

MINUTES OF THE HOUSE COMMITTEE ON HIGHER EDUCATION.

The meeting was called to order by Chairperson Lisa Benlon at 3:35 p.m. on March 25, 2002 in Room 231-N of the Capitol.

All members were present except: Lana Gordon (A)
Valdenia Winn (E)

Committee staff present: Carolyn Rampey, Legislative Research
Jim Wilson, Revisor of Statutes
Dee Ann Woodson, Committee Secretary

Conferees appearing before the committee: Senator David Haley
Blanche Parks, Director of Learning Quest Program, State
Treasurer's Office
John Peterson representing Elizabeth Rambacher, American
Century Investments

Others attending: See attached list.

SB 403 - Post-secondary savings program, elimination of two-year waiting period for withdrawal, elimination of the state penalty on non-qualified withdrawal and exemption from creditors

Chairperson Benlon opened the hearing on **SB 403**, and called upon Senator David Haley to testify as the first proponent on this bill. He handed out copies of an article that appeared in the Kansas City Star, Sunday, March 24, 2002. (Attachment 1) Senator Haley explained how this bill came about and the amendment he strongly supports for the passage of this legislation. His written testimony clarified what a family development account or an individual development account (I..D.A.) was, and who an I.D.A. benefits. The testimony also included the argument of why Kansas needs family development account programs, and the approximate cost of the program. He talked about the fiscal impact, and how this type of legislation encouraged citizens to establish and make contributions to a family post-secondary education savings account. He also shared with the Committee members a comparison with the State of Missouri, which is roughly three times larger in population, and the availability of a 50% tax credit which had reached a fiscal note of \$180,000 after four years of implementation. (Attachment 2)

Committee questions regarded the fiscal note of \$0.5 million that Bureau of the Budget and Department of Revenue reported to Representative Tanner, and why those agencies would object to this bill. Representative Tanner expressed his concern that his amendment would cause the bill to be submerged when it reached the floor of the House. Representative Reardon inquired as to what the vote had been on the Senate side before the amendment went on the bill, and Senator Haley responded that it was a 40-0 vote. Representative Horst pointed out that the dollar amount of the total tax credits was revised, and asked what else had been changed. Senator Haley explained the three major changes contained in the amendment. Representative Horst requested clarification as to who would administer this program, how it would be handled in the smaller communities, and how the Federal poverty level is determined.

Senator Haley concluded his remarks by telling the Committee that he would not do anything that would jeopardize this program as all three of his children are enrolled in the Learning Quest Program. He added that he would not have any objection to having a reasonable cap being put on it since it will not be reached for many years.

The Chair asked Carolyn Rampey, Legislative Research Department, to give an overview on this bill. She explained the Learning Quest Program, and that individuals could receive a federal or state tax credit for opening an account for a beneficiary and the purpose of the money was to save for educational purposes, but the money could also be withdrawn for other things by paying a penalty. She said it had been in effect since July 1, 2000, and that Kansas had one of the very top programs. Ms. Rampey further explained that the bill came through the Legislative Educational Planning Committee, and was brought to that Committee by the State Treasurer due to a Federal tax law change and the need to conform our state law to

CONTINUATION SHEET

federal law. She also talked about the protection the bill offers from bankruptcy and that the accounts would be shielded, and clarified the changes that the State Treasurer requested plus other changes that had been added to the bill. She added that Senator Haley's amendment was a floor amendment.

Blanche Parks, Director of Learning Quest Education Savings Program, State Treasurer's Department, testified in place of Assistant State Treasurer, Peggy Hanna, as the second proponent in support of this bill. She reviewed the highlights of the Kansas Learning Quest Education Savings Program which included that it was enacted by the Kansas Legislature in 1999, administered by the Kansas State Treasurer, and managed by the American Century Investment Company located in Kansas City, Missouri. Ms. Parks explained that the State Treasurer's Department were requesting six changes to the bill. She said that her written testimony also contained a balloon that referred to **SB 403**: KSA 2001 Supp 75-646(j) which is amended to restate the language in SB 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. Ms. Parks also told the Committee members about the new sections 1 through 7 that were amended into this bill during floor debate in the Senate, and which were not requested by the Treasurer's office but on which they are neutral.

