

MINUTES

LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

November 19-20, 2009
Room 545-N—Statehouse

Members Present

Senator Jean Kurtis Schodorf, Chairperson
Representative Deena Horst, Vice-chairperson
Senator Marci Francisco
Senator Bob Marshall
Senator Mark Taddiken
Senator John Vratil
Representative Barbara Ballard
Representative Owen Donohoe
Representative Steve Huebert
Representative Eber Phelps
Representative JoAnn Pottorff
Representative Valdenia Winn

Member Absent

Senator Ruth Teichman

Staff Present

Sharon Wenger, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Reagan Cussimano, Kansas Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Kristen Kellems, Office of the Revisor of Statutes
Renae Jefferies, Office of the Revisor of Statutes
Dale Dennis, Kansas State Department of Education
Janet Henning, Committee Assistant

Others Present

Scott Frank, Legislative Division of Post Audit
Laurel Murdie, Legislative Division of Post Audit
Alex Gard, Legislative Division of Post Audit

Daniel Bryan, Legislative Division of Post Audit
Mike Reece, K12, Inc.
Kathy Damron, University of Kansas
Bill Reardon, Kansas City Kansas Public Schools
Diane Gjerstad, Wichita Public Schools
Dodie Wellshear, United School Administrators of Kansas
Tom Krebs, Kansas Association of School Boards
Val DeFever, Schools for Quality Education
Bill Brady, Schools for Fair Funding
Terry Forsyth, Kansas National Education Association
Bob Vancrum, USD 229, Blue Valley
Sue Storm, Kansas State Board of Education
Sue Denny, USD 229, Blue Valley
Doug Bowman, Coordinating Council on Early Childhood
Mark Bozanysk, Capitol Strategies
Jennifer Crow, USD 501, Topeka
Shannon Bell, Little Government Relations
Trudy Racine, Kansas Children's Service League
Debi Hatfield, Kansas Department of Health and Environment
Julie Hein, Hein Law Firm

**Thursday, November 19
Morning Session**

The meeting of the Legislative Educational Planning Committee (LEPC) was called to order at 10:00 a.m. by Chairperson Schodorf.

**Update on November Fiscal Consensus Estimates
for K-12 Education**

Dale Dennis, Deputy Commissioner, Kansas State Department of Education, spoke to Commission members and reviewed the current fiscal situation for K-12 education. Mr. Dennis began by describing the changes, over time, in the Base State Aid per Pupil (BSAPP). BSAPP primarily is what funds general education.

When the November consensus estimates were done, the following factors exacerbated fiscal problems:

- Property valuations dropped by \$500.0 million;
- Total K-12 enrollments increased by 3,300-3,400 students;
- Free lunch applications increased by 12-13 percent; and
- Virtual and bilingual students increased slightly.

These factors led to an additional BSAPP cut of approximately \$150, bringing the BSAPP to \$4,068.

Mr. Dennis told Committee members there have been indications in the media that there will be additional allotments. He advised that under the American Recovery and Reinvestment Act (ARRA), the State of Kansas cannot go below the 2006 level of funding for K-12 education without special permission and special waivers from the federal government.

Mr. Dennis told Committee members that 2,101 licensed positions were eliminated in Kansas school districts for the 2009-10 school year. There have been 1,603 non-licensed positions eliminated for the 2009-10 school year.

Mr. Dennis told Committee members of other cost-saving measures which have been reduced or eliminated for the 2009-10 school year. These include cuts in or total elimination of the following:

- Before school, after school, and summer school programming;
- Parents as Teachers;
- Fine arts, language arts, and career and technical education classes;
- All-day kindergarten;
- In-district professional development;
- Out-district conferences;
- Extracurricular activities;
- School year (shortened);
- Transportation;
- Attendance center(s) (closed);
- Purchase of textbooks; and
- Purchase of school buses.

Mr. Dennis told Committee members the above listed items would be a total estimated reduction cost of \$67,692,746. He stressed to Committee members that this will have an effect on student achievement.

Mr. Dennis reviewed staff cost-cutting and efficiency measures being taken by the school districts:

- Eliminated 2,101 licensed positions in the 2009-10 school year;
- Eliminated 1,603 non-licensed positions in the 2009-10 school year:
 - Used early retirement options;
 - Froze salaries;
 - Reduced or eliminated professional development;
 - Shared food service manager with local hospital;
 - Shared a school nurse with the county health department;
 - Reduced or eliminated out-of-state conference travel;
 - Shared staff with other districts, such as a technology coordinator;
 - Eliminated bonuses for teachers in high-poverty schools;
 - Reduced new teacher orientation and induction;
 - Reduced and eliminated school resource officers, counselors, librarians, educational aides, administrators, paraprofessionals, social workers, school nurses, and parent educators;
 - Filled a coaching position with private funds from the community;
 - Used part-time staff; and

- Reduced overtime for non-licensed staff.

Mr. Dennis related some of the utility-related cost-cutting and efficiency measures:

- Contracted with a company to evaluate energy systems and recommend replacement and savings;
- Created a position which monitors energy use and implementation of energy cost-saving measures;
- Retrofitted buildings with energy-saving lights;
- Updated heating and cooling systems;
- Installed new energy-efficient heating and cool systems;
- Lowered room temperatures in the winter and increased room temperatures during the summer;
- Purchased natural gas via a bulk-buying group; and
- Created a student advisory council to assist with finding energy savings through the district's buildings.

Mr. Dennis told Committee members that programming efficiencies included the following:

- Increased pupil-teacher ratio;
- Reduced or eliminated early childhood programs;
- Reduced the number of activity buses taken to out-of-town athletic events;
- Reduced the number of activity trips;
- Reduced the number of curriculum-related field trips;
- Reduced extracurricular activities, such as clubs and organizations;
- Reduced alternative school programs;
- Reduced or eliminated before school, after school, and summer school programming;
- Reduced or eliminated support to Parents as Teachers programs;
- Reduced or eliminated fine arts, language arts, and family and consumer science programs;
- Reduced athletic programs;
- Reduced tutoring;
- Reduced instructional time;
- Lengthened school day and shortened school year, which save money on custodial, utility, and transportation services;
- Eliminated field trips, unless paid for by parents or boosters; and
- Raised class sizes in some or all subjects.

Mr. Dennis told Committee members that school districts have increased school lunch, driver's education, and facility rental fees. Districts also have increased scrutiny of Medicaid-eligible services, which increased the billing for services.

Committee members were advised the following steps have been taken regarding the operations and maintenance of school districts:

- Closed school buildings;
- Discontinued contracted bus service;
- Eliminated or reduced bus routes, making some routes longer than one hour;
- Deferred maintenance, repairs, and improvements to buildings and equipment;
- Bid large ticket items such as milk, fuel, technology software and hardware services, telecommunications, vehicles, and other large equipment;
- Installed hand blowers in restrooms to reduce paper towel use;
- Installed automatic flush toilets to reduce custodial time;
- Joined cooperative buying units;
- Used state contract when purchasing various equipment and supplies;
- Delayed purchases of textbooks, supplies, and school buses;
- Entered into agreements with local units of government for some services, such as school security services with a local police department;
- Reduced maintenance to a minimum;
- Eliminated transportation of students to day care providers;
- Used bigger buses or passenger vans; and
- Reduced funding available to purchase necessary school supplies, which increases the cost to teachers and parents, who still must provide supplies.

Mr. Dennis advised that school districts have refinanced bonded indebtedness and reduced cash reserves, which is of concern for future budgets. Mr. Dennis also noted that school districts have promoted wellness and safety issues in an attempt to keep health insurance renewal rates as low as possible. Insurance policies have been changed to have higher deductibles. Mr. Dennis indicated some school districts are interested in a statewide health insurance plan for their employees (Attachment 1).

A question and answer session followed the presentation.

Representative Steve Huebert distributed two items:

- Unified School Districts—State Totals (November 16, 2009, prepared by the Kansas Department of Education) (Attachment 2); and
- Chart prepared by Legislative Research dated May 8, 2009, showing K-12 expenditures over time for KPERS, bond and interest, local option budget, and full-time equivalent enrollment (Attachment 3).

Staff Review of Topics for Legislative Action and Inclusion in Final Report

School District Reorganization

History and Review of Various Studies

Dale Dennis and Sharon Wenger, Kansas Legislative Research Department, spoke to Commission members regarding school district reorganization questions being discussed (Attachments 4 and 5).

A question and answer session followed the presentation.

Afternoon Session

Current Statutory Incentives

Theresa Kiernan, Office of Revisor of Statutes, gave an overview of the various statutory incentives which have been enacted to encourage school districts to consolidate (Attachment 6).

A question and answer session followed the presentation.

Status of Performance Audit on Reorganization

Dan Bryan, Legislative Division of Post Audit, gave an overview of a performance audit reviewing school district reorganization currently being prepared by Legislative Post Audit. The report should be completed by mid to late January, 2010, and will include a variety of reorganization scenarios for review by Kansas legislators.

A question and answer session followed the presentation.

Special Education Catastrophic Aid

Sharon Wenger spoke to Committee members regarding three proposals made by various entities related to the special education catastrophic aid funding formula. Those proposals are summarized below.

- **2010 Commission:** Increase the funding threshold per student to two times the prior year's aid per teacher, deduct any other state categorical aid a district has already received for the student, and multiply the result by the percentage determined by state law (currently .75).
- **Special Education Directors:** Increase the funding threshold per student to two times the prior year's average cost per special education student (FTE), deduct any other state categorical aid a district has already received for the student, and multiply the result by the percentage determined by state law (currently .75).
- **Legislative Post Audit Committee:** Increase the funding threshold to \$36,000, allow the threshold to increase in future years to account for inflation, deduct any other state categorical aid a district has already received for the student, and multiply the result by the percentage determined by state law (currently .75) (Attachments 7, 8, and 9).

A question and answer session followed the presentation.

Youth Residential Centers

Theresa Kiernan, Revisor of Statutes Office, spoke to Committee members and reviewed the funding for educational services provided to students residing at juvenile detention facilities, psychiatric residential treatment facilities, youth residential centers, and the Flint Hills Job Corp Center (Attachments 10, 11, 12, and 13).

A question and answer session followed the presentation.

Chairperson Schodorf asked Committee members if there were any changes or additions to the minutes of October 12, 2009. *Representative Horst moved to approve the minutes as recorded. The motion was seconded by Representative Phelps. The motion carried.*

Review of Final 2010 Commission Recommendations

Martha Dorsey, Kansas Legislative Research Department, spoke to Committee members and gave a review of the final 2010 Commission recommendations (Attachment 14), which included:

- The Legislature should refocus its revenue and funding priorities to make education priority number one;
- The Legislature should consider generating revenue from at least three specific revenue sources, including:
 - Reversing previous tax cuts;
 - Increasing the statewide school mill levy; and
 - Increasing the state sales tax.
- In addition to the knowledge that the education of children is the most important function of state government, there are practices that are known to make a difference in assuring that every child receives the maximum benefit of his or her education;
- The Legislature should continue funding K-12 education in a three-year funding cycle;
- The Legislature should change the formula for determining special education catastrophic aid; and
- The Legislature should shift the *tiny-k* and Early Head Start programs to the Kansas Department of Education.

A question and answer session followed the presentation.

Kansas Board of Regents Final Legislative Initiatives

President Reginald Robinson, Kansas Board of Regents, spoke to Committee members and gave a summary of the Board of Regents 2010 Legislative initiatives (Attachment 15):

- Revise Private Postsecondary Statutes—Amend private postsecondary statutes by: including new definitions of regulated entities; eliminating the exemption for branch locations; making changes to the application and renewal process; clarifying the types of degrees requiring a certificate of approval; providing for greater penalties for violations of the Private Postsecondary Act; revising the fee structure to establish new maximum amounts that may be charged to regulated entities; requiring data to be reported by regulated institutions; and requiring the schools to post their student complaint process.
- Amend the 45-day veto provision related to the Technical Education Authority (TEA) statutes by TEA and the Board, and eliminate the need for the Board to take negative action on TEA recommendations for purely procedural reasons.
- Make permanent the State University Purchasing Pilot Project—The University of Kansas and Fort Hays State University have participated in a three-year purchasing pilot program which has exempted them from state purchasing statutes. The proposal would make the exemptions permanent and would allow all six state universities to participate.
- Expand State University Surplus Property Exemption—Exempt the six state universities from the State Surplus Property Act.
- Update investment statutes/gifts and bequests—Update statute language and offer an additional investment option supported by the recent adoption of the Kansas Uniform Prudent Management of Institutional Funds Act.
- Authorize Fort Hays State University to sell land—Authorize Fort Hays State University to sell two tracts of land to the City of Hays.

A question and answer session followed the presentation.

Chairperson Schodorf announced the Committee would be meeting at 9:00 a.m., November 20, 2009, in Room 545-N.

The meeting was adjourned at 3:25 pm.

Friday, November 20 Morning Session

The meeting was called to order at 9:00 a.m. by Chairperson Schodorf. Committee members discussed recommendations and bill introductions for the 2010 Legislative Session.

Catastrophic Aid Recommendations

Representative Horst moved to have the LEPC recommend and introduce a bill changing catastrophic special education aid by raising the threshold for catastrophic aid claims to twice the previous year's teacher aid allocation, and districts would be required to deduct any other state

categorical aid already received . The motion was seconded by Representative Pottorf. The motion carried.

Senator Vratil moved to have the LEPC recommend and introduce a second bill raising the threshold for catastrophic aid claims to \$36,000 for the 2009-10 school year, with the threshold indexed to the consumer price index-urban (CPI-U), and districts would be required to deduct any other state categorical aid already received. In addition, the bill would establish a separate fund called the Catastrophic Aid Fund at the state level, which would be used to receive appropriations and be subject to an annual appropriation. The motion was seconded by Representative Ballard. The motion carried.

Youth Residential Centers (YRCs)

Theresa Kiernan explained a bill related to YRCs which has been prefiled by Senator Vratil (SB 340). On June 30, 2011, SB 340 would eliminate the "two for one student" funding currently in place for students in the custody of the Department of Social and Rehabilitation Services or the Juvenile Justice Authority enrolled in USD 259, Wichita, and USD 409, Atchison, and housed at the Judge V. Riddel Boys Ranch and the youth residential center located on the grounds of the former Atchison Juvenile Correctional Facility. In SB 340, each student housed in the above facilities would be counted as one student, instead of two students.

Representative Horst made a motion that the LEPC support prefiled SB 340. Senator Vratil seconded the motion. The motion passed.

Early Childhood Programming

Senator Vratil made a motion to have the LEPC support a resolution requesting the Governor to move the tiny-k and early head start programs to the Kansas Department of Education (in agreement with a recommendation of the 2010 Commission). Senator Schodorf seconded the motion. The motion failed.

State Aid for K-12 Education

Senator Vratil made a motion that the LEPC recommend in its final report that state aid for K-12 education and higher education not be reduced below the 2006 maintenance of effort level required by the American Recovery and Reinvestment Act; in addition, the Governor should not request a waiver of this maintenance of effort requirement. Senator Francisco seconded the motion. The motion passed.

Higher Education

Senator Vratil made a motion for the LEPC to recommend and introduce bills which include all six of the Kansas Board of Regents legislative initiatives. Representative Pottorf seconded the motion. The six initiatives are described below:

- Amend private postsecondary statutes by including:
 - New definitions of regulated entities;

- Eliminate the exemptions for branch locations;
 - Change the application and renewal process (for out-of-state postsecondary institutions wanting to do business in Kansas);
 - Clarify the types of degrees requiring a certificate of approval;
 - Provide for greater penalties for violations of the Private Postsecondary Act;
 - Revise the fee structure to establish new maximum amounts that may be charged to regulated entities;
 - Require data to be reported by regulated institutions; and
 - Require the schools to post their student complaint processes.
-
- Amend Kansas Postsecondary Technical Education Authority statutes by amending the 45-day veto requirement and, instead, requiring the Kansas Board of Regents to “act upon such recommendations within 45 days of submission”;
 - Make a pilot exemption permanent that has allowed Ft. Hays State and the University of Kansas to be exempt from state purchasing statutes, and expand the exemption to all six state universities to participate;
 - Exempt the six state universities from the State Surplus Property Act;
 - Update and streamline statutory language regarding investments and add an additional investment option supported by the recent adoption of the Kansas Uniform Prudent Management of Institutional Funds Act; and
 - Authorize Fort Hays State University to sell two tracts of land to the City of Hays as part of the development of a community sports complex.

Representative Huebert made a substitute motion for the LEPC to recommend and introduce bills for all of the Board of Regents’ legislative initiatives, except for initiative number two, which would amend the Kansas Postsecondary Technical Education Authority statutes by changing the 45-day veto requirement. Representative Huebert’s motion indicated this proposed bill would be introduced by the LEPC, but without a recommendation. Representative Horst seconded the substitute motion. The substitute motion passed.

Senator Schodorf indicated that the LEPC’s final report should include recognition of the efforts by superintendents and all school district personnel and the Kansas Department of Education in the continuing good work providing quality education for Kansas children in very difficult times. She wished to thank all who testified before the LEPC during the 2009 Interim.

The meeting adjourned at 10:30 a.m.

Prepared by Sharon Wenger

Approved by Committee on:

December 30, 2009

(Date)

LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

November 19, 2009

Base State Aid Per Pupil

School Year	BSAPP
1992-93	3,600
1993-94	3,600
1994-95	3,600
1995-96	3,626
1996-97	3,648
1997-98	3,670
1998-99	3,720
1999-00	3,770
2000-01	3,820

LEPC
11-19-09
Attachment¹

Base State Aid Per Pupil

School Year	BSAPP
2001-02	3,870
2002-03	3,863
2003-04	3,863
2004-05	3,863
2005-06	4,257*
2006-07	4,316
2007-08	4,374
2008-09	4,400
2009-10	4,068

Statutes provide for a BSAPP of \$4,492 for 2009-10 and each school year thereafter.

