district shall  
5 possess the usual powers of a corporation for public purposes. The board  
6 of education of every unified school district may delegate to the super-  
7 intendent of schools, *or other employees of the district*, the power to  
8 execute contracts on behalf of the district for the purchase of goods and  
9 services if the value of such goods or services is less than \$10,000.

10 [New Sec. 4. The state board of education shall adopt rules  
11 and regulations for administration and effectuation of the provi-  
12 sions of this act and, in accordance therewith, may issue an initial  
13 license to teach in this state to any person who successfully com-  
14 pletes the alternate teacher preparation program.

15 [New Sec. 5. As used in this act:

16 [(a) "Alternate teacher preparation program" means a pro-  
17 gram which is provided for by the state board of education under  
18 contractual arrangements with an accredited Kansas teacher ed-  
19 ucation institution having an approved teacher education program  
20 and with accredited schools and which is designed to ensure the  
21 attainment of the basic competencies necessary to engagement in  
22 the profession of teaching through correlation of professional de-  
23 velopment study at the teacher education institution with practical  
24 experience at an accredited school.

25 [(b) "Teacher licensure applicant" means a person who applies  
26 under authority of this act for an initial license to teach in this state.

27 [New Sec. 6. (a) The alternate teacher preparation program  
28 will require a teacher licensure applicant to complete:

29 [(1) Nine semester hours of professional development study at  
30 the teacher education institution. Professional development study  
31 shall include, but not be limited to, study of adolescent psychology,  
32 foundations of education, classroom management, and methodol-  
33 ogy. Professional development study may be taken during a sum-  
34 mer or regular session and must be completed by the applicant  
35 prior to entry into the classroom;

36 [(2) a 10 contact hour preservice orientation conducted by the  
37 employing accredited school prior to a classroom assignment. Ori-  
38 entation shall include familiarization with school policies, proce-  
39 dures, curriculum, instructional model, community characteristics,  
40 and resources;

41 [(3) an internship of two school years (four semesters). During  
42 internship, the applicant will be enrolled in three credit hours of  
43 internship each semester. The contact and delivery system will be

determined by the teacher education institution. At the successful completion of internship, student teaching requirements will be waived; and

[(4) professional development coursework during the second year of internship or the second summer of participation in the program as needed to meet professional development standards set by the state board of education.

[(b) During internship, a teacher licensure applicant will be supervised by a team of three persons consisting of a mentor teacher from the accredited school employing the applicant, the building principal, and a faculty member from the teacher education institution. Guidelines for supervision will be provided by the teacher education institution. The supervisory team will meet no fewer than three times per school year to evaluate, consult with, and provide advice to the applicant. The last meeting of the first year of internship will result in a recommendation for discontinuation of the program or continuation for the second year of internship. Successful completion of the program will result in a recommendation for licensure.

[(c) In order to receive institutional recommendation for initial licensure, a teacher licensure applicant must successfully complete the required semester hours of professional development study at the teacher education institution and the two years of internship. An applicant will be suspended from participation in the program by failure to attain a 3.0 grade point average on a 4.0 scale or for causes for suspension arising under law or rules and regulations of the state board of education.

[New Sec. 7. A teacher licensure applicant shall:

[(a) Be the holder of a baccalaureate or higher degree, earned with a minimum cumulative grade point average of 2.75 on a 4.0 scale, and granted by an accredited college or university;

[(b) have earned academic credits appropriate to meeting subject and field requirements for licensure with an endorsement at the secondary level for such subject or field. The teacher education institution will assure attainment by the applicant of the minimum semester hour requirements for general education and minimum competence in subjects or fields of specialization. Minor deficiencies in the subject or field of specialization may be satisfied through additional course work approved by the teacher education institution;

[(c) take and pass the PPST or other basic skills test as prescribed by the state board of education;

[(d) apply for and receive from the state board of education a

1 restricted license valid for three years and renewable in accord-  
2 ance with rules and regulations of the state board of education;

3 [(e) fulfill formal requirements for admission to a teacher ed-  
4 ucation program at an accredited Kansas teacher education  
5 institution;

6 [(f) meet all nonacademic requirements of the teacher educa-  
7 tion institution upon which the applicant will depend for initial  
8 institutional recommendation;