Ms. Parks concluded her testimony by sharing with the Committee members that the Kansas Learning Quest Education Savings Program had been quite successful, and was ranked by the *Kiplinger Magazine* in the "Top 5 College Savings Programs in the Nation". She stated that the Treasurer's Department believed if **SB 403** as amended was passed, it would ensure that the Kansas Learning Quest Education Program would become even more successful and more beneficial to Kansans. (Attachment 3)

Committee questions and discussion involved staff clarifications on the new sections added in by the Senate regarding the federal poverty level in order to qualify for the program, the cap for the dollar amount of not exceeding \$25,000, penalty for early withdrawals, explanations of who could participate, and fiscal note implications.

John Peterson spoke briefly before the Committee and submitted Elizabeth Rambacher's written testimony since she was unable to appear in person before the Committee. Ms. Rambacher is the Learning Quest Program Manager for American Century Investments in Kansas City. In Ms. Rambacher's written testimony she explained that 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 post-secondary education. She also gave a brief overview of her company. Ms. Rambacher's testimony stated that the changes would 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. (Attachment 4)

Chairperson Benlon noted that there were no opponents appearing before the Committee to testify, and she closed the hearing on **SB 403**.

Representative Tanner made a motion to strike the first seven sections from this bill and return it to its original form as it came out of LEPC. Representative Krehbiel seconded the motion.

The Chair opened the floor for discussion of the motion. Representative Reardon stated he opposed the motion, and expressed concern that the bill was at more of a risk in its original form than by removing the first seven sections. He felt that the amendment was not damaging, that this was in effect a state-wide pilot program, and it had passed the Senate on a 40-0 vote. Representative Horst expressed her hesitancy on making tax law in an education committee. Representative Sloan stated that he did not have any objection to this bill except for the date that it becomes effective, and would make a motion to that effect if Representative Tanner's motion failed. He suggested that the effective date should be changed to start in 2004 in hopes for a better economy at that time.

Committee comments and discussion continued with concerns expressed about the bill being referred to a Conference Committee if this Higher Education Committee did not agree with it and pass it out, and how the program would be run and administered in regard to the community-based organization control aspect. Representative McLeland talked about his apprehension regarding page 3, line 20, and the 20% of all the reserve funds could be used for the administrative costs of the program in the first and second years of the program, and no more than 15% of such funds may be used in any subsequent year. He said he thought that was too high.

CONTINUATION SHEET

Representative Tanner closed on his motion. The Chair called for a vote, there being eight (8) for and six (6) against, the motion carried.

Representative Tanner made a motion to adopt the State Treasurer's balloon to SB 403. The motion was seconded by Representative Reardon, and the motion carried.

Representative Sloan made a motion to pass SB 403 out favorably as amended, seconded by Representative Pottorff, and the motion carried.

Jim Wilson, Revisor's Office, clarified the change that was done on the floor of the Senate. The Chair asked the Committee members if anyone had an objection to leaving that change in, and there was no objection to this change.

Chairperson Benlon called the Committee's attention to **HB 2956** for consideration and possible action.

Representative Storm made a motion to amend HB 2956 by adding that no institution of higher education would be required to take more than three new students in any given year. She stated that no institution would have more than twelve students on this program at any one time, and this possibly would relieve some of the Regent's concerns. The motion was seconded by Representative Kuether.

Representative Horst expressed her concerns referencing page 1, line 17 through 21 referring to all schools and whether the small schools would have the same required amount as the large institutions.

Representative Storm replied that if they were going to make it different or increase it for the large schools that three were not very many. Representative Horst said she was concerned about the funding issue even for three students in the smaller schools. Carolyn Rampey, Legislative Research Department, explained that this was a reimbursement program, and it was like other programs the state had plus it was subject to appropriations by the KBOR. Jim Wilson, Revisor's Office, clarified that if the Kansas institutions' had the funding for this program and if they can't cover it with their own funds or reserves there would be some opportunity for an out. He added with the larger institutions it would be difficult for them to argue they couldn't cover the costs because it is for tuition, undergraduate fees, lab fees and not living expenses.

Representative Tapanelli shared his misgivings about this bill and putting such a burden on the schools for the foster care students. He said he thought it was a band-aid approach to solving the problems of foster care. Representative Wells imparted that he felt there were a lot of low income kids from one parent homes that also should receive assistance, and there were a lot of kids that have to work their way through school. He added that he didn't think it was right, and the foster care children have the opportunity for grants or other scholarships to assist in furthering their education.

Representative Storm responded that this bill required that the students work, and that the children are not given money to carry around. She also added that the children are moved around so much that their high schools don't pick up on what their skills or interests are.