Base State Aid Per Pupil

- * Approximately \$244 of the increase was a result of raising the BSAPP and lowering the enrollment weighting which resulted in no increased spending authority.

$$\$ 4,068 - \$ 244 = \$ 3,824$$

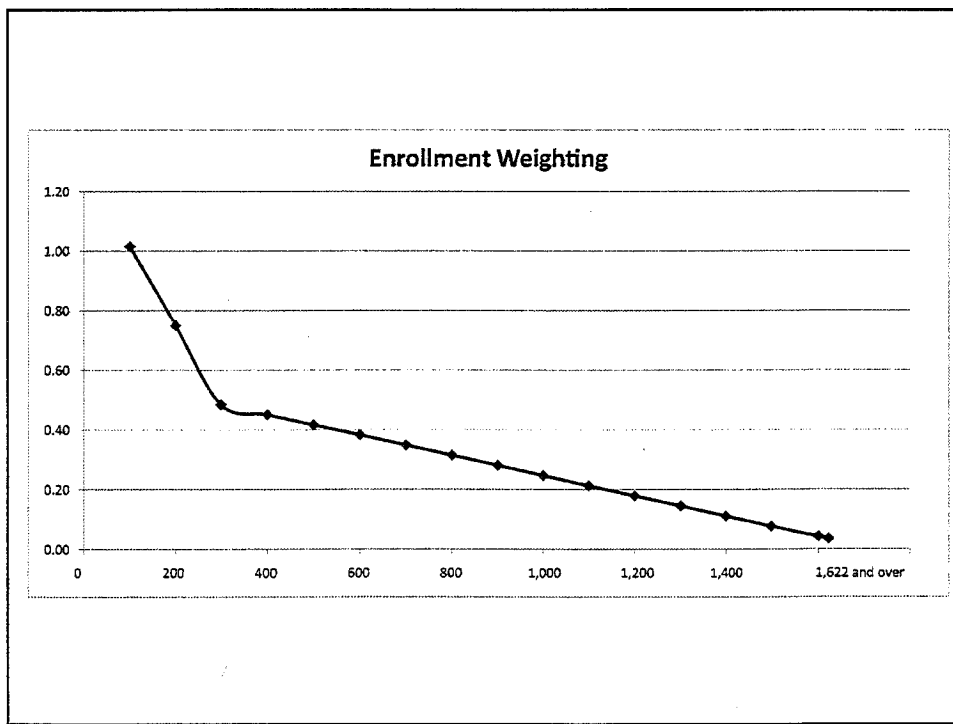
(compares to school years prior to 2005-06)

Base State Aid Per Pupil

Statutory BSAPP \$ 4,492

BSAPP Following
Legislative Adjournment \$ 4,280

BSAPP Following
Governor's Allotments \$4,068



**STATE AID
REDUCTIONS/UNDERFUNDING*
2009-10 School Year**

State Aid	Reduction
General State Aid BSAPP \$4,400 to \$4,068	\$ 217,466,640
Capital Outlay	25,600,000
Professional Development	1,750,000
Teacher Mentoring	200,000
Discretionary Grants	85,000
National Board Certification	240,000
Special Education	4,000,000
TOTAL	\$ 249,341,640

**STATE AID
REDUCTIONS/UNDERFUNDING***

- * This total does not include the underfunding of Supplemental General (LOB) State Aid of \$41,812,000 or Special Education State Aid of \$9,510,333

Potential Additional Reductions

General State Aid	\$ 100,534,000
Local Option Budget	\$ 41,812,000
Special Education	\$ 13,510,333
TOTAL	\$ 155,856,333

Survey—USD Reductions

1. How many licensed positions were eliminated for the 2009-10 school year?

	Headcount	Est. Dollars Reduced
Administrators	133	\$ 9,707,109
Teachers	1,160	53,823,567
Coaches	583	3,969,786
Other	225	5,672,252
TOTAL	2,101	\$ 73,172,714

Survey—USD Reductions

2. How many non-licensed positions were eliminated for the 2009-10 school year?

	Headcount	Est. Dollars Reduced
Food Service	111	\$ 1,534,779
Bus Drivers	70	882,820
Custodians & Maintenance	278	6,647,964
Paraprofessionals	566	9,015,962
Coaches	234	616,865
Other	344	7,650,066
TOTALS	1,603	\$ 26,348,456

Survey—USD Reductions

3. How other cost-saving measures were reduced/eliminated for the 2009-10 school year?

Program	Est. Reductions
Before School	47,500
After School	1,005,671
Summer School	2,213,672
Parents as Teachers	259,416
Fine Arts	328,623
Language Arts	78,500
Career & Technical Education	654,091

Survey—USD Reductions

How other cost-saving measures were reduced/eliminated for the 2009-10 school year? (continued)

Program	Est. Reductions
All-Day Kindergarten	25,500
In-District Professional Development	3,657,528
Out-District Conferences	3,015,233
Extracurricular Activities	1,054,256
Shortened School Year	4,491,382
Transportation	3,344,869
Closing of Attendance Center(s)	2,454,557

Survey—USD Reductions

How other cost-saving measures were reduced/eliminated for the 2009-10 school year? (continued)

Program	Est. Reductions
Delay Purchase of Textbooks	6,606,054
Delay Purchase of School Buses	7,243,132
Other	31,212,762
TOTAL	67,692,746

Survey—USD Reductions

Total Positions	3,701
Total Estimated Reductions	\$ 167,213,916

Cost Cutting & Efficiency Measures As Described by

- Standard & Poor's Kansas School District Efficiency Study (7/2007)
- Testimony of School District Superintendents to the Kansas House Appropriations Committee (August 2009)
- Kansas Department of Education (Survey of USDs in 2009 and 2004 Cost Savings Survey)
- Site visits by the Center for Innovative School Leadership (at Emporia State)
- Selected School Superintendents

Staff Cost-Cutting and Efficiency Measures

- Eliminated 2,101 licensed positions in the 2009-10 school year.
- Eliminated 1,603 non-licensed positions in the 2009-10 school year.
- Some specific examples, include:
- Used early retirement options.
- Froze salaries.
- Reduced or eliminated professional development.

Staff Cost-Cutting and Efficiency Measures

- Shared food service manager with local hospital.
- Shared a school nurse with the county health department.
- Reduced or eliminated out-of-state conference travel.
- Shared staff with other districts, such as a technology coordinator.
- Eliminated bonuses for teachers in high-poverty schools.
- Reduced new teacher orientation and induction.

Staff Cost-Cutting and Efficiency Measures

- Reduced and eliminated school resource officers, counselors, librarians, educational aides, administrators, paraprofessionals, social workers, school nurse, and parent educators.
- Filled a coaching position with private funds from the community.
- Used part-time staff.
- Reduced overtime for non-licensed staff.

Utility-Related Cost-Cutting and Efficiency Measures

- Contracted with a company to evaluate energy systems and recommend replacement and savings.
- Created an "energy czar" position which monitors energy use and implementation of energy cost-saving measures.
- Retrofitted buildings with energy saving lights.
- Updated heating and cooling systems.
- Installed new energy-efficient heating and cooling systems.
- Lowered room temperatures in the winter and increased room temperatures during the summer.
- Purchased natural gas via a bulk-buying group.
- Created a student advisory council who assisted with finding energy savings through the district's buildings.

Programming Efficiencies

- Increased pupil-teacher ratio.
- Reduced or eliminated early childhood programs.
- Reduced the number of activity buses taken to out-of-town athletic events.
- Reduced the number of activity trips.
- Reduced the number of curriculum-related field trips.
- Reduced extracurricular activities, such as clubs, organizations, etc.
- Reduced alternative school programs.
- Reduced or eliminated before school, after school, and summer school programming.

Programming Efficiencies

- Reduced or eliminated support to Parents as Teachers programs.
- Reduced or eliminated fine arts, language arts, and family and consumer science programs.
- Reduced athletic programs.
- Reduced tutoring.
- Reduced instructional time.
- Lengthened school day and shortened school year, which saved money on custodial, utility, and transportation services.
- Eliminated field trips, unless paid for by parents or boosters.
- Raised class sizes in some or all subjects.

Revenue Increases

- Increased school lunch, drivers' education, and facility rental fees.
- Increased scrutiny of Medicaid-eligible services so billing of services increased.

Operations & Maintenance

- Closed school buildings.
- Discontinued contracted bus service.
- Eliminated or reduced bus routes, making some routes longer than one hour.
- Deferred maintenance, repairs, and improvements to buildings and equipment.
- Bid large ticket items such as milk, fuel, technology software/hardware/services, telecommunications, vehicles, and other large equipment.
- Installed hand blowers in restrooms to reduce paper towel use.

Operations & Maintenance

- Installed automatic flush toilets to reduce custodial time.
- Joined cooperative buying units.
- Used State contract when purchasing various equipment and supplies.
- Delayed purchases of textbooks, supplies, and school buses.
- Entered into agreements with local units of government for some services, such as school security services with a local police department.
- Reduced maintenance to a minimum.

Operations & Maintenance

- Eliminated transportation of students to day care providers.
- Used bigger buses or passenger vans.
- Reduced funding available to purchase necessary school supplies, which increases the cost to teachers and parents, who still must provide supplies.

Finance

- Refinanced bonded indebtedness.
- Reduced cash reserves (which is of concern for future budgets.)

Insurance

- Promoted wellness and safety issues in an attempt to keep health insurance renewal rates as low as possible.
- Changed to higher deductibles on insurance policies.
- Joined the State Health Insurance Plan (while initial costs are high, the long term benefit of the larger group helps keep annual increases low.)

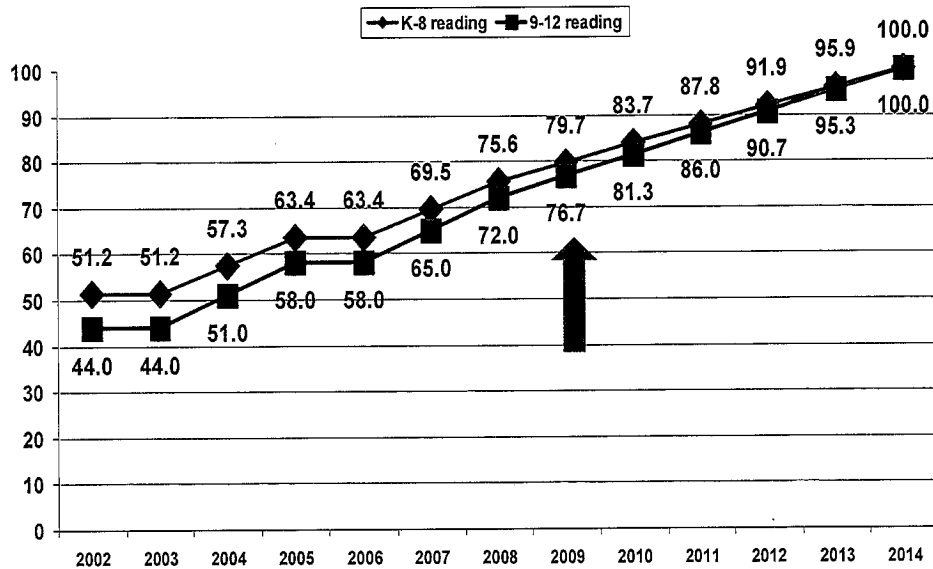
Rankings and Estimates 2008

Table 1. Average Salaries (\$) of Public School Teachers, 2007-08

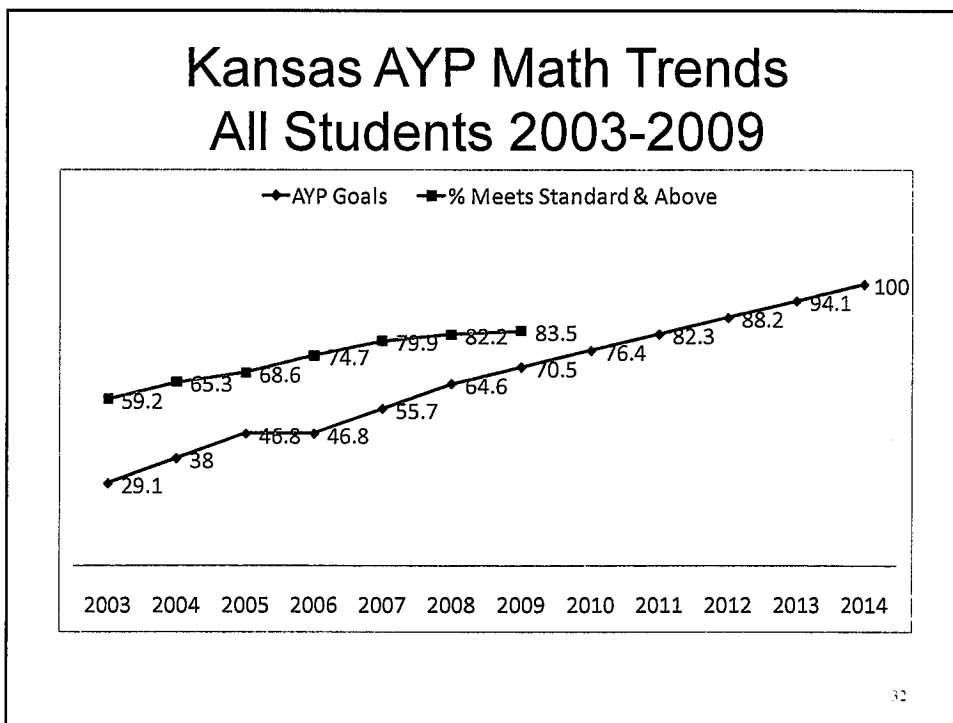
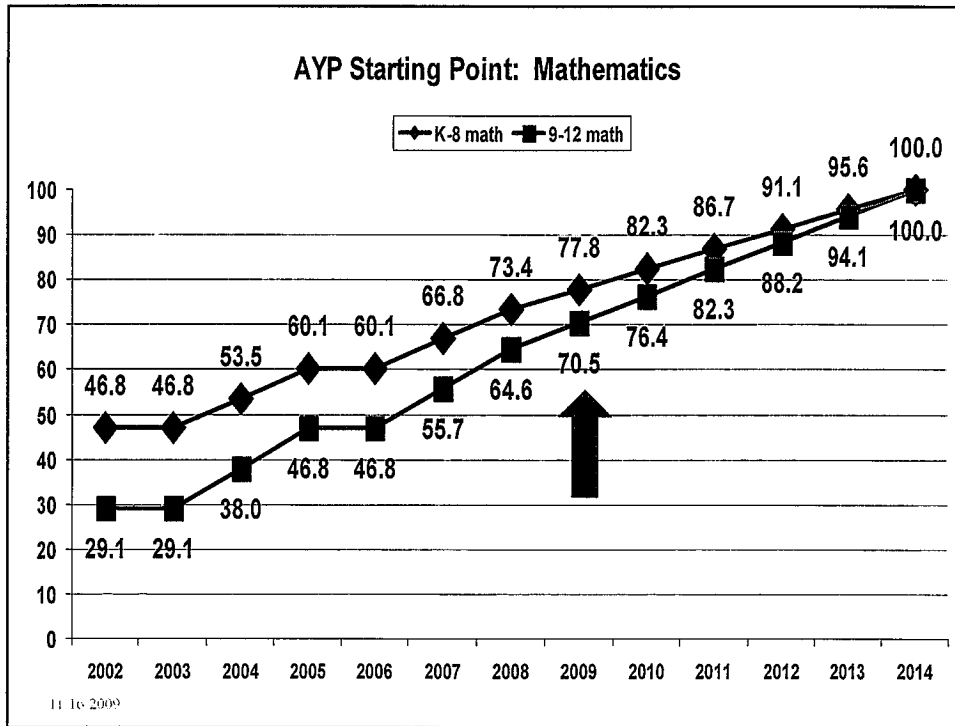
Rank	State	2007-08
1	CALIFORNIA	84,424
2	NEW YORK	72,332
3	CONNECTICUT	61,976
4	NEW JERSEY	61,277
5	DISTRICT OF COLUMBIA	60,628
6	ILLINOIS	60,474
7	MASSACHUSETTS	60,471
8	MARYLAND	59,933
9	RHODE ISLAND	57,164
10	ALASKA	56,758
11	MICHIGAN	56,096
12	DELAWARE	55,994
13	PENNSYLVANIA	55,833
14	OHIO	53,410
15	HAWAII	53,400
16	WYOMING	53,074
17	UNITED STATES	52,308
18	OREGON	51,811
19	UNITED STATES	51,811
20	OREGON	51,811
21	GEORGIA	51,590
22	MINNESOTA	50,923
23	WASHINGTON	49,884
24	WISCONSIN	48,051
25	INDIANA	48,008
26	NEVADA	47,710
27	NEW HAMPSHIRE	47,609
28	NORTH CAROLINA	47,254
29	COLORADO	47,248
30	KENTUCKY	47,207
31	LOUISIANA	46,964
32	FLORIDA	46,930
33	VIRGINIA	46,796
34	IDAHO	46,664
35	ALABAMA	46,604
36	VERMONT	46,593
37	TEXAS	46,176
38	ARKANSAS	45,975
39	ARIZONA	45,772
40	SOUTH CAROLINA	45,758
41	KANSAS	45,136
42	NEW MEXICO	45,112
43	TENNESSEE	45,030
44	IDAHO	44,099
45	OKLAHOMA	43,551
46	MAINE	43,397
47	MISSOURI	43,208
48	NEBRASKA	42,885
49	MONTANA	42,874
50	WEST VIRGINIA	42,529
51	MISSISSIPPI	42,403
52	UTAH	41,515
53	NORTH DAKOTA	40,279
54	SOUTH DAKOTA	38,574

NGA Research, Estimates Database (2008).
From Rankings & Estimates 2008-2009, Rankings, Table C-11.