9 [(g) receive and document an offer of a teaching position at an  
10 accredited Kansas school in accordance with rules and regulations  
11 of the state board of education;

12 [(h) pay a fee approved by the state board of education as part  
13 of the contractual arrangements with the teacher education insti-  
14 tution and employing accredited school, which fee shall be in an  
15 amount determined to be necessary for payment of the costs of  
16 the program including, but not limited to, the costs related to the  
17 credit hours of professional development study and internship  
18 earned at the teacher education institution, the costs for travel  
19 expenses of the teacher education institution faculty member of  
20 the supervisory team, and the costs for remuneration of the prin-  
21 cipal and mentor teacher members of the supervisory team. The  
22 applicant and employing accredited school will share equally in  
23 the costs for remuneration of the principal and mentor teacher.

24 [New Sec. 8. Upon successful completion of the alternate  
25 teacher participation program as verified by the teacher education  
26 institution, a teacher licensure applicant may apply for licensure  
27 on a form provided by the state board of education. The state  
28 board shall review the application and the recommendation of the  
29 teacher education institution and shall grant or deny licensure.  
30 Successful completion of the alternate teacher preparation pro-  
31 gram will not entitle a teacher licensure applicant to certification  
32 with an endorsement in special education.

33 [New Sec. 9. Upon completion of each school year, commenc-  
34 ing with the 2004-05 school year, the state board of education shall  
35 make a report to the governor and the legislature on the effect-  
36 iveness of the alternate teacher preparation program. The report  
37 shall include the following information:

38 [(a) The number of accredited schools participating in the  
39 program;

40 [(b) the number of persons who applied for employment as  
41 teacher licensure applicants and the number of such applicants  
42 who actually were employed;

43 [(c) the number of persons who successfully completed the al-



ternate teacher preparation program, who were recommended for licensure, and who were granted licenses;

[(d) the rate of attrition of teachers granted licenses under this act as compared with teachers who have completed a regular teacher preparation program; and

[(e) the costs of the alternate teacher preparation program as compared with costs associated with regular teacher preparation programs.

[New Sec. 10. Nothing contained in this act shall be construed to abrogate, affect the status, force or operation of any other provision of law relating to initial issuance of licenses to teach or of any rules and regulations adopted pursuant thereto. The requirements and procedures contained in this act for initial issuance of licenses to teach shall be deemed alternative to the requirements and procedures therefor that are in effect under any other provision of law and under rules and regulations adopted pursuant thereto by the state board of education.]

Sec. ~~4~~ [11.] K.S.A. 12-105b and 72-5326 and K.S.A. 2001 Supp. 72-8201 are hereby repealed.

Sec. ~~5~~ [12.] This act shall take effect and be in force from and after its publication in the statute book.

B-1

March 20, 2002

**To:** Chairman Tanner and  
Members of the House Education Committee

**From:** Assistant State Treasurer, Peggy Hanna

**Re:** Kansas Learning Quest Education Savings Program  
Senate Bill 403

Chairman Tanner and Members of the committee:

Thank you for the opportunity to submit comments on Senate Bill 403 on behalf of the Kansas State Treasurer's Office.

The Kansas Postsecondary Education Savings Program, now known as the Kansas Learning Quest Education Savings Program, was created by the Kansas Legislature in 1999 and officially opened on July 1, 2000. The Learning Quest program is administered by the Kansas State Treasurer and managed by American Century Investment Company. Under the program, an account may be opened as a savings fund to pay postsecondary education expenses. Kansas account owners can deduct up to \$2,000 (\$4,000 married filing jointly) from the account owner's Kansas adjusted gross income and no state or federal income taxes are assessed on the earnings.

Changes in federal tax laws continually affect this program, as well as programs offered by other states authorized under Internal Revenue Code Section 529. We are proposing technical changes to ensure compliance with Section 529 as amended by the 2001 Tax Act as well as other changes which we believe will make the program better meet the needs of Kansas citizens participating in the Program.

There are six basic changes included in the current bill plus one balloon, which is attached to my testimony:

- Protection from creditors, with some exceptions (program enhancement)
- Expansion of who can make deposits to accounts (program enhancement)
- Change in requirements regarding withdrawals (technical change)
- Elimination of 10% state penalty (technical change)
- Allow account owner to direct investments (technical change)
- Decrease waiting period from 2 years to 1 year (program enhancement)
- \*Re-word the waiting period language in SB 403 (Balloon)

New sections 1 through 7 were amended into this bill during floor debate in the Senate and were not requested by the Treasurer's office. However, the Treasurer's office is neutral on their inclusion.