Representative Cook offered a substitute motion in order to offer a compromise by taking out the state institutions and leaving in community colleges and vocational technical schools. She stated that it would be less expensive and it was a good starting point for those kids, and she wanted to leave in the limitation of three students per year per institution. Representative Phelps said he would second the motion for purposes of discussion.

Representative Reardon pointed out that he appreciated Representative Cook offering a compromised solution, but questioned whether the students not living in the areas where there are community colleges or vocational educational schools would not benefit from this bill. He said that this would make it difficult for some to find a place to attend. Representative Krehbiel expressed that he felt that Representative Storm's motion was middle ground because there were not going to be that many go on to further their education past high school. He stated he opposed the substitute motion, and suggested that the Regents could come to the Legislature later and tell them if the numbers were getting out of hand. He said he supported Representative Storm's motion. Representative McLeland stated that he felt that the limitation of three per year was not really necessary, but if that is what it would take to get the bill passed out then he would support it.

CONTINUATION SHEET

Representative Tanner stated that the Legislature needed to put the bite on SRS to provide counseling services for these foster care kids, and thought the Committee should pass the bill out.

Representative Cook withdrew her substitute motion with the consent of Representative Phelps who had seconded the motion.

Committee discussion continued. Representative Storm closed on her motion to amend **HB 2956**, and the Chair called for the vote with eight (8) voting in favor and five (5) against. The motion passed.

Representative Krehbiel made a motion to amend the bill regarding the age limit beginning on line 26, page 1, changing it to read as "within two years following the date such applicant graduates from high school or receives their GED" striking the reference of reaching 18 years of age. The motion was seconded by Representative Reardon.

The Chair opened the floor for Committee discussion and comments. Committee members expressed concerns that the foster care kids are wards of the state and the responsibility lies therein, and that SRS needs to provide more and better guidance for high school students regarding post-secondary educational opportunities. After much discussion on various wording possibilities, Representative Krehbiel stated he wanted to move his motion as was stated. Chairperson Benlon called for the voice vote, and the Chair was undecided on the voice vote and called for a show of hands. The vote was tied seven (7) to seven (7), and the Chair voted in favor of the amendment. The motion carried.

Representative Storm made a motion to pass **HB 2956** out favorably as amended, and seconded by Representative Krehbiel. After brief Committee discussion, Representative Storm closed on her motion to pass the bill out favorably. Chairperson Benlon called for the voice vote, and the Chair again asked for clarification by a show of hands. The vote was tied six (6) to six (6), and the Chair voted in favor for passage. The motion carried.

Chairperson Benlon adjourned the meeting at 5:30 p.m. The next meeting of the House Higher Education Committee will be on call of the Chair.

HOUSE HIGHER EDUCATION COMMITTEE GUEST LIST

DATE March 25, 2002

NAME	REPRESENTING
Chuck Stones	KS Bankers Assoc
Blaise Parks	Co. Treasurer's Office
Bill Brady	Am. Century

HIGHER ED
3-25-02
ATTACHMENT 1

Grants available to low-income families

By KATIE WEEKS
The Kansas City Star

Heart of America Family Services on Saturday announced 500 grants for low-income families to help them purchase a house, pursue an education or begin a small business.

The grants will award the recipients twice as much as they are able to save over a four-year period. Approved account holders can save up to \$800 and receive up to \$1,600, making the account worth \$2,400. In addition, the Fannie Mae Foundation has pledged to make low down-payment mortgages available for as little as \$500.

Kansas City will provide \$75,000

For information

For more information or to obtain an application for a Heart of America Family Services grant, contact Pat Burns, Family Asset Building program coordinator, at **(816) 418-8400**.

for the program, Mayor Kay Barnes announced at the Home Show at Bartle Hall. Other supporters are the Ewing Marion Kauffman Foundation, the Department of Health and Human Services, and the McAuley Institute, a nonprofit organization dedicated to helping women purchase homes.

The grants will be added to the

Heart of America Family Services' Family Asset Building program, which currently serves 325 families.

Qualifying families must live in Kansas City or Kansas City, Kan., and meet the following income guidelines: They must make no more than \$42,640 for a family of five, no more than \$36,220 for a family of four, no more than \$30,040 for a family of three, no more than \$23,880 for a family of two, or no more than \$17,720 for a single person.