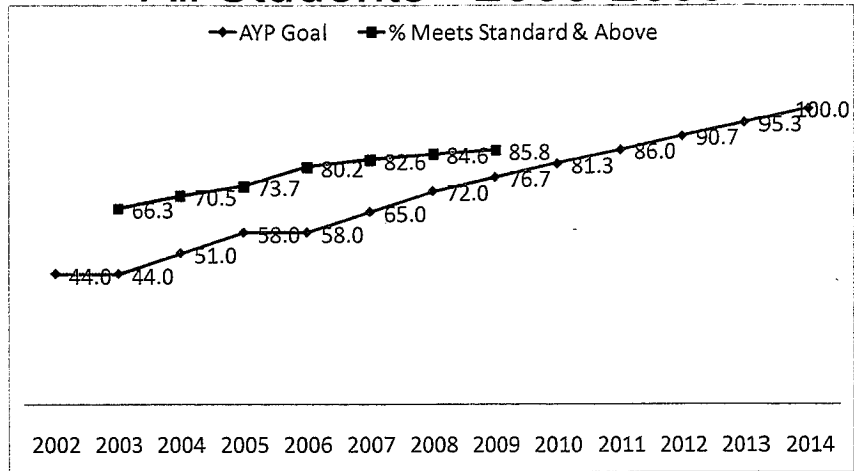
AYP Starting Point: Reading



11/16/2009



Kansas AYP Reading Trends All Students - 2003-2009



Unified School Districts -- State Totals

Estimates for School Years 2008-09 and 2009-2010

Revised—November 16, 2009

School Year	FTE* Enroll	State Aid	Federal Aid	Local Revenue	Total Expend**
1997-1998	448,609.0	1,815,684,144	189,120,462	1,058,428,663	3,063,233,269
1998-1999	448,925.7	2,035,194,082	202,565,725	1,004,736,639	3,242,496,446
1999-2000	448,610.3	2,110,484,390	220,780,350	1,071,444,132	3,402,708,872
2000-2001	446,969.9	2,152,622,486	261,038,153	1,172,918,480	3,586,579,119
2001-2002	445,376.6	2,200,529,799	310,104,678	1,269,928,113	3,780,562,590
2002-2003	444,541.4	2,277,804,680	340,728,648	1,335,185,546	3,953,718,874
2003-2004	443,301.8	2,124,578,761	376,908,121	1,592,564,728	4,094,051,610
2004-2005	441,867.6	2,362,223,172	398,667,040	1,528,524,331	4,289,414,543
2005-2006	442,555.7	2,657,971,383	382,782,642	1,648,540,541	4,689,294,566
2006-2007	444,878.7	2,888,960,769	385,393,086	1,867,723,060	5,142,076,915
2007-2008	446,874.0	3,131,495,347	377,006,174	1,937,863,161	5,446,364,682
2008-2009	447,615.1	3,287,165,278	413,624,558	1,965,942,156	5,666,731,992
+2009-2010	454,000.0	2,969,275,000	635,313,000	2,003,801,212	5,608,389,000

Amount Per Pupil

School Year	State Aid	Federal Aid	Local Revenue	Total Expend	Total % Change
1997-1998	4,047	422	2,359	6,828	4.16
1998-1999	4,533	451	2,238	7,223	5.79
1999-2000	4,704	492	2,388	7,585	5.01
2000-2001	4,816	584	2,624	8,024	5.79
2001-2002	4,941	696	2,851	8,488	5.78
2002-2003	5,124	766	3,004	8,894	4.78
2003-2004	4,793	850	3,593	9,235	3.83
2004-2005	5,346	902	3,459	9,707	5.11
2005-2006	6,006	865	3,725	10,596	9.16
2006-2007	6,494	866	4,198	11,558	9.08
2007-2008	7,008	844	4,336	12,188	5.45
2008-2009	7,344	924	4,392	12,660	3.88
+2009-2010	6,540	1,399	4,414	12,353	(2.42)

+2009-2010 are estimates. Approximate \$242 million of one-time federal money for FY 2010. According to federal law, this amount will decrease slightly in FY 2011 and be eliminated in FY 2012.

*September 20th Full-Time Equivalency Enrollment (includes 4yr old at risk). Beginning with the 2005-06 school year, enrollment includes February 20 FTE enrollment for military districts based on 2005 House Bill 2059.

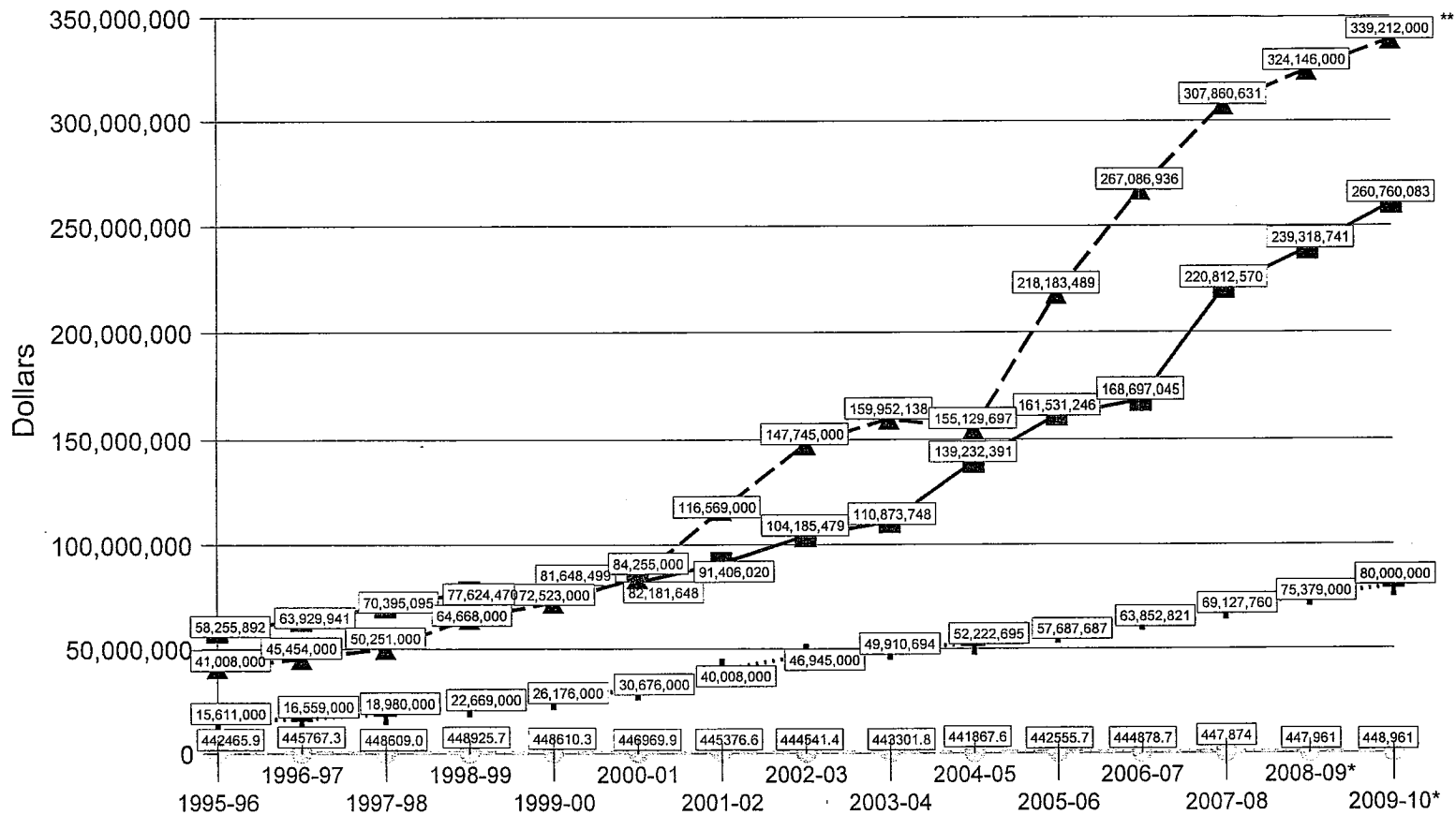
**Total expenditures include the following funds (less transfers): General, Supplemental General, At-Risk 4Yr Old (beginning 2005-06 and thereafter), At-Risk K-12 (beginning 2005-06 and thereafter), Adult Education, Adult Supplemental Education, Bilingual Education, Capital Outlay, Driver Training, Extraordinary School Program, Food Service, Professional Development, Parent Education Program, Summer School, Special Education, Vocational Education, Area Vocational School, Special Liability Expense, School Retirement, School Retirement, KPERs Special Retirement Contribution (beginning 2004-05 and thereafter), Contingency Reserve, Textbook and Student Material Revolving, Bond and Interest #1, Bond and Interest #2, No-Fund Warrant, Special Assessment, Temporary Note, Cooperative Special Education, unbudgeted federal funds, and Gifts and Grants, which were collected beginning with 2002-03.

Local revenue is computed by determining the total expenditures minus state and federal aid. It is not unusual for a district to accumulate monies in its capital outlay fund for large projects and spend the money in one year. During that year, expenditures will be higher than usual and may drop the following year. Also, in those districts where the voters have approved for a bond issue, the expenditures would be higher in the year that the district begins making bond payments.

- Effective July 1, 2002, USD #280-Morland and USD #281-Hill City consolidated into USD #281 – Hill City.
- Effective July 1, 2003, USD #317-Herndon and USD #318-Atwood consolidated into USD #105 – Rawlins County.
- Effective July 1, 2004, USD #302-Ransom and USD #304-Bazine consolidated into USD #106 – Western Plains.
- Effective July 1, 2005, USD #301-NesTreLaGo dissolved with most of their students going to USD #106 – Western Plains.
- Effective July 1, 2006, USD #104-White Rock and USD #278-Mankato consolidated into USD #107 – Rock Hills.
- Effective July 1, 2006, USD #221-North Central and USD #222-Washington consolidated into USD #108 – Washington Co. Schs.
- Effective July 1, 2006, USD #427-Belleville and USD #455-Cuba consolidated into USD #109 – Republic Co.
- Effective July 1, 2006, USD #295-Prairie Heights dissolved with most of their students going to USD #412 – Hoxie.
- Effective July 1, 2008, USD #238-West Smith County and USD #324-Eastern Heights consolidated into USD #110 – Thunder Ridge.

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Attachment 2

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Attachment 3



KPERs
 LOB
 Bond and Interest
 FTE Enroll

* Estimated
** Estimated assuming passage of SB84

May 8, 2009

Note: Beginning with 2005-06 school year, FTE includes 2/20 military enrollment for qualifying districts.

School Reorganization/Consolidation

KANSAS STATE BOARD OF EDUCATION
NOVEMBER 2009

4 studies are provided

- 2 State Studies

- Augenblick & Myers, Inc. – 2001
 - Mandated by the legislature in 1999 Senate Bill 171
- Legislative Division of Post Audit – 1992

- 2 National Studies

- Rural School District Consolidation – 2007
- School Size, School Climate, and Student Performance - 1996

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11-19-09
Attachment 4

Augenblick & Myers, Inc.



- 304 School Districts at the time of this study (currently, there are 293 school districts).
- Schools, particularly high schools, need to be large enough to provide an adequate array of academic services and extra-curricular activities.
- There are those who advise that schools be small enough to assure a safe, nurturing environment and that school districts are not so large that they become unmanageable.

A&M used two basic approaches.



- The first approach focuses on districts with relatively low levels of pupil performance and relatively high levels of per pupil spending.
- Of the 28 districts that were identified, 6 are no longer in existence and 2 districts are working towards consolidating.

A&M targeted districts

- The second approach focuses on districts that are either too small or too large, given what researchers and practitioners believe, to offer an appropriate curriculum, extra-curricular opportunities, and a safe, nurturing environment.
- This approach assumes that a high school should serve between 100 and 900 pupils.
- They found 50 districts that are too small, and 24 districts that are too large based on these guidelines.
- Of the 50 districts identified as too small, 13 are no longer in existence and 6 districts are working towards consolidating. The 24 that are too large have not changed.

A&M Conclusions

- For the approach based on pupil performance and per pupil spending, we identified 28 target districts. We found 20 neighboring districts that could be merged with 20 target districts to create 20 new districts. The result would be 284 districts statewide.
- For the approach based on school district size, we identified 76 target districts. In total, 51 districts are merged with 36 neighboring districts to create 39 new districts and a total of 256 districts in the state.
- For the combined approach, we were able to reconfigure 56 target districts with 36 neighboring districts to create 43 new districts and a total of 255 districts statewide. As with the second approach, we were unable to resolve concerns in 21 districts by reorganization, which would require other approaches to be taken.

Legislative Division of Post Audit



- While larger classes and larger schools reduce the amount spent per student, most of the literature in the field says that smaller classes and smaller schools improve the quality of education provided to children.
- In Kansas, as in other states, the most likely candidates for school district consolidation are districts with low enrollment and high cost per student.
- More than 100 of Kansas' 304 school districts have fewer than 400 students each. Therefore, even if savings could be realized through school district consolidation in those small districts, those savings would not likely have a significant effect on the overall State funding for primary and secondary education.

Legislative Division of Post Audit



- The work done in this audit suggests that consolidating school districts can reduce administrative costs, but more significant savings occur only when schools are closed and average class sizes are increased.
- Those kinds of changes would take time to accomplish, and could cause significant social and economic consequences.
- Individual case studies would have to be done to determine whether cost savings in one area (such as administration) would or would not be offset by higher costs in other areas.

Legislative Division of Post Audit

- 2006 Cost Study Analysis:

In the cost function results, a 1.0% increase in district performance outcomes was associated with a 0.83% increase in spending – almost a one-to-one relationship.

The results were statistically significant beyond the 0.01 level, which means we can be more than 99% confident there is a relationship between spending and outcomes.

Rural School District Consolidation

- Lawrence et al. (2002) indicated that a district should have an enrollment of 4000 to 5000 students as a maximum.
- Imerman and Otto (2003) recommended that school districts should not fall below an enrollment of 750 students.
- Augenblick and Myers (2001) reported that in order to offer a safe and nurturing environment, an appropriate curriculum, and extra-curricular activities, a district should have an enrollment between 260 and 2,925 students.
- Other research reviews suggest a maximum of 300-400 students for elementary schools and 400-800 for secondary schools. If the study focused on social and emotional aspects of success, then the research indicated that no school should be larger than 500.
- Research by Howley and Bickel (2000) indicated that the lower the socio-economic status of the students and/or district, then the school enrollment should be small.

Rural School District Consolidation



- When viewed on a cost-per-student basis, they (small schools) are somewhat more expensive.
- But when examined on the basis of the number of students they graduate, they are less expensive than either medium-sized or large high schools.
- Dropouts are three times more likely to be unemployed; two and a half times more likely to receive welfare benefits; and over three times more likely to be in prison than high school graduates with no college.

Rural School District Consolidation



- While some costs, particularly administrative costs may decline in the short run, they are replaced by other expenditures, especially transportation and more specialized staff.
- The loss of a school also negatively affects the tax base and fiscal capacity of the district. These costs are often borne disproportionately by low-income and minority communities.
- There is a strong negative correlation between district size and student achievement in low-income populations.

R.S.D.C. - Summary

- There should not be “forced” consolidation.
- There is no “ideal” size for schools or districts.
- “Size” does not guarantee success – good schools come in all sizes.
- Smaller districts have better achievement, affective and social outcomes.
- The larger a district becomes, the more resources are devoted to secondary or non-essential activities.
- Local school officials should be wary of merging several smaller elementary schools, at least if the goal is improved performance.
- After a school closure, out migration, population decline, and neighborhood deterioration are set in motion, and support for public education diminishes.
- There is no solid foundation for the belief that eliminating school districts will improve education, enhance cost-effectiveness or promote equality.
- There is a strong negative correlation between district size and student achievement in low-income populations.

School Size, School Climate, and Student Performance

- There is no clear agreement on the dividing line between small and large schools.
- Student achievement in small schools is at least equal – and often superior – to student achievement in large schools.
- Measured either as dropout or graduation rate, the holding power of small schools is considerably greater than that of large schools.
- Student social behavior – as measured by truancy, discipline problems, violence, theft, substance abuse, and gang participation – is more positive in small schools.

Kansas Demographics

- **20 smallest Kansas school districts: 160 students or less**
 - 2 have already consolidated.
 - 11 are discussing consolidation, or currently have a cooperative agreement with a neighboring district.
 - In 2002, there were 12 additional districts under 160 students, but they no longer exist due to consolidations/reorganizations.
- **These 20 districts account for less than 1% (0.67) of the total state expenditures.**
- **9 other school districts above 160 students are discussing consolidation.**
- **20 largest Kansas school districts: 4,500 students or more, account for 51.8% of total state expenditures.**
- **Since 2002, there have been 11 consolidations involving 29 school districts.**

Expenditures Per Pupil

	Average Enrollment	Total Expenditures	Average Per Pupil Cost
3 Largest Districts	32,449	1,198,263,017	\$12,309
Top 20%	4,044	2,931,667,099	\$12,498
Next 20%	945	676,031,911	\$12,548
Next 20%	539	392,934,226	\$12,776
Next 20%	334	251,364,603	\$13,409
Bottom 20%	175	146,645,965	\$14,931

Expenditures Per Pupil

- The following school districts have been removed from the expenditures per pupil chart due to:
 - Tornadoes and fires- Greensburg 422, Chapman 473, and Nemaha Valley 442, and
 - Recent consolidations- Beloit 273, Doniphan West 111, Thunder Ridge 110, and Rock Hills 107.