As a summary, the recommended changes are:

- Page 6 Lines 4-7 Amends K.S.A. 2001 Supp. 60-2308(b). Removes language that exempts retirement accounts from the subpoena process. Members of the LEPC requested this amendment.

House Education Committee

Date: 3/20/02

Attachment # 2-1

- Page 6, Beginning with Line 33 and continuing at the top of Page 7 Lines 1-19 contain compromise language that amends K.S.A. 60-2308 with a new subsection (f) which provides that any money or assets held for a beneficiary who is a lineal descendent of the account owner shall be exempt from any creditors of the account owner or the designated beneficiary. The effect of the recommended change would be to protect children's or grandchildren's accounts from creditors. This section also incorporates all filings back to January 1, 2002 and provides exceptions for the following cases:
  - \* Claims of any creditor of an account owner, as to amounts contributed within a one-year period preceding the date of the filing of a bankruptcy petition
  - \* Claims of any creditor of an account owner, as to amounts contributed within a one-year period preceding an execution on judgment for such claims against the account owner
  - \* Claims of any creditor of an account owner, as to amounts exceeding \$5,000 contributed within a period of time which is more than one year but less than two years preceding the date of the filing of a bankruptcy petition
  - \* Claims of any creditor of an account owner, as to amounts exceeding \$5,000 contributed within a period of time which is more than one year but less than two years preceding an execution on judgment for such claims against the account owner
  
- Page 7, Lines 40-41 This section amends K.S.A. 2001 Supp. 75-646 to incorporate the January 1, 2002 effective date to be consistent with other amendments. It makes it possible for any person to make a deposit to an existing account.
  
- Page 8, Lines 3-16 K.S.A. 2001 Supp. 75-646, is amended to delete language that requires the program manager to perform due diligence regarding non-qualified withdrawals. Changes to Section 529, as stated in IRS Notice 2001-81, now place the responsibility on the account owner instead of the program administrator or the program manager. **Deleted language states that:**
  - a) rules and regulations shall include provisions that will determine whether a withdrawal is a nonqualified withdrawal or qualified withdrawal;
  - b) An account owner seeking a qualified withdrawal must provide certification of qualified higher education expenses;
  - c) Withdrawals not meeting requirements shall be treated as nonqualified withdrawals.
  
- Page 8 Lines 29-43 – Page 9 Lines 1-6 K.S.A. 2001 Supp 75-646 is amended to remove reference to a state imposed penalty. **Deleted language states the following:**
  - a) Provisions that provide for a 10% penalty for nonqualified withdrawals from an account, that equal 10% of the portion of

withdrawal constituting earnings as determined by Section 529 of the federal internal revenue code, and withheld as a penalty and paid to the Program. *Under new federal legislation, a 10% federal penalty is imposed, which would result in a 20 % percent penalty for non-qualified withdrawals under the Kansas program.*

- b) The provision that allows the state Treasurer to determine the amount of the penalty.
  - c) Language that when an account owner makes a nonqualified withdrawal and no penalty amount is withheld, the account owner shall pay the unpaid portion of the penalty to the program at the time the account files the federal income tax return for the taxable year of the withdrawal.
- 
- Page 9 Lines 9-12 – K.S.A. 2001 Supp. 75-646 is amended to add the phrase “Subject to the provisions of Section 529 of the Internal Revenue Code of 1986, in effect on January 1, 2002, or later version as established in rules and regulations adopted by the treasurer, an account owner of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon.”
  - Page 9 Lines 18-20 K.S.A. 2001 Supp. 75-646 is amended to add new language defines the waiting period before qualified withdrawals can be made – in this case the waiting period is one year.
  - Page 10 Lines 15–19 K.S.A. 2001 Supp. 75-646 is amended to delete the old language regarding the two-year waiting period.
  - Page, 11, Line 5-7, K.S.A. 2001 Supp. 75-646 is amended to add language that makes changes to this section applicable to any action or transaction after January 1, 2002. This change keeps our plan in compliance with Section 529.
  - Page 11, Line 11 K.S.A. 2001 Supp. 75-646 is amended to delete the words “Statute Book” and insert the words “Kansas Register” to reflect an earlier effective date.
  - **Balloon to SB 403: K.S.A. 2001 Supp. 75-646(j) is amended to restate the language in S.B. 403 to clarify that withdrawals made in the first 12 months after an account is opened are non-qualified, making them subject to the recapture of any tax deduction previously taken by a Kansas taxpayer on their state tax return.**