Julie Riddle, a Family Services spokesman, estimated that the 500 grants will pump \$1.2 million into the local economy.

"This program offers residents the opportunity to build wealth and

to be fully participating members of the community," Barnes said. "This is one of many strategies employed to strengthen our families and our community."

Funds are sent straight to a vendor to make sure they are spent on intended purposes, Riddle said.

Ladonna Miles, a divorced mother of four, spoke to the crowd at the Home Show. She said she was able to purchase a house with the help of a grant from the Family Asset Building program several years ago.

"I pretty much gave up on owning my own home," Miles said. "After a divorce, it's really hard to get on your feet. ... It was an uplifting thing. I encourage anyone to look into it. ... You can do it."

House Higher Education Committee
Meeting Date: 3-25-02
Attachment No.: 1-1

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SENATE CHAMBER
DAVID B. HALEY
SENATOR
DISTRICT 4
WYANDOTTE COUNTY

TESTIMONY IN SUPPORT OF *HALEY* AMENDMENT TO SB 403 (An Act establishing the family development account program)

Greetings & Gratitude

INTRODUCTION

- A) What is a “family development account” (also known as an “individual development account” or “I.D.A.”)?
- Basically, an I.D.A. is a “savings account”, of sorts, whereby the account “holder” is of average to low-income (200% of the federal poverty income index) and wherein each dollar contributed by the individual/family is matched at a one-to-one up to a three-to-one ratio.

Example

- B) Who does an I.D.A. benefit?
- Contributions from the individual/family account holder are held at a financial institution and can only be withdrawn (and joined with the matching funds) for specific expenditures approved by a Board regulated by the State Treasurer.

Example

ARGUMENT

- C) Why does Kansas need family development account programs?
- Statistics prove that few incentives are available to prevent the ever widening gap between the wealthy and the poor and I.D.A’s have been successful in helping once chronically dependent poor families to achieve home ownership/higher educational/small business opportunities in other states.

Example

House Higher Education Committee

Meeting Date: 3-25-02

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- D) How much will this Program actually cost Kansas?
 - Although this attached fiscal note is totally erroneous (based perhaps on the presumption that program contributors will reach \$500,000 in total, in any fiscal year), this committee could set a realistic limit to potential tax credits. (By comparison, Missouri, with three times Kansas' population and a 50% credit availability, has only reached a fiscal note of \$180,000 after four years of implementation.)
Example

CONCLUSION

- E) Where do I.D.A.'s generate?
 - With the current federal emphasis on individual wealth retention and assistance by community and/or "faith based" organizations, initiatives like I.D.A.'s will generate in Kansas, neighborhood after neighborhood, self enrichment married with private sector participation with a minute, but empowering "incentive" from state government.
Example
- F) When have I.D.A.'s been successfully implemented?
 - Family development accounts, according to both N.C.S.L. and A.L.E.C., have been up and running with varying degrees of success in several states (including Missouri and Indiana).

NOTES: _____

Thank you for your consideration.

March 25, 2002

To: Chairperson Benlon and
Members of the House Higher Education Committee

From: Assistant State Treasurer, Peggy Hanna

Re: Kansas Learning Quest Education Savings Program
Senate Bill 403

Chairperson Benlon 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.

Highlights of the Kansas Postsecondary Education Savings Program, now known as the Kansas Learning Quest Education Savings Program:

- Authorized and regulated by Section 529 of the Internal Revenue Code of 1986 as amended
- Enacted by the Kansas Legislature in 1999
- Opened on July 1, 2000
- Administered by the Kansas State Treasurer
- Managed by American Century Investment Company.
- A savings account may be opened 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
- No state or federal income taxes are assessed on the earnings
- Over 30,000 accounts open (over half belong to Kansas residents)
- Current account balances in excess of \$206 million

Enhancements added to Learning Quest by policy that encourage Kansas residents to save for their children's education:

- Low deposit amounts for Kansas accounts (automatic deposits or payroll deductions - \$25 per month; check deposits - \$500 to open and \$50 follow up deposits)
- Waived the \$10 annual fee that was being assessed to each Kansas account

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.
- 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. 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

3-5

P. 02

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P. 02
FAX NO. 9132966668
REVISOR OF STATUTES
MAR-19-02 TUE 01:06 PM

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 ~~(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) (l)~~ (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 Committee on Higher Education

March 25, 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.

House Higher Education Committee
Meeting Date: 3-25-02
Attachment No.: 4-1

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.