Consolidation Law

Size of smallest district consolidating	Number of years that budgets are combined
Less than 150 students	3 years
150 to 200 students	4 years
200 or more students	5 years
3 or more districts	5 years

- July 1, 2002 – USD 280 Morland and USD 281 Hill City consolidated into USD 281 Hill City
- July 1, 2003 – USD 317 Herndon and USD 318 Atwood consolidated to create USD 105 Rawlins Co.
- July 1, 2004 – USD 302 Ransom and USD 304 Bazine consolidated to create USD 106 Western Plains
- July 1, 2005 – USD 301 NesTreLaGo disorganized and transferred territory into USDs 106, 208, 293, 303, 482
- July 1, 2006 – USD 104 White Rock and USD 278 Mankato consolidated to create USD 107 Rock Hills
- July 1, 2006 – USD 221 North Central and USD 222 Washington Schools consolidated to create USD 108 Washington County Schools
- July 1, 2006 – USD 427 Belleville and USD 455 Hillcrest consolidated to create USD 109 Republic County
- July 1, 2006 – USD 295 Prairie Heights disorganized and transferred territory to USD 211 Norton, 294 Oberlin, and 412 Hoxie.
- July 1, 2008 – USD 238 W. Smith Co. and USD 324 Eastern Heights consolidated to create USD 110 Thunder Ridge Schools
- July 1, 2009 – USD 279 Jewell dissolved and transferred territory to USD 107 Rock Hills and USD 273 Beloit
- July 1, 2009 – USD 425 Highland and USD 433 Midway Schools consolidated to create USD 111 Doniphan West Schools

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November 13, 2009

To: Legislative Educational Planning Committee Members
From: Sharon Wenger, Principal Analyst
Re: Information on School District Reorganization

1960s Reorganization in Kansas

Because of legislation passed in 1963, the number of school districts in Kansas decreased significantly, from 2,794 school districts in 1958 to 311 in 1969, while the average number of students per school district rose from 167 in 1958 to 1,746 in 1969. This legislation divided the state into 106 planning units, one for each county with one additional unit in Johnson County. These units were charged with recommending school districts based on one of two requirements:

- An enrollment of at least 400 students in grades 1-12; or
- At least 200 square miles and an assessed valuation of at least \$2 million.

This legislation was intended for "the general improvement of the public schools"; "equalization of the benefits and burdens of education" throughout the state; expediting the organization of uniform school districts that provide free public education from the first through the twelfth grades; and to use state funds more wisely.

Prior to passage of the 1963 legislation, another attempt at consolidation from the 1961 Legislative Session, SB 400, was deemed unconstitutional,¹ which led to a concurrent resolution directing the Legislative Council to make a thorough study of the organization of school districts in every county and to collect and use information and records compiled by the State Committee on School District Organization and the County Boards of School Planning.

After providing feedback on the 1961 legislation, members of the County Planning Committees also suggested issues that legislators should consider in drafting additional legislation.

- "Many schools were consolidated under the 1945 law. No one would go back to where we were at that time. We should have gone further while we were at it. If another unification law is passed, we should, as we plan, look ahead for a decade or more."
- When the community is not involved in consolidation decisions, they will be more likely to resist any proposed changes.

¹The Supreme Court held the Legislature unlawfully delegated legislative power to county planning committees similar to those used in the 1963 legislation, failed to provide adequate standards for the planning committees, and included a section not covered in the title of the act. *School District Joint No. 71 v. Throckmorton*, 189 Kan. 259 (1962), *aff'd* 189 Kan. 590 (1962).

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Attachment 5

- Support of local leadership is key.
- The public needs to be educated on what constitutes a "good school" and should have plenty of time to consider consolidation plans.

- Establish conditions that permit equal educational opportunities for all children.
- Set minimum standards to determine the adequacy of a school and lacking these, allow the Department of Education to close a school.
- Formulate comprehensible and concrete guidelines without loopholes that allow communities to evade those things necessary for progress in school district unification.
- Members of the community planning committees should be representative citizens, all lay members, and preferably not members of school boards.
- After giving a county committee the opportunity to act, allow the Department of Education to act for them if they have failed to do so, encouraging the committee to act rather than have an outside authority act for them.
- Introduce legislation early in the session to afford the education committees and other individuals time to study it thoroughly.
- Clarification should be provided on who will assume the debts of the former school districts (most likely the new district).

Kennedy-Little Reorganization Proposal

Following the publication of two studies by the firm of Augenblick and Myers in 2001 and 2002, two Kansas superintendents, Dr. Sharol Little of the Manhattan-Ogden School District and Kenneth Kennedy of the Pratt School District, developed their own reorganization proposal in 2003 and presented it to the House Education Committee. Dr. Walter Chappell, currently a member of the State Board of Education, is a proponent of this proposal and recently discussed it at a State Board meeting.

The proposal consisted of a recommendation that school districts reconfigure themselves into 40 regional education districts (R.E.D.) over a five- to ten-year period. The only small school districts or small schools that would remain would be those defined as "necessary small schools" because of geographic isolation or "sparse population density."

While there appeared to be no detailed analysis of cost savings, the authors indicated a great deal of funding would be saved because redundant services would be eliminated, for example, central administration, food service, payroll processing and the like would be accomplished centrally rather than in separate districts. Presumably, low enrollment weighting would be eliminated and nearly 50 attendance centers would be closed.

To help communities that would lose their school, the proposal included a financial incentive to the community of \$1,000 per student for the first year of loss, not to exceed \$100,000, to convert the school buildings into community or senior centers or to raze the structures. The "loss incentive" would continue through the tenth year of loss at continually declining amounts.

This proposal became a House bill in 2003 but never came out of the House Education Committee.

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

TO: Legislative Educational Planning Committee
FROM: Theresa Kiernan, Senior Assistant Revisor of Statutes
RE: Statutory Incentives for School District Consolidation
DATE: November 19, 2009

MEMORANDUM

Below is an overview of the various statutory incentives which have been enacted to encourage school districts to consolidate.

State Financial Aid

K.S.A. 72-6445 was enacted in the 1992 school finance act. Under that provision districts which consolidated received the combined state financial aid of each of the former districts for two school years. In 2002, the provision was amended so that any districts which consolidated prior to July 1, 2004 would receive the combined state financial aid of each of the former districts for a period of four years. In addition, districts which were enlarged by the attachment of all of the territory of a disorganized district also received the combined state financial aid of the districts if the disorganization and attachment occurred prior to July 1, 2004. Districts which consolidated or were enlarged after July 1, 2004 would have received the combined state financial aid of the former districts for two school years.

In 2004, K.S.A. 72-6445a was enacted and provided that any districts which consolidated prior to July 1, 2005 would receive the combined state financial aid of each of the former districts for a period of three school years. In addition, districts which were enlarged by the attachment of all of the territory of a disorganized district also received the combined state financial aid of the districts if the disorganization and attachment occurred prior to July 1, 2005. Districts which consolidated or were enlarged after July 1, 2005 would receive the combined state financial aid of the former districts for two school years.

In 2008, K.S.A. 72-6445a was amended to provide that any district created by a consolidation or disorganization and attachment involving a district with an enrollment of less than 150 pupils would receive the combined state financial aid of the former districts for three school years if the consolidation is completed prior to July 1, 2011. If the consolidation is completed on

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11-19-09
Attachment 6

or after July 1, 2011, the district will receive the combined state financial aid of the former districts for only two school years. Any district created by a consolidation or disorganization and attachment involving a district with an enrollment of at least 150 pupils but less than 200 pupils will receive the combined state financial aid of the former districts for four school years. Any district created by a consolidation or disorganization and attachment involving districts with enrollments of at least 200 pupils will receive the combined state financial aid of the former districts for five school years.

In 2009, 72-6445a was amended to provide that the financial benefit under the section would be given to any district which is enlarged by the attachment of a portion of a district which had been disorganized.

Capital Outlay State Aid

In 2006, the legislature enacted K.S.A. 72-8814b which concerns the computation of the amount of capital outlay state aid paid to school districts. Under this provision, the state aid percentage factor of a district created by consolidation or enlarged by the attachment of all of the territory of a district which has disorganized is the highest state aid percentage factor of the former districts. The benefit is provided for three school years.

Capital Improvements State Aid

In 2006, the legislature enacted K.S.A. 75-2319c which concerns the computation of the amount of capital improvements state aid paid to school districts. Under this provision, the state aid percentage factor of a district created by consolidation or enlarged by the attachment of all of the territory of a district which has disorganized is the highest state aid percentage factor of the former districts. The benefit is provided for three school years.

Supplemental General State Aid

In 2006, the legislature enacted K.S.A. 72-6434b which concerns the computation of the amount of supplemental general state aid paid to school districts. Under this provision, a district created by consolidation or enlarged by the attachment of all of the territory of a district which has disorganized is ranked at the level of the former district receiving the highest amount of supplemental general state aid. The benefit is provided for three school years.

Contingency Reserve Fund

In 2009, the legislature increased the amount of moneys that a district may maintain in its contingency reserve fund. For school years 2008-2009 through 2011-2012, the contingency reserve fund cannot exceed 10% of the general fund budget. In school year 2012-2013, the amount in the contingency reserve fund cannot exceed 6% of the general fund budget. These limitations do not apply to school districts whose state financial aid is computed under K.S.A. 72-6445a.

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November 13, 2009

To: Legislative Educational Planning Committee
From: Sharon Wenger, Principal Analyst
Re: Three Special Education Catastrophic Aid Proposals

Below are the three proposals made by the various entities related to the special education catastrophic aid funding formula.

2010 Commission

Increase the funding threshold per student to two times the prior year's aid per teacher, deduct any other state categorical aid a district has already received for the student, and multiply the result by the percentage determined by state law (currently .75).

Special Education Directors

Increase the funding threshold per student to two times the prior year's average cost per special education student (FTE), deduct any other state categorical aid a district has already received for the student, and multiply the result by the percentage determined by state law (currently .75).

Legislative Post Audit Committee

Increase the funding threshold to \$36,000, allow the threshold to increase in future years to account for inflation, deduct any other state categorical aid a district has already received for the student, and multiply the result by the percentage determined by state law (currently .75).

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11-19-09
Attachment 7



LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

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November 17, 2009

To: Members, Legislative Post Audit Committee

Representative Virgil Peck Jr., Chair	Senator Terry Bruce, Vice-Chair
Representative Tom Burroughs	Senator Anthony Hensley
Representative John Grange	Senator Derek Schmidt
Representative Peggy Mast	Senator Chris Steineger
Representative Cindy Neighbor	Senator Dwayne Umbarger

As you may recall, at the October 12 meeting of the Legislative Post Audit Committee, members voted to introduce legislation to implement the recommendations from our school district performance audit, *K-12 Education: Reviewing Issues Related to Catastrophic Funding for Special Education*. Specifically, the proposed legislation would increase the annual threshold for a special education student's cost to be considered "catastrophic" from \$25,000 to \$36,000, adjust that threshold for inflation in future years, and begin requiring districts to deduct any special education State aid they've already received from the catastrophic cost calculation (i.e., eliminate "double dipping").

On November 19, the Legislative Educational Planning Committee will be meeting, and one of the items on its agenda is to review proposals from three groups—the 2010 Commission, the Kansas special education directors, and the Legislative Post Audit Committee—that would address the catastrophic aid issue.

Our audit report included evaluations of the impact the 2010 Commission and special education directors' proposals would have on catastrophic aid. I've attached a similar analysis of the Legislative Post Audit Committee proposal, which shows that the estimated number of catastrophic aid applications for the 2009-10 school year would decrease from almost 5,500 to 130, and the corresponding amount of aid would decrease from almost \$48 million to just more than \$1 million. As noted in the report, these proposals only affect how special education aid is distributed, and wouldn't have any effect on the total amount of aid provided by the Legislature.

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11-19-09
Attached 8

I'll be providing a copy of this analysis to the Legislative Educational Planning Committee to assist them in their discussions. Please feel free to contact me at (785) 296-5180 if you have any questions.

Sincerely,



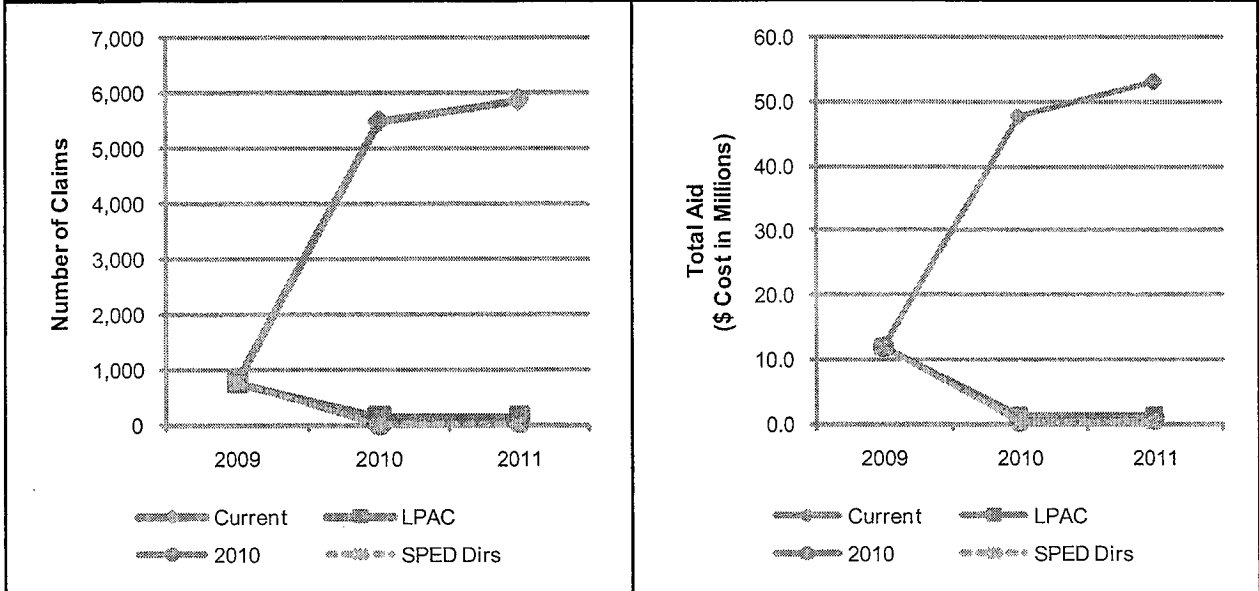
Scott Frank
Audit Manager

cc: James A. Wilson III, Scott Wells, Theresa Kiernan, Revisor of Statutes' Office
Sharon Wenger, Martha Dorsey, Reagan Cussimano, Legislative Research Department

enclosure

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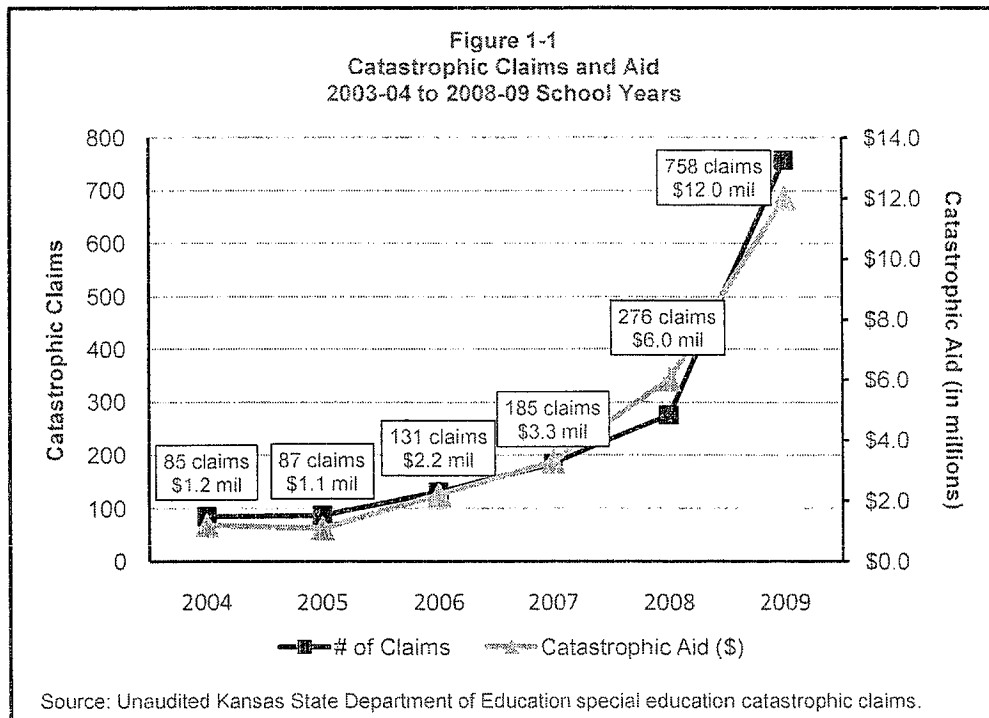
**Estimated Catastrophic Claims and Aid
Under Various Proposed Changes to Catastrophic Aid Requirements
Legislative Post Audit Committee, 2010 Commission, and Special Education Directors Proposals**



Proposed Change:	Details of the Proposed Change:			Estimated # of Claims and Estimated Catastrophic Aid	
	Threshold	Accounts for inflation?	Eliminates Double-Dipping?	2009-10	2010-11
No change to current law	\$25,000	no	no	5,490 claims \$47.7 million	5,880 claims \$53.0 million
Legislative Post Audit Committee	\$36,000 (a)	Yes	Yes	130 claims \$1.2 million	140 claims \$1.4 million
2010 Commission	\$56,400 (b)	Yes	Yes	10 claims \$420K	40 claims \$650K
Special Education Directors	\$59,550 (c)	Yes	Yes	10 claims \$390K	10 claims \$420K

(a) The LPAC proposal would increase the threshold to \$36,000 in 2009-10, and then adjust it for inflation in subsequent years.
 (b) This amount is tied to the prior year's special education aid per teacher. For example, the 2007-2008 aid amount per teacher was \$28,200, so the threshold for 2008-09 would be \$56,400.
 (c) This amount is tied to the prior year's Statewide average cost per special education FTE. For example, the 2007-08 Statewide average special education cost for 1.0 FTE was \$29,775, so the threshold for 2008-09 would be \$59,550. Total catastrophic aid would be capped at \$4 million.