The Kansas Learning Quest Education Savings Program has been quite successful with current assets of \$206 million. Over half the 30,000 accounts belong to Kansas residents. Learning Quest has been ranked by *Kiplinger Magazine* in the “Top 5 College Savings Programs in the Nation”. We believe if Senate Bill 403 as amended is passed, it will ensure the Kansas Learning Quest Education Program will become even more successful and more beneficial to Kansas citizens. Thank you again.

SENATE BILL No. 403

By Legislative Educational Planning Committee

1-22

12 AN ACT [relating to savings account programs] concerning the pos-  
13 tsecondary education savings program; [establishing the family de-  
14 velopment account program;] amending K.S.A. 2001 Supp. 60-2308  
15 and 75-646 and repealing the existing sections.  
16

17 Be it enacted by the Legislature of the State of Kansas:

18 [New Section 1. The provisions of sections 1 through 7, and  
19 amendments thereto, of this act shall be known and may be cited as  
20 the family development account program.

21 [New Sec. 2. As used in sections 1 through 7, and amendments  
22 thereto of this act:

23 [(a) "Account holder" means a person who is the owner of a  
24 family development account.

25 [(b) "Community-based organization" means any religious or  
26 charitable association that is approved by the state treasurer to  
27 implement the family development account reserve fund.

28 [(c) "Department" means the state treasurer's office.

29 [(d) "Family development account" means a financial instru-  
30 ment established in section 3, and amendments thereto.

31 [(e) "Family development account reserve fund" means the fund  
32 created by an approved community-based organization for the pur-  
33 poses of funding the costs incurred in the administration of the pro-  
34 gram by the financial institutions and the community-based organ-  
35 izations and for providing matching funds for moneys in family  
36 development accounts.

37 [(f) "Federal poverty level" means the most recent poverty in-  
38 come guidelines published in the calendar year by the United States  
39 department of health and human services.

40 [(g) "Financial institution" means any bank, trust company,  
41 savings bank, credit union or savings and loan association or any  
42 other financial institution regulated by the state of Kansas, any  
43 agency of the United States or other state with an office in Kansas

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1 portion of the penalty to the program at the same time that the account  
2 owner files the earlier of the account owner's state or federal income tax  
3 return for the taxable year of the withdrawal or if such account owner  
4 does not file such return, the due date for such returns but in any event  
5 on or before the due date for such return taking into account any au-  
6 thorized extensions.

7 ~~(j)~~ The program shall provide separate accounting for each desig-  
8 nated beneficiary.

9 ~~(k) (h)~~ No account owner or designated beneficiary Subject to the  
10 provisions of section 529 of the internal revenue code of 1986, in  
11 effect on January 1, 2002, or later versions as established in rules  
12 and regulations adopted by the treasurer, an account owner of any  
13 account shall be permitted to direct the investment of any contributions  
14 to an account or the earnings thereon.

15 ~~(h) (i)~~ Neither an account owner nor a designated beneficiary may use  
16 an interest in an account as security for a loan. Any pledge of an interest  
17 in an account shall be of no force and effect.

18 ~~(j)~~ An account shall be open under a qualified tuition program  
19 as defined in section 529 of the internal revenue code of 1986 at  
20 least one year before a qualified withdrawal may be made.

21 ~~(m) (j) (k)~~ (1) The state treasurer shall adopt rules and regulations  
22 to prevent contributions on behalf of a designated beneficiary in excess  
23 of an amount equal to the average amount of the qualified higher edu-  
24 cation expenses that would be incurred for five years of study at institu-  
25 tions of postsecondary education located in the midwest states. Such  
26 amount shall be determined annually by the state treasurer.

27 (2) Such rules and regulations shall include requirements that any  
28 excess contributions with respect to a designated beneficiary be promptly  
29 withdrawn in a nonqualified withdrawal or transferred to another account.

