

SENATE MOTION

MR. PRESIDENT:

I move that Senate Bill 100 be amended to read as follows:

- 1 Delete everything after the enacting clause and insert the
2 following:
- 3 SECTION 1. IC 6-3-3-11 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 1998]: **Sec. 11. (a) As used in this section, "dependent" means a**
6 **person who the taxpayer is eligible to claim as a dependent on the**
7 **taxpayer's federal income tax return for the taxable year under**
8 **Section 151 of the Internal Revenue Code.**
- 9 (b) As used in this section, "family college savings" means
10 deposits made to an individual trust account in the Indiana family
11 college savings trust fund under IC 21-9.
- 12 (c) As used in this section, "higher education institution" has
13 the meaning set forth in IC 21-9-2-16.
- 14 (d) As used in this section, "individual trust account" has the
15 meaning set forth in IC 21-9-2-17.
- 16 (e) As used in this section, "taxpayer" means an individual
17 filing a separate return or a husband and wife filing a joint return.
- 18 (f) A taxpayer is entitled to the credit specified in subsection
19 (g) for deposits of family college savings in an individual trust
20 account for the taxpayer's dependent after June 30, 1998, and
21 before July 1, 2000.
- 22 (g) The amount of the credit under this section is equal to the
23 lesser of:
- 24 (1) thirty percent (30%) of the aggregate of the family
25 college savings deposited by the taxpayer for the taxpayer's
26 dependent; or
27 (2) three hundred dollars (\$300) per dependent.
- 28 (h) A credit under this section must be claimed in conformity
29 with the procedures established by the department of state
30 revenue.
- 31 (i) The department of state revenue shall deposit the lesser of:
32 (1) the amount determined under subsection (g) plus any
33 amount carried over under subsection (j); or

1 **(2) the taxpayer's adjusted gross income liability for the**
 2 **taxable year;**
 3 **in the individual trust account in which the taxpayer made a**
 4 **deposit of family college savings for a dependent. Money deposited**
 5 **under this subsection may be used only for a purpose for which**
 6 **other money in the individual trust account may be used. The**
 7 **deposit under this subsection is exempt from taxation under this**
 8 **title.**

9 **(j) Except as provided in subsection (k), in any year that the**
 10 **amount determined under subsection (g) exceeds the amount of the**
 11 **taxpayer's adjusted gross income tax liability, the taxpayer may**
 12 **carry the excess over to the immediately following three (3) taxable**
 13 **years. The amount of the credit carryover from a taxable year shall**
 14 **be reduced to the extent that the carryover is used by the taxpayer**
 15 **to obtain a credit under this section for any subsequent year.**

16 **(k) If the amount determined under subsection (g) exceeds the**
 17 **amount of the taxpayer's adjusted gross income tax liability, the**
 18 **taxpayer may elect to receive the amount of the excess as a refund**
 19 **in lieu of carrying over the excess under subsection (j).**

20 **(l) If:**

21 **(1) a credit was taken under this section for family college**
 22 **savings; and**

23 **(2) the amount deposited is withdrawn from the Indiana**
 24 **family college savings trust fund and not used in conformity**
 25 **with the purposes of the Indiana family college savings trust**
 26 **fund, as determined under the policies and procedures**
 27 **specified by the board of directors of the Indiana education**
 28 **savings authority under IC 21-9-7-1;**

29 **the taxpayer receiving the credit is subject to a penalty in the year**
 30 **of the withdrawal. The amount of the penalty is the amount of**
 31 **credits given under this section on the amount withdrawn,**
 32 **excluding any earnings on the amount deposited. The amount of**
 33 **the penalty shall be treated as other penalties imposed under**
 34 **IC 6-8.1. However, the board of directors of the Indiana education**
 35 **savings authority may provide for the withholding of a penalty**
 36 **imposed under this subsection from amounts withdrawn from the**
 37 **Indiana family college savings trust fund and the direct payment**
 38 **of the amount of the penalty to the department of state revenue.**
 39 **The department of state revenue may provide by rule adopted**
 40 **under IC 4-22-2 for the waiving of a penalty imposed under this**
 41 **subsection in the case of hardships or special circumstances**
 42 **affecting the account owner (as defined in IC 21-9-2-4) or account**
 43 **beneficiary (as defined in IC 21-9-2-3).**

44 **SECTION 2. IC 21-9-7-1, AS ADDED BY P.L.165-1996,**
 45 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 46 **JULY 1, 1998]: Sec. 1. In addition to any other powers granted by this**
 47 **article, the board has all powers necessary or convenient to carry out**
 48 **and effectuate the purposes and objectives of this chapter, IC 21-9-8,**

1 and IC 21-9-9, the purposes and objectives of the family college
 2 savings programs that may be established under this article, and the
 3 powers delegated by other laws or executive orders, including the
 4 following:

5 (1) To establish policies and procedures, including penalties, to
 6 govern withdrawals from accounts in the event of:

7 (A) the death or disability of an account beneficiary;

8 (B) the denial of admission or acceptance by a higher
 9 education institution of an account beneficiary; ~~and~~

10 (C) other hardships or special circumstances affecting
 11 account owners and account beneficiaries; ~~However; and~~

12 **(D) the use of withdrawn money for a purpose other**
 13 **than an allowable purpose at a higher education**
 14 **institution.**

15 The authority must establish penalties for ~~early the~~ withdrawal
 16 **or use** of money from accounts in circumstances other than
 17 hardships ~~described in this subdivision.~~ **affecting account**
 18 **owners or account beneficiaries.**

19 (2) To establish policies and procedures regarding the transfer of
 20 individual accounts and the designation of substitute account
 21 beneficiaries.

22 (3) To establish policies and procedures for withdrawal of
 23 money from accounts for, or in reimbursement of, allowable
 24 expenditures.

25 (4) To establish policies and procedures regarding recapture of
 26 all or a part of prior or current benefits or incentives allocated or
 27 allocable to accounts, including **the penalty under IC 6-3-3-11.**

28 **The board may**, in appropriate circumstances in the board's
 29 judgment, recapture as a precondition to withdrawal.

30 (5) To enter into agreements with account owners, account
 31 beneficiaries, and contributors, with the agreements naming:

32 (A) the account owner, who must be an adult or
 33 emancipated minor; and

34 (B) the account beneficiary, who may also be the account
 35 owner, if qualified.

36 (6) To establish accounts for account beneficiaries. However:

37 (A) the authority shall establish a separate account for each
 38 account beneficiary; and

39 (B) an individual may be the beneficiary of more than one
 40 (1) account.

41 (7) To enter into agreements with financial institutions relating
 42 to accounts as well as deposits, withdrawals, penalties,
 43 recaptures of benefits or incentives, allocation of benefits or
 44 incentives, and transfers of accounts, account owners, and
 45 account beneficiaries.

46 (8) To conform the trust program and the account program to
 47 federal tax advantages or incentives, as the advantages or

1 incentives may exist periodically, to the extent consistent with
2 the purposes and objectives of this article.
3 (9) To interpret, in rules, policies, guidelines, and procedures,
4 the provisions of this article broadly considering the purposes
5 and objectives of this article.
6 SECTION 3. [EFFECTIVE JULY 1, 1998] **IC 6-3-3-11, as added**
7 **by this act, applies only to taxable years beginning after December**
8 **31, 1997, and deposits of family college savings (as defined in**
9 **IC 6-3-3-11, as added by this act) made after June 30, 1998, and**
10 **before July 1, 2000.**
(Reference is to SB 100 as printed January 23, 1998.)

Senator GERY