Source: LPA analysis of KSDE and district expenditure and revenue data.



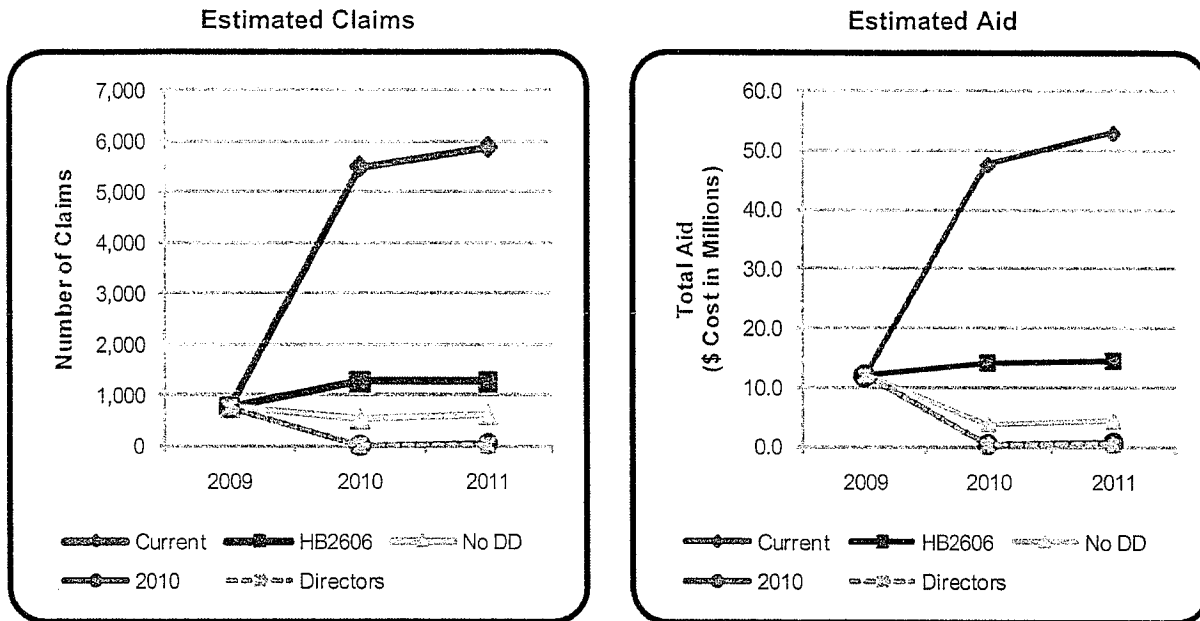
Things began to change after that, however:

- The total number of claims filed increased fairly steadily until 2008, but jumped in 2009 to 758 claims.
- Over that same time, the amount of catastrophic aid paid increased to \$12 million.
- The number of districts or cooperatives that filed a catastrophic aid claim increased from 26 in 2006 to 35 in 2009, according to Department of Education data.
- As **Figure 1-2** on page 8 shows, four large districts—but especially the Shawnee Mission school district—significantly increased the number of claims they filed for special education students in 2009.

As described in more detail in the sections that follow, we identified three primary reasons why these numbers have increased so much in recent years:

- The cost of providing special education services has increased over time, but the \$25,000 threshold hasn't.
- The Blue Valley, Olathe, and Wichita school districts indicated they now have more very expensive special education students, and have begun prorating the shared costs for these expensive students.
- The Shawnee Mission school district began prorating the shared costs for all its special education students—not just its expensive ones.

**Figure 1-6
Estimated Catastrophic Claims and Aid
Under Various Proposed Changes to Catastrophic Aid Requirements**



Proposed Change:	Details of the Proposed Change:			Estimated # of Claims and Estimated Catastrophic Aid	
	Threshold	Accounts for inflation?	Eliminates Double-Dipping?	2009-10	2010-11
Scenario #1 No change to current law	\$25,000	no	no	5,490 claims \$47.7 million	5,880 claims \$53.0 million
Scenario #2 House Bill 2606	\$36,000 (a)	yes	no	1,270 claims \$14.2 million	1,270 claims \$14.6 million
Scenario #3 Eliminate Double-Dipping (b)	\$25,000	no	yes	530 claims \$3.9 million	620 claims \$4.5 million
Scenario #4 2010 Commission	\$56,400 (2 times prior year's aid per teacher) (c)	yes	yes	10 claims \$420K	40 claims \$650K
Scenario #5 Special Education Directors' Proposal	\$59,550 (2 times prior year's avg cost per special education FTE) (d)	yes	yes	10 claims \$390K	10 claims \$420K

(a) House Bill 2606 proposed the threshold be modified to \$36,000 in 2008-09, and adjusted for inflation in subsequent years.
 (b) Scenario was created by LPA as it seemed a logical extension of the other proposals, but we don't endorse this over any other proposed change.
 (c) This amount is tied to the prior year's special education aid per teacher. For example, the 2007-2008 aid amount per teacher was \$28,200, so the threshold for 2008-09 would be \$56,400.
 (d) This amount is tied to the prior year's Statewide average cost per special education FTE. For example, the 2007-08 Statewide average special education cost for 10 FTE was \$29,775, so the threshold for 2008-09 would be \$59,550. Total catastrophic aid would be capped at \$4 million.
 Source: LPA analysis of KSDE and district expenditure and revenue data.

9-2

However, the more catastrophic aid districts and cooperatives claim, the less aid there is available to distribute as teacher aid to help fund special education teachers and paraprofessionals. This is shown in *Figure 1-7*. For example, if the catastrophic aid formula isn't changed, we estimate catastrophic aid could increase to nearly \$48 million in 2009-10, which would reduce the amount of teacher aid by almost \$3,000 per teacher (compared to the current level estimated by the Department). Conversely, if the 2010 Commission's proposal were adopted by the Legislature, the total amount of catastrophic aid could drop to around \$400,000, increasing the amount of teacher aid by almost \$750 per teacher.

Figure 1-7
Estimated 2009-10 Special Education Categorical Aid That Would Result Under Various Proposed Changes to Catastrophic Aid
 (aid amounts shown in millions)

	Transportation Aid	Medicaid Replacement Aid	Catastrophic Aid	Teacher Aid	Total Categorical Aid	Teacher Aid Distributed per Teacher	Amt Under/Over KSDE est. for 2009-10 (a)
#1 No Change to Current Law * \$25,000 threshold * no inflation adjustment	\$56.5	\$9.0	\$47.7	\$254.4	\$367.5	\$20,026	(\$2,974)
#2 House Bill 2606 * \$36,000 threshold (b) * adjusted for inflation	\$56.5	\$9.0	\$14.2	\$287.9	\$367.5	\$22,661	(\$339)
#3 Eliminate Double Dipping * \$25,000 threshold * no inflation adjustment	\$56.5	\$9.0	\$3.9	\$298.2	\$367.5	\$23,470	\$470
#4 2010 Commission * 2x prior year's teacher aid per teacher * adjusted for inflation	\$56.5	\$9.0	\$0.4	\$301.7	\$367.5	\$23,744	\$744
#5 Special Ed. Directors * 2x prior year's average cost per student * adjusted for inflation	\$56.5	\$9.0	\$0.4	\$301.7	\$367.5	\$23,746	\$746

(a) KSDE began notifying districts and cooperatives to expect teacher aid per teacher to fall to \$23,000 in FY2010-11 because of shifts in the composition of special education funding.
 (b) House Bill 2606 proposed the threshold be modified to \$36,000 in 2008-09, and adjusted for inflation in subsequent years.
 Source: LPA analysis of KSDE, district, and cooperative expenditure and revenue data.

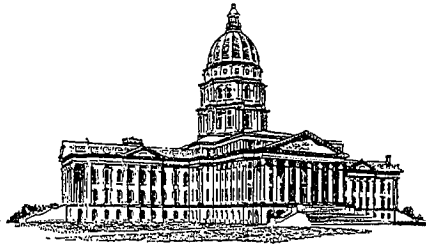
Because Districts and Cooperatives Can Get Paid Twice for Some Costs, They Can Make Money On Some Students with Catastrophic Costs

If districts have to shoulder some of the cost of providing special education services, they are more likely to try to provide them more efficiently. That's one reason why none of the four types of special education categorical aid—transportation, catastrophic, Medicaid replacement, or teacher aid—is designed to cover all the costs a district or cooperative incurs. For example, transportation aid covers only 80% of transportation costs, and teacher aid has provided roughly half the cost of a special education teacher.

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KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

TO: Legislative Educational Planning Committee

FROM: Theresa Kiernan, Senior Assistant Revisor of Statutes

RE: Funding for Educational Services Provided Pupils Residing at Certain Facilities

DATE: July 28, 2009

M E M O R A N D U M

Compulsory Attendance Law

Kansas law generally requires any child between the ages of seven years and 18 years who has not attained a high school diploma or a general educational development (GED) credential to be regularly enrolled in and attend continuously school. A child is entitled to attend school in the district in which the child lives if the child lives with a parent, if the child lives in a district as a result of placement by a district court or by the Secretary of SRS or if the child is homeless.

State funding for the provision of educational services is obtained either under the school district finance and quality performance act (K.S.A. 72-6405 et seq.), through a grant of state moneys under K.S.A. 72-8187 or with moneys from the appropriation to the state institution where the child resides.¹

State Aid for School Districts Providing Services to Pupils Residing at Certain Facilities

The 1992 school finance act provided that a pupil enrolled in USD No. 259, Sedgwick County who was housed, maintained and receiving educational services at the Judge James V. Riddel Boys Ranch was counted as two pupils. All applicable pupil weightings under the school finance act would be assigned to these pupils. The 1992 act also provided that a pupil enrolled in a school district, but who was housed, maintained and receiving educational services at a state institution would not be counted in the enrollment of the district. Funding for the education of any such pupil would be paid from the appropriation to the state institution. These provisions are still contained in K.S.A. 72-6407.

¹ K.S.A. 72-8223 requires the Secretary of SRS to pay tuition to the school district for children in an institution under the secretary's jurisdiction who attend school in the district. The amount of tuition is determined on the basis of the average operating cost per pupil of the school district, less the proportionate amount of state aid received by such school district as determined by the state board of education.

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In 1994, K.S.A. 72-8187 was enacted in response to the increase in the number of community-based facilities to house accused or adjudicated juvenile offenders. Under this section, a school district providing educational services to pupils confined in a juvenile detention facility (JDF) or to pupils residing at the Flint Hills job corp center would be eligible to receive a grant of state moneys in an amount determined by the state board of education. In the application for the grant, a district must certify the amount expended, and not reimbursed or otherwise financed, in the school year for the services provided by the school district. The maximum amount of the grant is the lesser of the actual cost of the services or two times the amount of the BSAPP for each pupil. Pupil weightings are not assigned to these pupils and the pupils are not counted in the enrollment of the school district under the school finance act. If the district receives a grant under K.S.A. 72-8187, the district is not eligible for any other state aid under the school finance act for that pupil. Special education funding is not paid as part of the grant. Another limitation is the licensed capacity of the facility which is determined at the beginning of the year. A facility could not receive funding for the number of pupils which exceed the licensed capacity of the facility.

Nearly every legislative session, the Legislature added to the list of named facilities that qualified for reimbursement under K.S.A. 72-8187. In an effort to avoid the need to amend the law each year, the 2002 Legislature amended the definition of juvenile detention facility in K.S.A. 72-6407 and 72-8187. The new definition created two general categories of eligible facilities and a list of specifically-named facilities².

During the 2007 legislative session, SB 95 was enacted to correct and update state law regarding treatment facilities focused on helping mentally ill youth and psychiatric residential treatment facilities (PRTFs). The changes were necessary to conform to the regulations of the Centers for Medicare and Medicaid Services (CMS) and would allow the state to continue accessing CMS funding for residents of these facilities. The bill deleted the references to individually-named treatment facilities eligible for reimbursement under K.S.A. 72-8187.

A juvenile detention facility is defined to mean any public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which shall not be a jail.

A psychiatric residential treatment facility is defined to mean a facility which provides psychiatric services to individuals under the age of 21 and which conforms with the regulations of the centers for medicare/medicaid services, is licensed by the Kansas department of health and environment and is certified by the Kansas department of social and rehabilitation services as required by subsection (f) of K.S.A. 72-8187.

As a result of the 2007 amendment, school districts are no longer eligible for the reimbursement of costs under K.S.A. 72-8187 for providing services to pupils at those facilities which had been specifically named in the definition but which were not a JDF or a PRTF.

2

(1) Any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which shall not be a jail;

(2) any level VI treatment facility licensed by Kansas department of health and environment which is a psychiatric residential treatment facility for individuals under the age of 21 which conforms with the regulations of the centers for medicare/medicaid services and the joint commission on accreditation of health care organizations governing such facilities; and

(3) the Forbes Juvenile Attention Facility, the Sappa Valley Youth Ranch of Oberlin, Salvation Army/Koch Center Youth Services, the Clarence M. Kelley Youth Center, the Clarence M. Kelley Transitional Living Center, Trego County Secure Care Center, St. Francis Academy at Atchison, St. Francis Academy at Ellsworth, St. Francis Academy at Salina, St. Francis Center at Salina, King's Achievement Center, and Liberty Juvenile Services and Treatment.

Youth Residential Centers

A youth residential center (YRC) is a non-secure (not locked) facility which provides juvenile residents access to the surrounding community with minimal supervision. A YRC is licensed by the Kansas Department of Health and Environment and is not a juvenile detention facility or a psychiatric residential treatment facility. Pupils in a YRC may leave the center to go to school and are counted as part of the enrollment of the district under the school finance act. A district and a YRC may enter into an agreement under which classes are conducted on the campus of the YRC rather than having the pupils attend the public school. Currently, there are 14 YRCs where classes are conducted on the campus of the YRC (including the Judge Riddel Ranch and the Atchison YRC). School districts are not eligible for reimbursement of costs for providing services to a pupil residing at a YRC under the provisions of K.S.A. 72-8187. Funding is provided under the school finance act for such pupil. Except for pupils residing at the Judge Riddel Ranch and the Atchison YRC, each pupil is counted in the same manner as other pupils residing in the district. Pupil weightings are assigned to each pupil, if applicable. The district would be eligible for special education state aid for any of pupil provided services if the pupil is an exceptional child under K.S.A. 72-961 et seq.

During the 2009 legislative session, HB 2001 was enacted. The bill provides that for school year 2009-2010, the number of pupils enrolled in U.S.D. No. 409 but housed and receiving educational services at the YRC located on the grounds of the former Atchison juvenile correctional facility would be deemed equal to two times the licensed capacity of the former correctional facility. In all school years after 2009-2010, a pupil housed and receiving educational services at the YRC would be counted as two pupils. All applicable pupil weightings under the school finance act would be assigned to these students. The district also would qualify for special education funding for any exceptional child provided services by the district. Pupils at this YRC would be funded in the same manner as pupils at the Judge Riddell Ranch are funded.

Chart

Attached to this memo is a chart showing the funding schemes for educational services provided to pupils residing at juvenile detentions facilities, psychiatric residential treatment facilities, youth residential centers and the Flint Hills job corp center.

Facility Where Pupil Resides	Is Pupil Counted Under School Finance Act?*	Is USD Eligible for Grant Under K.S.A. 72-8187?*	When Is Enrollment Determined?
Juvenile Detention Facility	No	Yes. Pupil weightings are not assigned to a pupil.	September 20, November 20 or April 20, whichever date has highest pupil-count
State Institution	No	No. Funding for the education of any such pupil would be paid from the appropriation to the state institution. Tuition is paid to USD for children in an institution under the secretary's jurisdiction who attend school in the district (K.S.A. 72-8337).	N/A
Psychiatric Residential Treatment Facility	No	Yes. Pupil weightings are not assigned to a pupil.	September 20, November 20 or April 20, whichever date has highest pupil-count
Youth Residential Center	Yes. Each pupil is counted in the same manner as other pupils residing in the district.	No	September 20
Youth Residential Center located on the grounds of the former Atchison Juvenile Correctional Facility, for school year 2009-2010	Yes. The pupil count shall be deemed to be equal to two times the licensed capacity of the former Atchison Juvenile Correctional Facility as certified by the Secretary of SRS.	No	September 20
Youth Residential Center located on the grounds of the former Atchison Juvenile Correctional Facility, for school year 2010-2011 and thereafter	Yes. Each pupil is counted as two pupils.	No	September 20
Judge James V. Riddel Boys Ranch, USD No. 259, Wichita	Yes. Each pupil is counted as two pupils.	No	September 20
Flint Hills Job Corps Center, USD No. 383, Manhattan	No	Yes. Pupil weightings are not assigned to a pupil.	September 20, November 20 or April 20 whichever date has highest pupil-count

*If a pupil is counted in the enrollment of a district under the school finance act, applicable pupil weightings are assigned to the pupil. In addition, if the pupil is an exceptional child under 72-961 et seq., the district would be eligible for special education state aid for any of pupil provided services.