30 ~~(n) (k)~~ (1) If there is any distribution from an account to any  
31 individual or for the benefit of any individual during a calendar year, such  
32 distribution shall be reported to the federal internal revenue service and  
33 the account owner or owners, the designated beneficiary, or the distri-  
34 butee to the extent required by federal law or regulation.

35 (2) Statements shall be provided to each account owner at least once  
36 each year within 60 days after the end of the twelve-month period to  
37 which they relate. The statement shall identify the contributions made  
38 during a preceding twelve-month period, the total contributions made to  
39 the account through the end of the period, the value of the account at  
40 the end of such period, distributions made during such period and any  
41 other information that the state treasurer shall require to be reported to  
42 the account owner.

43 (3) Statements and information relating to accounts shall be prepared

(j) Except as provided by K.S.A. 75-640 through 75-648,  
and amendments thereto, or section 529 of the internal revenue  
code of 1986, any withdrawal made within one year after an  
account has been opened is a nonqualified withdrawal.

House Education Committee  
March 20, 2002  
Testimony on Senate Bill 403  
Elizabeth Rambacher, Program Manager – Learning Quest, American Century Investments

American Century Investments is honored to have been selected by the State Treasurer to serve as program manager for the Kansas Postsecondary Education Savings Program (KPESP), Learning Quest Education Savings Program. This outstanding program was created by the Kansas Legislature in 1999. American Century acts as financial depository, record keeper and investment manager for thousands of persons and markets the program to anyone interested in saving for postsecondary education.

American Century is a Kansas City company that has grown to become one of the nation's largest families of direct-marketed mutual funds. We manage more than \$85 billion in 70 mutual funds for more than two million shareholders nationwide. In Kansas, we serve more than 80,000 Kansas investors who entrust us with more than \$2 billion of their money. We also employ over 900 Kansas residents.

Senate Bill 403 contains both important technical corrections and modest policy changes to the Kansas Postsecondary Education Savings Plan law. American Century has worked with the State Treasurer's office on these legislative proposals and supports their prompt passage. We believe the changes will improve an already excellent Kansas law and help to continue the program as one of the finest state-sponsored education savings programs in the nation.

American Century Investments is pleased and proud to have the opportunity to serve the State of Kansas and I will be happy to answer any questions about the improvements proposed in Senate Bill 403.

Proposed Legislative Changes

1. Expand Permissible Contributors to Include Non-Account Owners.

Proposed Change: Modify K.S.A. 75-646( c ) to allow any person to make contributions.

Rationale: This change will allow individuals, partnerships, corporations, etc. to either open an account for the beneficiary of their choice or contribute to an existing account owned by someone else. This will help those who would like to help an individual save for college but do not want account owner responsibilities. Any Kansas taxpayer who contributes to a KPESP account will be entitled to a state tax deduction, whether or not they are the account owner.

2. Eliminate the Requirement to Verify Qualified Withdrawals.

*Marty Crow*  
*Ray*

House Education Committee

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Attachment # 3-1

Proposed Change: Modify K.S.A. 75-646( e ) to remove the requirement for account owners to provide the program manager proof that an account withdrawal will be used for education expenses.

Rationale: Although this was a requirement of prior federal law, it was removed by IRS Notice 2001-81. The federal rules now place the responsibility on the account owner to report a withdrawal as either qualified or non-qualified. This reporting will be done with their income tax return. The proposed change to the Kansas statute will make it consistent with federal rules.

3. Eliminate the State-Level Penalty for Non-Qualified Withdrawals.

Proposed Change: Eliminate K.S.A. 75-646( g-i ) to remove the Kansas 10% penalty for non-qualified withdrawals.

Rationale: This previous federal requirement was replaced by the provision of the 2001 Tax Act (EGTRRA) that provides for a 10% federal penalty tax on any non-qualified withdrawal. If the state penalty is left in place, there will be double penalties for a non-qualified withdrawal from the Kansas program. This will put the program at a competitive disadvantage to other states' programs.

4. Provide Limited Investment Direction for Account Owners.

Proposed Change: Modify K.S.A. 75-646( k ) to allow account owners to periodically change their investment selection within federal rules.

Rationale: The prior federal prohibition on investment direction by an account owner was removed by IRS Notice 2001-55. The federal rules now allow a change in investment selection upon change of beneficiary or once per calendar year with the same beneficiary. This proposed change will allow a Kansas account owner the privilege provided by federal rules.