**Under K.S.A. 72-8187, a school district is eligible for reimbursement for the lesser of: An amount equal to two times the amount of BSAPP for each pupil to which the district provides services; or the actual amount expended, and not reimbursed or otherwise financed, for the services provided by the district to a pupil. If the district receives a grant under K.S.A. 72-8187 for the reimbursement of services provided to a pupil, the district is not eligible for any other state aid under the school finance act for that pupil, nor is the district eligible for special education state aid for that pupil.

Residential/Community Based Institutional Education Services
Funding Alternative

- I. **Applicability**
 - a. Juvenile Detention Centers
 - b. Psychiatric Residential Treatment Facilities
 - c. Youth Residential Center II with education service being provided on the campus of the facility exclusively.
- II. **Standards for Education Services**
 - a. Meet KSDE accreditation.
 - b. Provide for 210 days of instruction (6 contact hours a day minimum).
 - c. Expenditure of funds limited to instructional services, materials and equipment for the provision of education services at the specific institutional or residential placement.
 - d. Unexpended funds are carried forward to following year and following year funding is reduced by the unexpended amount.
 - e. Education services are provided by the school district in which the facility is located by the district or a contractor of the district.
- III. **Funding provisions**
 - a. State base aid per student is the value (V)
 - b. Student count is imputed in an amount equal to 90% of licensed capacity as certified by Secretary of Health and Environment on July 1st each year (C)
 - c. Weighted funding is provided by doubling the count (C) times the value (V)

Funding Formula: $V * C * 2$

Example: Licensed capacity 70 *.90 = 63 students

Base state aid	\$ 4,218
	\$265,734
	<u> x2</u>
Total funding	\$532,468

- IV. **Process changes/advantages**
 - a. September 20th count date becomes irrelevant in determining funding level.
 - b. Districts and state have budget certainty when providing education services on facility campus.
 - c. Avoid potential for duplicate student count at PRTF and JDC's as a result of multiple count dates.
 - d. KSDE enrollment reconciliation to assure no duplicate count on September 20th.
 - e. Expenditure of funds limited to benefit the students intended to benefit from funding.
 - f. Expanded school year for benefit of youth who are often significantly behind educationally.
 - g. All like situated facilities and districts are treated equally.
 - h. Increased quality and intensity of education for youth residents.

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attachment 11

Kansas YRC II Education and ADP Data for FY09

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YRC ID	YRC Name	License Capacity	City	County	School District	School on grounds	Avg Daily Pop. (FY 2009)	Highest Daily Population (FY 2009)
1	Alpha and Omega	14	Topeka	Shawnee	USD 501	No	10	13
2	AYS Home Ties	10	Kansas City	Wyandotte	USD 500	No	7	10
3	Bob Johnson Youth Shelter	16	Hutchinson	Reno	USD 308	Yes	15	16
4	Camelot Lakeside Academy	45	Goddard	Sedgwick	USD 265	Yes	44.25	45
5	Carla's YRC II	10	Wichita	Sedgwick	USD 259	No	7	10
6	Clarence M Kelley Youth Center-KYC	53	Topeka	Shawnee	USD 501	Yes	49	53
7	DCCCA, Inc. (Elm Acres) Columbus	28	Columbus	Cherokee	USD 493	No	22	25
8	DCCCA, Inc. (Elm Acres) Pittsburg	28	Pittsburg	Crawford	USD 250	Yes	22	25
9	Forbes Juvenile Attention Center	56	Topeka	Shawnee	Greenbush 609	Yes	54	56
10	GAS	56	Atchison	Atchison	USD 409	Yes	NA	NA
11	Judge James V. Riddel Boys Ranch	49	Goddard	Sedgwick	USD 259	Yes	48	49
12	King's Treatment Center - ILP	7	Goddard	Sedgwick	USD 265	Yes	6	7
13	King's Treatment Center - Sadie's Haven	7	Goddard	Sedgwick	USD 265	Yes	6	7
14	New Directions	37	Junction City	Geary	USD 475	Yes	28	33
15	Morton House owned by BCYMO	7	Great Bend	Barton	USD 428	No	6	6
16	O'Connell Youth Ranch, Inc.	24	Lawrence	Douglas	USD 497	No	21	22
17	Pratt County Achievement Place	11	Pratt	Pratt	USD 382	No	11	11
18	Salina Youth Care Home Foundation	10	Salina	Saline	USD 305	No	7	9
19	Salvation Army Koch Family Services	32	Wichita	Sedgwick	USD 259	No	20	20
20	Sedgwick County Youth Program (SCYP)	20	Wichita	Sedgwick	USD 259	No	15	19
21	St Francis Comm. & Resid. Services, Ellsworth	12	Ellsworth	Ellsworth	USD 327	Yes	11.9	12
22	The Villages, Inc.	50	Topeka	Shawnee	USD 437	No	40	49
23	The Villages, Inc.	20	Lawrence	Douglas	USD 497	No	15	19
24	TLC for Children and Families, Inc.	25	Olathe	Johnson	USD 233	Yes	16.5	25
25	Trueway Network Group Home	5	Salina	Saline	USD 305	No	3	4
26	Wichita Children's Home	20	Wichita	Sedgwick	USD 259	Yes	14.6	17
27	Youth Crisis Shelter, Inc.	16	Parsons	Labette	USD 503	No	13.5	16
28	Hoisington Youth Home (SRS Only)	10	Hoisington	Barton	USD 431	No	7	10
29	Hope House (SRS Only)	7	Quinter	Gove	USD 293	No	8.1	7
30	New Beginnings for youth found (SRS Only)	14	Topeka	Shawnee	USD 437	No	10	14
31	Youthville - Newton (SRS Only)	10	Newton	Harvey	USD 373	Yes	9	10

Total 709

31 Providers

86% occupancy rate

School on site standard funding - 14

School on site double funding - 1

School on site double funding - 1st year student count based on licensed capacity - 1

SENATE BILL NO. _____

By Senator Vratil

AN ACT concerning school districts; relating to school finance; amending K.S.A. 2009 Supp. 72-6407 and repealing the existing section.

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

Section 1. K.S.A. 2009 Supp. 72-6407 is hereby amended to read as follows: 72-6407. (a) (1) "Pupil" means any person who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 maintained by the district or who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 in another district in accordance with an agreement entered into under authority of K.S.A. 72-8233, and amendments thereto, or who is regularly enrolled in a district and attending special education services provided for preschool-aged exceptional children by the district.

(2) Except as otherwise provided in ~~paragraph-(3)-of~~ this subsection, a pupil in attendance full time shall be counted as one pupil. A pupil in attendance part time shall be counted as that proportion of one pupil (to the nearest 1/10) that the pupil's attendance bears to full-time attendance. A pupil attending kindergarten shall be counted as 1/2 pupil. A pupil enrolled in and attending an institution of postsecondary education which is authorized under the laws of this state to award academic degrees shall be counted as one pupil if the pupil's postsecondary education enrollment and attendance

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together with the pupil's attendance in either of the grades 11 or 12 is at least $5/6$ time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest $1/10$) that the total time of the pupil's postsecondary education attendance and attendance in grade 11 or 12, as applicable, bears to full-time attendance. A pupil enrolled in and attending an area vocational school, area vocational-technical school or approved vocational education program shall be counted as one pupil if the pupil's vocational education enrollment and attendance together with the pupil's attendance in any of grades nine through 12 is at least $5/6$ time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest $1/10$) that the total time of the pupil's vocational education attendance and attendance in any of grades nine through 12 bears to full-time attendance. A pupil enrolled in a district and attending a non-virtual school and also attending a virtual school shall be counted as that proportion of one pupil (to the nearest $1/10$) that the pupil's attendance at the non-virtual school bears to full-time attendance. Except as provided by this section for preschool-aged exceptional children and virtual school pupils, a pupil enrolled in a district and attending special education and related services, provided for by the district shall be counted as one pupil. A pupil enrolled in a district and attending special education and related services provided for by the district and also attending a virtual school shall be counted as that proportion of one pupil (to the nearest $1/10$) that the pupil's

attendance at the non-virtual school bears to full-time attendance. A pupil enrolled in a district and attending special education and related services for preschool-aged exceptional children provided for by the district shall be counted as 1/2 pupil. A preschool-aged at-risk pupil enrolled in a district and receiving services under an approved at-risk pupil assistance plan maintained by the district shall be counted as 1/2 pupil. A pupil---in---the---custody---of---the---secretary---of---social---and rehabilitation-services-or-in-the-custody-of-the-commissioner--of juvenile-justice-and-enrolled-in-unified-school-district-No.-259, Sedgwick--county,--Kansas,--but-housed,--maintained,--and-receiving educational-services-at-the-Judge-James--V.--Riddel--Boys--Ranch, shall--be-counted-as-two-pupils.--Except-as-provided-in-section-1, and-amendments-thereto,--a-pupil-in-the-custody-of--the--secretary of--social--and--rehabilitation-services-or-in-the-custody-of-the commissioner-of-juvenile-justice-and-enrolled-in--unified--school district--No.--409,--Atchison,--Kansas,--but-housed,--maintained-and receiving-educational-services-at-the--youth--residential--center located---on---the---grounds--of--the--former--Atchison--juvenile correctional-facility,--shall-be-counted-as-two-pupils.

(3) A pupil in the custody of the secretary of social and rehabilitation services or in the custody of the commissioner of juvenile justice and enrolled in unified school district No. 259, Sedgwick county, Kansas, but housed, maintained and receiving educational services at the Judge James V. Riddel Boys Ranch, shall be counted as two pupils. A pupil in the custody of the

secretary of social and rehabilitation services or in the custody of the commissioner of juvenile justice and enrolled in unified school district No. 409, Atchison, Kansas, but housed, maintained and receiving educational services at the youth residential center located on the grounds of the former Atchison juvenile correctional facility, shall be counted as two pupils.

The provisions of this paragraph shall expire on June 30, 2011.

~~(3)~~ (4) A pupil residing at the Flint Hills job corps center shall not be counted. A pupil confined in and receiving educational services provided for by a district at a juvenile detention facility shall not be counted. A pupil enrolled in a district but housed, maintained, and receiving educational services at a state institution or a psychiatric residential treatment facility shall not be counted.

(b) "Preschool-aged exceptional children" means exceptional children, except gifted children, who have attained the age of three years but are under the age of eligibility for attendance at kindergarten.

(c) "At-risk pupils" means pupils who are eligible for free meals under the national school lunch act and who are enrolled in a district which maintains an approved at-risk pupil assistance plan.

(d) "Preschool-aged at-risk pupil" means an at-risk pupil who has attained the age of four years, is under the age of eligibility for attendance at kindergarten, and has been selected

-DRAFT-
RECOMMENDATIONS OF THE 2010 COMMISSION

Adopted on November 9, 2009

1. **The Legislature should refocus its revenue and funding priorities to make education Priority Number One.** Education is the single most important function provided by state government. It is at its essence how we prepare for the future. Whether a student is three or twelve or twenty years old, it is education that allows the student to succeed and to contribute to the state's economy and well-being. The Commission has heard repeatedly that education spending has a direct and positive impact on student performance, most recently in the 2006 Legislative Post Audit report entitled "Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches." That report stated, in part:

"We found a strong association between the amounts districts spend and the outcomes they achieve. In the cost function results, a 1.0% increase in district performance outcomes was associated with a 0.83% increase in spending – almost a one-to-one relationship. This means that, all other things being equal, districts that spent more had better student performance. The results were statistically significant beyond the 0.01 level, which means we can be more than 99% confident there is a relationship between spending and outcomes." (Audit # 05PA19, Page 40.)

The Commission also has received information regarding the state's dire economic situation. This includes the following:

- For the state revenue situation in general:
 - Revenue estimates are still dropping in the current fiscal year. In comparison to the June 2009 Consensus Revenue estimate, the November 2009 estimate shows FY 2010 revenues decreased by another \$235.2 million. The revised estimate of \$5.301 billion represents a 5.1 percent decrease below final FY 2009 receipts.
 - The initial estimate for FY 2011 of \$5.301 billion is 2.3 percent below the newly revised FY 2010 figure. While the Consensus Revenue Estimating Group anticipates a modest improvement in tax receipts for FY 2011, it estimates a net change in over \$250 million for transfers out, in compliance with statutory requirements.

(Source: Kansas Legislative Research Department)

- Specifically with regard to K-12 education:
 - It is estimated that general state aid, using the current base state aid per pupil (BSAPP) of \$4,218, will require an increase of approximately \$100 million for the 2009-10 school year. The increase is due primarily to increases in school district enrollment, the number of students eligible for free lunches, and bilingual and virtual school enrollments and a decrease in assessed valuation. If an increase in appropriation is not approved, this will have the effect of reducing the BSAPP by approximately \$150 ($\$4,218 - \$150 = \$4,068$).
 - Because approximately \$244 of the BSAPP increase in the recent past was a "trade" in which the enrollment weighting was decreased at the same time, the net result was no increased spending authority. This in effect means the \$4,068 BSAPP figure effectively would place education spending authority back to the 2000-01 level.

(Source: Kansas Department of Education)

*LEPC
11-19-09
Attachment 14*

However, we also know the Legislature has made tax policy decisions that have contributed to these dire circumstances. Tax cuts made by the Legislature from FY 2005 through FY 2010 have totaled \$180 million. By FY 2011, that total will rise to nearly \$209 million (See Attachment 1). In contrast to the philosophy that "low taxes contribute to economic growth and high taxes detract from it," we believe instead the following:

- **Kansas is not a "high tax" state, and the Kansas tax burden (taxes compared to personal income) has been stable for decades.** Kansas is a highly educated state, but not a "high tax" state, ranking 23rd in the nation on state and local tax collections as a percent of personal income according to the most recent report from the National Federation of State Tax Administrators. (Source: Kansas Association of School Boards [KASB])
- **Tax policy alone does not drive prosperity.** Prosperous states do not have low average tax burdens, and low income states do not have high tax burdens. If low taxes spur income growth and prosperity, low tax states should rank high on income measures. However, that is not the case. State per capita income in 2007 ranged from a high of \$54,981 in Connecticut to a low of \$28,541 in Mississippi. The top 10 states in per capita income had an average ratio of total tax collections to state personal income of 12.17 percent. The 10 states with the lowest incomes had a slightly lower tax burden of 11.6 percent. Likewise the top 10 income states had an average national ranking of 22.4 (where 1 is the highest tax burden) and the bottom 10 had an average ranking of 26.3. In other words, high income states were more likely to be high tax states, not the reverse. (Source: KASB)
- **Education attainment drives state income more than tax burden.** In a presentation to the Commission, the KASB combined several measures of educational attainment (percent of population 18-24 who are high school completers and percent of population over age 24 with a high school diploma, bachelor's and advanced degrees), ranked the states based on this combined measure, and compared against a number of measures of wealth and tax burden. The analysis showed a stronger correlation to income than tax rates. The 10 highest income states had an average educational rank of 12. As state incomes decline, average education rankings also decline. The bottom 10 income states had by far the worst average educational ranking: 39.2.

This can be seen even more clearly in Kansas' neighboring states and the other Plains states. Of the five regional states with a lower tax burden than Kansas, only Colorado has a higher per capita income and median household income, and only Iowa had a (slightly) lower poverty rate. Lower taxes on low income is not a benefit. For example, Kansans paid about one percent more of their personal income in state and local taxes than Oklahoma, but had a 7.7 percent higher per capita income, 8.5 percent higher household income, and 4.7 percent fewer people living in poverty. Kansas also had better wealth measures than two states with higher tax burdens: Nebraska and North Dakota. On the other hand, Colorado has a low tax rate but a high ranking on income measures (but also a higher poverty rate). What the top income states in the region (Minnesota, Colorado and Kansas) have in common is not low taxes, but high education attainment. Likewise, the lowest wealth states have the lowest education levels. (See Attachment 2)

- **Lower taxes will not help the economy in the long run if the State cannot support a strong public education system – and that takes a significant investment.**
- **In prosperous economic times the Legislature has been eager to reduce revenues. Now, in these difficult times, the Legislature must face the fact that it needs to replace some of that revenue.**

In summary, the Commission believes we cannot sacrifice a generation of Kansas students because the economy is weak. It is time for the Legislature to take steps to ensure that the revenue and funding policies of the Legislature allow every Kansas student to achieve his or her full potential.

2. **The Legislature should consider generating revenue from at least three specific revenue sources.** These are (1) reversing previous tax cuts, (2) increasing the state school mill levy back to its former level, and (3) increasing the state sales tax. It should be noted the Commission is not suggesting that all of these be implemented in full; rather, the Commission recommends the Legislature consider implementing one or a combination of these potential revenue sources:
 - Reversing Previous Tax Cuts – As mentioned previously, the Legislature has reduced the State's tax base and resulting revenues by making a number of tax cuts, and the Commission believes the policy decision on several of these cuts should be reviewed and reversed. If the tax cuts – which, as mentioned previously, have resulted in a cumulative total of \$180 million in revenue lost from FY 2005 through FT 2010 – were reversed for FY 2011, the total recovered for that year would be almost \$30 million. Furthermore, if the Highway Fund were not repaid in FY 2011, another \$30 million would remain in the State General Fund to help finance education.
 - Increasing the Statewide School Mill Levy – In 1992, the statewide school mill levy was 32 mills. It increased to 33 mills in 1993 and rose again to 35 mills in 1994, remaining at that level through 1996. The current rate is 20 mills. According to recent estimates, each 1.0 mill increase in the statewide school mill levy would generate approximately \$29 million in FY 2011
 - Increasing the State Sales Tax – According to a recent estimate, a 1-cent increase in the state sales tax rate would generate \$351 million in FY 2012 receipts.
3. **In addition to the knowledge that the education of children is the most important function of state government, there are practices we know make a difference in assuring that every child receives the maximum benefit of his or her education.** These practices include the following:
 - Early childhood education.
 - Before- and after- school tutoring and support programs.
 - At-risk funding and programs.
 - Staff development.
 - Leadership academies, especially for principals who must be the educational leaders of their schools.
 - Highly qualified teachers. Nothing impacts the quality of education like the quality of the teaching staff.

The Commission recommends these items remain, or become, funding priorities.
4. **The Legislature should continue the three-year funding cycle.** The Commission recommends public education funding in Kansas be implemented on a minimum of a three-year basis so school districts have the flexibility to plan for the future.

5. **The Legislature should change the formula for determining special education catastrophic aid.** The Commission recommends a change in the calculation of the special education catastrophic aid. The threshold for qualifying for catastrophic aid should be based upon twice the previous year's categorical aid per teacher less any special education state aid.

The current statutory formula allows a school district to receive the aid if the cost for a special education student exceeds \$25,000. This amount was placed in law in 1994 with no provision to adjust the threshold for inflation. Because special education costs have increased while the \$25,000 threshold amount remained the same, the number of special education students who qualify for catastrophic aid has increased.

In addition, the current formula allows districts to count certain special education expenditures in the \$25,000 amount, even though districts receive state aid already for these costs. This includes transportation and teacher costs, both of which qualify for significant amounts of state aid. So far, only a handful of districts have begun recently to count these costs in their catastrophic aid claims. However, this "double counting" already has resulted in a sudden dramatic spike in the number of catastrophic aid claims and the total amount of catastrophic aid claimed. While this statutorily allowed double counting has been limited so far to only a few districts, many more could adopt the practice and drive catastrophic aid still higher.

Since catastrophic aid "comes off the top" of special education state aid distributed to teachers, these catastrophic aid increases likely will result in a dramatic decrease in the amount of special education teacher aid.

6. **The Legislature should shift the *tiny-k* and Early Head Start programs' administration to the Kansas Department of Education.** The Commission has made these recommendations in previous years and is making the same recommendations again.

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Estimated Fiscal Notes for Selected Tax Cuts Enacted Since 2005

(\$ in millions)												
Session	Bill #	Brief Description	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	thru FY 13
2005	SB 256	Inc Tax Exemption - Military Recruitment Bonuses	\$0.000	-\$0.587	-\$0.622	-\$0.660	-\$0.699	-\$0.741	-\$0.786	-\$0.833	-\$0.883	-\$5.810
2005	SB 133	Homestead Program - Indexation	\$0.000	\$0.000	-\$0.025	-\$0.050	-\$0.075	-\$0.100	-\$0.125	-\$0.150	-\$0.175	-\$0.700
2005	SB 23	Repeal of "Clunker" Sales Tax on Used Vehicles	-\$5.000	-\$5.175	-\$5.356	-\$5.544	-\$5.738	-\$5.939	-\$6.147	-\$6.362	-\$6.584	-\$51.845
2005	SB 138	Certain Tax Credits	-\$0.500	-\$0.500	-\$0.500	-\$0.500	-\$0.500	-\$0.500	-\$0.500	-\$0.500	-\$0.500	-\$4.500
2005	HB 2040	Sales Tax Ex - Hearing Aid Repair	\$0.000	-\$0.093	-\$0.096	-\$0.100	-\$0.103	-\$0.107	-\$0.110	-\$0.114	-\$0.118	-\$0.842
2005	HB 2222	Indiv Dvlpment Account Program	-\$0.503	-\$0.503	-\$0.503	-\$0.503	-\$0.503	-\$0.503	-\$0.503	-\$0.503	-\$0.503	-\$4.527
2006	SB 365	Phasing Out of Estate Tax	\$0.000	\$0.000	\$0.000	-\$9.000	-\$20.000	-\$37.000	-\$47.000	-\$52.000	-\$52.000	-\$217.000
2006	SB 404	Numerous Sales Tax Exemptions	\$0.000	\$0.000	-\$12.702	-\$15.448	-\$17.291	-\$8.173	-\$8.630	-\$10.087	-\$11.546	-\$83.877
2006	HB 2583	M and E (Sliden)	\$0.000	\$0.000	-\$3.500	-\$27.162	-\$42.737	-\$58.905	-\$63.698	-\$62.729	-\$68.869	-\$327.600
2007	HB 2031	Soc Sec Exemption and EITC Expansion	\$0.000	\$0.000	\$0.000	-\$12.900	-\$19.400	-\$21.300	-\$23.400	-\$25.800	-\$26.135	-\$128.935
2007	HB 2171	Sales Tax Exemptions - Various	\$0.000	\$0.000	\$0.000	-\$0.650	-\$0.673	-\$0.696	-\$0.721	-\$0.746	-\$0.772	-\$4.258
2007	HB 2240	Sales Tax Ex - Repair of Transmission Lines	\$0.000	\$0.000	\$0.000	-\$3.000	-\$3.387	-\$3.506	-\$3.629	-\$3.756	-\$3.887	-\$21.165
2007	HB 2405	Historic Preservation Tax Credits	\$0.000	\$0.000	\$0.000	-\$0.575	-\$0.575	-\$0.575	-\$0.575	-\$0.575	-\$0.575	-\$3.450
2007	HB 2476	Homestead Program Expansion	\$0.000	\$0.000	\$0.000	-\$10.500	-\$11.000	-\$11.600	-\$12.200	-\$12.800	-\$13.500	-\$71.600
2007	HB 2264	Franchise Tax Phase Out	\$0.000	\$0.000	\$0.000	-\$7.000	-\$16.500	-\$26.500	-\$37.000	-\$48.000	-\$50.000	-\$185.000
2007	HB 2004	Various Tax Credits	\$0.000	\$0.000	\$0.000	-\$4.100	-\$4.100	-\$4.100	-\$4.100	-\$4.100	-\$4.100	-\$24.600
2007	HB 2540	Business Disaster Sales Tax Relief	\$0.000	\$0.000	-\$0.400	-\$1.600	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	-\$2.000
2008	HB 2434	Omnibus Tax Bill Includes Corporate Rate Cut	\$0.000	\$0.000	\$0.000	\$0.000	\$0.141	\$0.141	\$0.139	\$1.079	\$1.078	\$2.578
		Total These Bills	-\$6.003	-\$6.858	-\$23.704	-\$99.291	-\$143.140	-\$180.104	-\$208.985	-\$227.975	-\$239.070	-\$1,135.131

14-6

Attachment 2

Tax Burden, Wealth and Education Attainment									
	Tax Collections % of Personal Income (2006)	U.S. Rank	Personal Income Per Capita (2007)	U.S. Rank	Household Income Median (2007)	U.S. Rank	Percent in Poverty (2007)	U.S. Rank	Education Attainment Adults 18 and older (Average U.S. Rank)
Nebraska	11.9%	14	\$36,471	24	\$47,085	33	11.2%	17	15
Minnesota	11.8%	19	\$41,034	11	\$55,802	10	9.5%	8	5
North Dakota	11.7%	21	\$34,846	29	\$43,753	39	12.1%	25	23
Kansas	11.7%	23	\$36,768	22	\$47,451	30	11.2%	17	10
Iowa	11.0%	34	\$35,023	27	\$47,292	32	11.0%	16	26
Oklahoma	10.6%	41	\$34,153	33	\$43,424	41	15.9%	41	40
Missouri	10.1%	44	\$34,389	32	\$45,114	37	13.0%	31	32
Colorado	9.8%	46	\$41,042	10	\$55,212	12	12.0%	22	11
South Dakota	9.1%	50	\$33,905	34	\$41,567	44	13.1%	32	30

Source:
Kansas Association of School Boards



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BOARD OF REGENTS 2010 LEGISLATIVE INITIATIVES

(As Submitted by Agency/Institution/Sector)

November 19, 2009

1) Revision of Private Postsecondary Statutes *(Attachment, Pages 1-20)*

Proposal: Would amend Private Postsecondary statutes by including: new definitions of regulated entities, eliminating the exemptions for branch locations, changes to the application and renewal process, clarifying the types of degrees requiring a certificate of approval, providing for greater penalties for violations of the Private Postsecondary Act, revising the fee structure to establish new maximum amounts that may be charged to regulated entities, requiring data to be reported by regulated institutions, and requiring the schools to post their student complaint process.

2) Technical Education Authority, Amend 45-Day Veto Provision *(Attachment, Pages 21-22)*

Proposal: Would amend Kansas Postsecondary Technical Education Authority (TEA) statutes by amending the 45-day veto requirement. The amendment will increase the positive interplay between the TEA and the Board and will eliminate the need for the Board to take negative action on TEA recommendations for purely procedural reasons.

3) State University Purchasing Pilot Project, Make Permanent *(Attachment, Pages 23-25)*

Proposal: The University of Kansas and Fort Hays State University have participated in a three-year purchasing pilot program which has exempted them from state purchasing statutes. The proposal would make the exemption permanent and would allow all six state universities to participate. The pilot project will sunset on June 30, 2010 unless new legislation is enacted.

4) State University Surplus Property Exemption *(Attachment, Page 26)*

Proposal: Would exempt the six state universities from the State Surplus Property Act.

5) Investment Statutes / Gifts and Bequests *(Attachment, Pages 27-32)*

Proposal: Would update out-dated statute language and would offer an additional investment option supported by the recent adoption of the Uniform Prudent Management of Institutional Funds Act by the State. In addition, would clarify and streamline statutes pertaining the investment of "endowments and bequests" by state university endowments/foundations on behalf of the universities.

6) Fort Hays State University, Authorization to Sell Land *(Attachment, Pages 33-36)*

Proposal: Would authorize Fort Hays State University to sell two tracts of land to the City of Hays as part of the development of a community sports complex.

LEPC
11-19-09
Attachment 15

REVISION OF PRIVATE POSTSECONDARY STATUTES

Summary and Recommendations

Staff recommends approval of proposed Private Postsecondary revisions to the Private Postsecondary statutes. The revisions to these statutes include: new definitions of regulated entities, eliminating the exemptions for branch location(s), changes to the application and renewal process, clarifying the types of degrees requiring a certificate of approval, providing for greater penalties for violations of the Private Postsecondary Act (including making violation of the Act a violation of the Kansas Consumer Protection Act¹), revising the fee structure to establish new maximum amounts that may be charged to regulated entities (for implementation in 2012), requiring data to be reported by regulated institutions, and requiring the schools to post their student complaint process.

September 10, 2009

1) Issue Background

During the 2004 Legislative Session, the Kansas Legislature passed the Kansas Private and Out-of-State Postsecondary Educational Institution Act ("Act"), a set of 22 statutes found at K.S.A. 74-32,162, *et seq.* The Act replaced two other separate legislative enactments that regulated out-of-state degree granting institutions and professional training schools and made the Board's oversight of these two different types of entities more uniform.

The Board regulates most private and out of state postsecondary educational institutions that want to do business in the state. The Board grants "certificates of approval" to institutions that fall under the Act, if the institution meets minimum standards. The certificate of approval allows an institution to lawfully operate within the state, subject to annual review and renewed approval. The Act allows the Board to charge fees for applying for a certificate of approval or registering authorized representatives to recruit students. Staff have researched proposed statute changes by looking at practices in other states. The proposed changes are outlined in the attached summary.

2) Rationale/Consequences

These changes are intended to improve the quality of, and standards for, private postsecondary institutions operating in Kansas. Some changes are being requested to clarify current intent and are a result of past issues encountered with specific fact situations. We intend these changes help KBOR ensure the quality of training received by the students attending and receiving degrees, certificates or diplomas from these types of institutions. The Board also requests that the fees be increased in order to allow KBOR to adequately fund the Private Postsecondary Education Department.

Should some of the new provisions in the statutes not be approved, there may be continued confusion over what institutions are covered by the Act. Kansas students attending private postsecondary institutions will not have the benefit of improved minimum standards that help prevent degree mills and ensure the validity of degrees, certificates and diplomas, and there will not be a clearly defined student complaint process for students attending private postsecondary institutions. If increased fees are not approved, KBOR may not have sufficient resources to adequately regulate this segment of postsecondary education.

¹ A change suggested and requested by the Sedgwick County DA's office, who has assisted in enforcing this Act with regard to several schools.

3) Fiscal and Administrative Impact

There is no cost increase for the state. Increased fees will be paid by the institutions being regulated and will help ensure the Private Postsecondary Department at KBOR will be adequately funded.

4) Impact on other State Agencies

Will the proposal affect other state agencies?

The proposal helps clarify private postsecondary education's role to other state regulating agencies.

5) Questions Legislators May Ask / Possible Political Hurdles / Anticipated Opposition or Allies

What questions or obstacles can be anticipated?

There may be some Private Postsecondary institutions that object to portions of the proposed changes. However, we anticipate support from schools, large and small, who recognize the necessity to "self-police" and set high standards. The changes made help to protect students and provide for quality institutions. The elimination of an entire exception will most likely cause the impacted schools to object. However, the Department of Commerce supports and encourages this change.

Will any entities oppose this or lobby on its behalf?

We are confident some of the regulated entities will support this effort and work with us for passage; however, there may be some that oppose it.

Has any outreach occurred with potential proponents or opponents, including individual legislators?

If this package is approved, we will share it with the Private Postsecondary Commission as soon as possible and will work towards reaching a consensus on as many of its objectives as is possible. There has been no contact with Legislators about this matter.

6) Draft of Proposed Legislation (See attached)

**PRIVATE POSTSECONDARY
SUMMARY OF PROPOSED CHANGES TO - STATUTES K.S.A. 74-32-162 et seq.
SEPTEMBER 2009**

Statute	Reason for change
74-32,163. Definitions. (a)	Change from doctor's to doctoral degree
74-32.163. Definitions. (p)	More specific
74-32,167. Certificates of Approval. (a)	Clearly states institutions cannot award other types of awards without KBOR approval – e.g. a certificate of graduation.
74-32,168, Same; branch institutions; application. (a)	Added language to ensure branch sites are reported to KBOR and compliance to all requirements are met.
74-32,169 (l)	New requirement that schools publish the procedure for handling student complaints.
74-32,170. Same; Contents; term; renewal; notice of intent to nonrenew. (4) (c)	Change to 60 days prior – increasing the time of notice of ownership changes to this office.
74-32,170. (4) (d)	Change renewal paperwork from being sent to institutions 60 days prior to expiration to being sent 120 days prior to expiration. The intent is to reduce the number of schools that operate with an expired certificate of approval.
74-32,170. (e)	Added specific language requiring approval from KBOR before regulated institutions accept student enrollments or paid fees.
74-32,178. Violations of act; injunctions; civil fine.	Currently, this penalty is only available for deceptive type practices. The fine would apply for operating without approval. Added language which matched Kansas Consumer Protection Act – K.S.A. 50-1132. This makes a violation of the Private Postsecondary Act a violation of the Consumer Protection Act.
74-32,181. Fees. (a) (1) and (2) Fee information from Minnesota, Wisconsin, Tennessee and Georgia; where demographics often compare to Kansas. (attached) Proposed Regulation Fee Schedule is included to illustrate fees we will be requesting.	Total restructure of fees more accurately reflects the cost of necessary resources required for reviewing and processing applications, including all programs, certificates, diplomas and degrees. The restructuring of fees also ensures Kansas is within the range of fees other states are charging private institutions wanting to offer training in their states. Initial Application Fee is the Base fee plus initial authorization of degree level. Non-refundable option is new. At present, when a school has been declined we have refunded their fees. This does not justly reflect the hours of staff time dedicated to working on the applications (sometimes many weeks of work are invested before a school is denied).

<p>Statute fee levels are for the maximum limits. Regulations fees are set lower, giving room to increase fees over the next several years without requirement of Statute changes.</p>	<p>Initial authorization of degree-level evaluation is new. The new fee reflects the time spent by staff to review programs submitted for compliance and preparation of issue paperwork on degree programs with the initial application of a school.</p> <p>New Program Submission Fee is new. New program submission fees are directly related to the time required for staff review and research of programs submitted.</p> <p>Program Modification Fee is new. The new fee reflects the staff resources required when a program is modified or changed.</p> <p>Branch site fee is new. A Branch site requires the same application process as a main campus.</p> <p>Renewal – Late Submission Fee is new . This fee will encourage schools to submit completed and accurate re-application materials. It will also encourage them not to operate without a valid and current certificate of approval.</p> <p>Changes in School Fees also reflect s staff resources and research required to approve changes for currently approved institutions.</p>
74-32,181. Fees. (c) (d)	Added language to apply to non degree granting schools
	NEW (d) Added more specific statement to recover all costs.
Request new Statutes	NEW Provision of data requires that private institutions provide data to KBOR similar to the data provided by publics for institutional research purposes. This provides improved tracking systems of students and institutions so KBOR better understands the educational needs in Kansas.