5. Eliminate the Two-Year Waiting Period for Qualified Withdrawals.

Proposed Change: Eliminate K.S.A. 75-646( q ) to remove the requirement for an account owner to wait two years before their first qualified withdrawal.

Rationale: The federal rules do not contain a similar requirement, so this Kansas rule makes a withdrawal potentially subject to a 10% penalty even if it's used for education expenses. This rule puts the program at a competitive disadvantage to other states' programs. It should also be removed to coordinate with the removal of the state-level penalty (see # 3 above).

6. Add Creditor Protection to KPESP Accounts.

Proposed Change: Modify K.S.A. 60-2308 and 75-646( q ) to add exemption from creditor claims for KPESP accounts.

Rationale: This change will provide protection for account balances similar to that already provided by Kansas statute for IRAs and other retirement accounts. Several states, including



Nebraska and Colorado, have already made this change to their programs. This will keep the program competitive with other states that are adopting similar rules and reinforce the position that Kansas encourages active saving for education goals. Kansas fraudulent conveyance statutes already protect a bankruptcy or judgment creditor from someone attempting to shelter assets by way of a KPESP account.

7. Make Changes Retroactive to January 1, 2002.

Proposed Change: Modify K.S.A. 75-646 to make all proposed changes retroactive to January 1, 2002.

Rationale: This change will clarify that the changes will be applied to withdrawals or other account actions taken after December 31, 2001. This will eliminate the need for state rulings on the various transactions of account owners between January 1, 2002 and passage of these changes into law.

PROPOSED AMENDMENT

Insert sections where appropriate, make corresponding amendments to the title and repealer.

Sec. \_\_\_\_ K.S.A. 2001 Supp. 72-5411 is hereby amended to read as follows: 72-5411. (a) (1) Except as provided further, all contracts of employment of teachers in the public schools in the state shall continue in full force and effect during good behavior and efficient and competent service rendered by the teacher, and all contracts of employment shall be deemed to continue for the next succeeding school year unless written notice of intention to terminate a contract of employment is served by a board of education upon any teacher on or before May 1. A teacher shall give written notice to the board of education of a school district that the teacher does not desire continuation of a contract of employment on or before May 15 or, if applicable, not later than 15 days after final action is taken by the board of education upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date.

(2) For the 2001-2002 school year, all contracts of employment of teachers in the public schools in the state shall continue in full force and effect during good behavior and efficient and competent service rendered by the teacher, and all contracts of employment shall be deemed to continue for the 2002-2003 school year unless written notice of intention to terminate a contract of employment is served by a board of education upon any teacher on or before June 15. A teacher shall give written notice to the board of education of a school district that the teacher does not desire continuation of a contract of employment on or before June 30 or, if applicable, not later than 15 days after final action is taken by the board of education upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date.

(b) Terms of a contract may be changed at any time by mutual consent of both a teacher and the board of education of a school district.

Sec. \_\_\_\_ K.S.A. 2001 Supp. 72-5437 is hereby amended to read as follows: 72-5437. (a) (1) Except as provided further, all contracts of employment of teachers, as defined in K.S.A. 72-5436, and amendments thereto, except contracts entered into under the provisions of K.S.A. 72-5412a, and amendments thereto, shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is served as provided in this subsection. Written notice to terminate a contract may be served by a board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by a board upon any teacher on or before May 1. A teacher shall give written notice to a board that the teacher does not desire continuation of a contract on or before May 15 or, if applicable, not later than 15 days after final action is taken by the board upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date.

(2) For the 2001-2002 school year, all contracts of employment of teachers, as defined in K.S.A. 72-5436, and amendments thereto, except contracts entered into under the provisions of K.S.A. 72-5412a, and amendments thereto, shall be deemed to continue for the 2002-2003 school year unless written notice of termination or nonrenewal is served as provided in this subsection. Written notice to terminate a contract may be served by a board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by a board upon any teacher on or before June 15. A teacher shall give written notice to a board that the teacher does not desire continuation of a contract on or before June 30 or, if applicable, not later than 15 days after final action is taken by the board upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date.

(b) Terms of a contract may be changed at any time by mutual consent of both a teacher and a board.

KSA 2001 Supp. 72-5452, Administrators contracts also.