PRIVATE POSTSECONDARY EDUCATION COMPARISON OF NEW FEE STRUCTURE

Fees – In State Institutions	Proposed Statute Maximum Limit Allowed	Proposed Regulation Actual Fee	Current Fee Structure
Initial Application Fee - Non-degree granting	\$ 3,000	\$ 1,500	\$ 850
Degree granting	\$ 6,000	\$ 3,000	\$ 1,000
Initial degree level evaluation – Non-degree granting	\$ 2,000	\$ 750	No Current Fee
Associate degree	\$ 3,000	\$ 1,000	
Baccalaureate	\$ 6,000	\$2,000	
Masters	\$ 8,000	\$3,000	
Professional and/or Doctoral	\$10,000	\$4,000	
Renewal Application Fee – Non-degree granting	.4% of gross Tuition \$6,000 min or \$50,000 max.	.2% of gross Tuition \$ 1,500 min or \$25,000 max.	\$ 600
Degree granting	\$12,000 min. or \$50,000 max.	\$ 3,000 min. or \$25,000 max.	\$ 800
New Program Fee – (cost per program) Non-degree	\$ 2,000	\$ 250	No Current Fee
Associate degree	\$ 3,000	\$ 500	
Baccalaureate	\$ 6,000	\$ 750	
Master's	\$ 8,000	\$ 1,000	
Professional and/or Doctoral	\$10,000	\$ 2,000	
Program Modification Fee (per program)	\$ 1,000	\$ 100	No Current Fee
Branch Site Fee – Initial – Non-degree	\$ 3,000	\$ 1,500	Branches are not charged separate fees at this time
Initial – Degree	\$ 6,000	\$ 3,000	
Renewal: Non-degree	.4% of gross Tuition \$6,000 min or \$50,000 max.	.2% of gross Tuition \$ 1,500 min. or \$25,000 max.	
Degree	\$12,000 min. or \$50,000 max.	\$ 3,000 min. or \$25,000 max.	
Site Approval Visit	\$ 1,000	\$ 125	No Current Fee
Representative Fees: Initial Registration	\$ 1,500	\$ 150	\$ 75
Renewal	\$ 1,000	\$ 100	\$ 50
Renewal – Late Submission Fee	\$ 1,000	\$ 125	No Current Fee
Student Transcript Fee	\$ 50	\$ 10	\$ 7
Returned Check Fee	\$ 300	\$ 50	No Current Fee
Changes in School Profile Fee –			

Change in Name	\$ 800	\$ 100	No Current Fee
Change in Location	\$ 800	\$ 100	No Current Fee
Change of Only Ownership	\$ 800	\$ 100	Changes in Ownership representing a change in curriculum, must apply for new certificate of approval Application fees apply.
Change in Ownership with additional changes in the institution's programs or instruction, location, and/or entrance requirements	Must apply for new authorization Initial Application fees apply	Must apply for new authorization Initial application fee apply	
Evaluation Team Fee	Applicant Institution is responsible for any costs connected with the on-site visit, and if necessary, and subsequent visits, including travel, meals, lodging, subject matter expert fees, and associated costs	Applicant Institution is responsible for any costs connected with the on-site visit, and if necessary, and subsequent visits, including travel, meals, lodging, subject matter expert fees, and associated costs	No Current Fee

**PRIVATE POSTSECONDARY EDUCATION
COMPARISON OF NEW FEE STRUCTURE**

Fees – Out of State Institutions	Proposed Statute Maximum Limit	Proposed Regulation Actual Fee	Current Fee Structure
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	Allowed		
Initial Application Fee - Non-degree granting	\$ 6,000	\$ 3,000	\$ 1,700
Degree granting	\$10,000	\$ 5,000	\$ 1,900
Initial degree level evaluation -			No Current Fee
Non-degree granting	\$ 4,000	\$ 1,500	
Associate degree	\$ 6,000	\$ 2,000	
Baccalaureate	\$ 8,000	\$3,000	
Masters	\$ 10,000	\$4,000	
Professional and/or Doctoral	\$12,000	\$5,000	
Renewal Application Fee -			
Non-degree granting	.6% of gross Tuition \$9,000 min or \$50,000 max.	.3% of gross Tuition \$ 3,000 min or \$25,000 max.	\$ 1,200
Degree granting	\$15,000 min. or \$50,000 max.	\$ 5,000 min. or \$25,000 max.	\$ 1,400
New Program Fee - (cost per program)			No current Fee
Non-degree	\$4,000	\$ 500	
Associate degree	\$ 6,000	\$ 750	
Baccalaureate	\$ 8,000	\$ 1,000	
Master's	\$10,000	\$ 1,500	
Professional and/or Doctoral	\$12,000	\$ 2,500	
Program Modification Fee	\$ 2,000	\$ 100	No Current Fee
Branch Site Fee -			Branches are not charged separate fees at this time
Initial - Non-degree	\$ 6,000	\$ 3,000	
Initial - Degree	\$ 10,000	\$ 5,000	
Renewal:			
Non-degree	.6% of gross Tuition \$9,000 min or \$50,000 max.	.3% of gross Tuition \$ 3,000 min. or \$25,000 max.	
Degree	\$15,000 min. or \$50,000 max.	\$ 5,000 min. or \$25,000 max.	
Site Approval Visit	\$ 2,000	\$ 500	No Current Fee
Representative Fees:			
Initial Registration	\$ 2,500	\$ 300	\$ 150
Renewal	\$ 3,000	\$ 200	\$ 100
Renewal - Late Submission Fee	\$ 3,000	\$ 125	No Current Fee
Student Transcript Fee	\$ 50	\$ 10	\$ 7
Returned Check Fee	\$ 300	\$ 50	No Current Fee
Changes in School Profile Fee -			No Current Fee
Change in Name	\$ 1,000	\$ 100	No Current Fee
Change in Location	\$ 1,000	\$ 100	No Current Fee
Change of Only Ownership	\$ 1,000	\$ 100	Changes in Ownership representing a change in curriculum, must
Change in Ownership with additional	Must apply for new	Must apply for new	

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changes in the institution's programs or instruction, location, and/or entrance requirements	Authorization Initial application fees apply	authorization Initial application fee apply	apply for new certificate of approval Application fees apply.
Evaluation Team Fee	Applicant Institution is responsible for any costs connected with the on-site visit, and if necessary, and subsequent visits, including travel, meals, lodging, subject matter expert fees, and associated costs	Applicant Institution is responsible for any costs connected with the on-site visit, and if necessary, and subsequent visits, including travel, meals, lodging, subject matter expert fees, and associated costs	No Current Fee

PRIVATE POSTSECONDARY

NOTES AND COMMENTS ON STATUTES K.S.A. 74-32-162 et seq.

74-32,162. Title and citation of act. K.S.A. 2007 Supp. 74-32,163 through 74-32,183 shall be known and may be cited as the Kansas private and out-of-state postsecondary educational institution act.

History: L. 2004, ch. 185, § 2; June 10.

74-32,163. Definitions. As used in the Kansas private and out-of-state postsecondary educational institution act:

(a) "Academic degree" means any associate, bachelor's, first professional, master's, intermediate (specialist) or ~~doctor's~~ doctoral degree.

Comment [s1]: Changed from - doctor's -
Changed to Doctoral degree.

(b) "Accreditation" means an accreditation by an agency recognized by the United States department of education.

(c) "Branch campus" means any subsidiary place of business maintained within the state of Kansas by an institution at a site which is separate from the site of the institution's principal place of business and at which the institution offers a course or courses of instruction or study identical to the course or courses of instruction or study offered by the institution at its principal place of business.

(d) "Commission" means the advisory commission on private and out-of-state postsecondary educational institutions established pursuant to this act.

(e) "Distance education" means any course delivered primarily by use of correspondence study, audio, video or computer technologies.

(f) "Out-of-state postsecondary educational institution" means a postsecondary educational institution chartered, incorporated or otherwise organized under the laws of any jurisdiction other than the state of Kansas.

(g) "Institution" means an out-of-state or private postsecondary educational institution.

(h) "Institution employee" means any person, other than an owner, who directly or indirectly receives compensation from an institution for services rendered.

(i) "Owner of an institution" means:

(1) In the case of an institution owned by an individual, that individual;

(2) in the case of an institution owned by a partnership, all full, silent and limited partners;

(3) in the case of an institution owned by a corporation, the corporation, its directors, officers and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares; and

(4) in the case of an institution owned by a limited liability company, the company, its managers and all its members.

(j) "Person" means an individual, firm, partnership, association or corporation.

(k) "Physical presence" means the employment in Kansas of a Kansas resident for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising or any other activity on behalf of the institution, or the delivery of, or the intent to deliver, instruction in Kansas with the assistance from any entity within the state in delivering the instruction including, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.

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(l) "Private postsecondary educational institution" means an entity which:

(1) Is a business enterprise, whether operated on a profit or not-for-profit basis, which has a physical presence within the state of Kansas or which solicits business within the state of Kansas;

(2) offers a course or courses of instruction or study through classroom contact or by distance education, or both, for the purpose of training or preparing persons for a field of endeavor in a business, trade, technical or industrial occupation or which offers a course or courses leading to an academic degree; and

(3) is not specifically exempted by the provisions of this act.

(m) "Representative" means any person employed by an institution to act as an agent, solicitor or broker to procure students or enrollees for the institution by solicitation within this state at any place other than the office or a place of business of the institution.

(n) "State board" means the Kansas board of regents or the board's designee.

(o) "Support" or "supported" means the primary source and means by which an institution derives revenue to perpetuate operation of the institution.

(p) "University" means a postsecondary educational institution authorized to offer any degree including bachelor ~~together with graduate degrees~~ or first professional degrees.

(q) "State educational institution" means any state educational institution as defined by K.S.A. 76-711, and amendments thereto.

(r) "This act" means the Kansas private and out-of-state postsecondary educational institution act.

History: L. 2004, ch. 185, § 3; June 10.

Comment [52]: SUGGESTED CHANGES

74-32,164. Institutions and courses exempt from act.

The Kansas private and out-of-state postsecondary educational institution act shall not apply to:

(a) An institution supported primarily by Kansas taxation from either a local or state source;

(b) an institution or training program which offers instruction only for ~~a vocational or recreational~~ purposes as determined by the state board;

(c) a course or courses of instruction or study, excluding degree-granting programs, sponsored by an employer for the training and preparation of its own employees, and for which no tuition or other fee is charged to the student;

(d) a course or courses of instruction or study sponsored by a recognized trade, business or professional organization having a closed membership for the instruction of the members of the organization, and for which no tuition or other fee is charged to the student;

(e) an institution which is otherwise regulated and approved under any other law of this state;

(f) a course or courses of special study or instruction having a closed enrollment and financed or subsidized on a contract basis by local or state government, private industry, or any person, firm, association or agency, other than the student involved;

(g) an institution financed or subsidized by federal or special funds which has applied to the state board for exemption from the provisions of this act and which has been declared exempt by the state board because it has found that the operation of such institution is outside the purview of this act;

(h) the Kansas City college and bible school, inc.; and

(i) any postsecondary educational institution which was granted approval to confer academic or honorary degrees by the state board of education under the provisions of K.S.A. 17-6105 prior to its repeal.

History: L. 2004, ch. 185, § 4; June 10.

74-32,165. Rules and regulations; institutions qualified to award academic degrees, standards; information from state agencies. (a) The state board may adopt rules and regulations for the administration of this act. Prior to the adoption of any such rules and regulations, the state board shall afford the advisory commission an opportunity to make recommendations thereon.

(b) Specific standards shall be set for determining those institutions which qualify for approval to confer or award academic degrees. Such standards shall be consistent with standards applicable to state educational institutions under the control and supervision of the state board.

(c) The state board shall maintain a list of institutions that have been issued a certificate of approval.

(d) Any state agency having information which will enable the state board to exercise its powers and perform its duties in administering the provisions of this act shall furnish such information when requested by the state board.

History: L. 2004, ch. 185, § 5; June 10.

74-32,166. Advisory commission; membership; meetings; compensation.

(a) The advisory commission on private and out-of-state postsecondary educational institutions is hereby created. The commission shall consist of nine members appointed by the state board. Except as provided by this section, members shall be appointed for terms of four years. Vacancies shall be filled by the state board for the unexpired term. Five members of the commission shall be owners or managers of private postsecondary educational institutions, at least two of the five members shall represent institutions, which at the time of appointment of such members, have enrollments of under 125 students, and at least one shall represent a degree granting institution. Four members shall be selected from among persons representing: Secondary schools, postsecondary schools, business and industry, members of the employment community, economic development interests of the state and health occupations.

(b) The commission shall elect one member as chairperson of the commission and such other officers as may be necessary.

(c) The commission shall meet at least once annually in Topeka during the month of October, and shall conduct special meetings on the call of the chairperson or the state board or at the request of at least four members of the commission.

(d) Members attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(e) A majority of the commission is a quorum to conduct business, but no less than four members must concur to pass upon any matter before the commission.

(f) The commission may recommend to the state board such policies, minimum standards and rules and regulations that the commission deems necessary for administering the provisions of this act.

History: L. 2004, ch. 185, § 6; June 10.

74-32,167. Certificates of approval. (a) No institution may operate within this state without obtaining a certificate of approval from the state board as provided in this act. No institution shall confer or award any degree, certificate, or diploma, whether academic or honorary, unless such institution has been approved for such purpose by the state board of regents.

(b) Any contract entered into by or on behalf of any owner, employee or representative of an institution which is subject to the provisions of this act, but which has not obtained a certificate of approval, shall be unenforceable in any action.

History: L. 2004, ch. 185, § 7; June 10.

Comment [MSOffice3]: DOES NOT CLEARLY SAY THEY CAN'T AWARD OTHER TYPES OF AWARDS WITHOUT KBOR APPROVAL - E.G. A CERTIFICATE OF GRADUATION ETC. THE FIRST SENTENCE SAYS THEY CAN'T OPERATE.

74-32,168. Same; branch institutions; application.

(a) Each institution shall apply to the state board for a certificate of approval. An institution shall not be required to obtain a separate certificate of approval for maintenance of any branch institution. Any institution opening or maintaining a branch institution shall notify the board and be subject to a review of the branch site for compliance with this act.

(b) An application for a certificate of approval shall be made on a form prepared and furnished by the state board and shall contain such information as may be required by the state board.

(c) The state board may issue a certificate of approval upon determination that an institution meets the standards established by the state board. The state board may issue a certificate of approval to any institution accredited by a regional or national accrediting agency recognized by the United States department of education without further evidence.

History: L. 2004, ch. 185, § 8; June 10.

Comment [54]: This is to make sure the new site is complying with the law and meets applicable standards.

74-32,169. Same; compliance with minimum standard required. The state board shall issue a certificate of approval to an institution when the state board is satisfied that the institution meets minimum standards established by the state board by adoption of rules and regulations to insure that:

(a) Courses, curriculum and instruction are of such quality, content and length as may reasonably and adequately ensure achievement of the stated objective for which the courses, curriculum or instruction are offered;

(b) institutions have adequate space, equipment, instructional material and personnel to provide education and training of good quality;

(c) educational and experience qualifications of directors, administrators and instructors are such as may reasonably insure that students will receive instruction consistent with the objectives of their program of study;

(d) institutions maintain written records of the previous education and training of students and applicant students, and that training periods are shortened when warranted by such previous education and training or by skill or achievement tests; of the previous education and training of students and applicant students, and that training periods are shortened when warranted by such previous education and training or by skill or achievement tests;

(e) a copy of the course outline, schedule of tuition, fees and other charges, settlement policy, rules pertaining to absence, grading policy and rules of operation and conduct are furnished to students upon entry into class;

(f) upon completion of training or instruction, students are given certificates, diplomas or degrees as appropriate by the institution indicating satisfactory completion of the program;

(g) adequate records are kept to show attendance, satisfactory academic progress and enforcement of satisfactory standards relating to attendance, progress and conduct;

(h) institutions comply with all local, state and federal regulations;

(i) institutions are financially responsible and capable of fulfilling commitments for instruction;

(j) institutions do not utilize erroneous or misleading advertising, either by actual statement, omission or intimation; and

(k) institutions have and maintain a policy, which shall be subject to state board approval, for the refund of unused portions of tuition, fees and other charges if a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom at any time prior to completion. Such policies shall take into account those costs of the institution that are not diminished by the failure of the student to enter or complete a course of instruction.

(I) (1). All institutions shall publish and adhere to a procedure for handling student complaints. This procedure shall include use of written documentation that contains signature of the appropriate school officials and the student as well as the date that each step of the complaint process was completed. (2.) Institutions shall post information so that students will be aware of the complaint process available to them. This information shall be posted in locations used and/or seen by all students on a regular basis such as web site, enrollment agreement, catalogue or other media.

History: L. 2004, ch. 185, § 9; June 10.

Comment [s5]: Add requirement for schools to publish procedure for handling students complaints. National research supports this language and requirement.

74-32,170. Same; contents; term; renewal; notice of intent to nonrenew. (a)

After review of an application for a certificate of approval and if the state board determines that the institution meets the requirements of this act, the state board shall issue a certificate of approval to the institution. Certificates of approval shall be in a form specified by the state board. Certificates of approval shall state:

- (1) The date of issuance and term of approval;
- (2) the correct name and address of the institution;
- (3) the signature of the chief executive officer of the Kansas board of regents or a person designated by the state board to administer the provisions of this act; and
- (4) any other information required by the state board.

(b) Certificates of approval shall be valid for a term of one year.

(c) Each certificate of approval shall be issued to the owner of an institution and shall not be transferable. If a change in ownership of an institution occurs, the new owner shall apply within ~~30~~ 60 days prior to the change in ownership for a new certificate of approval. The state board may waive the thirty-day requirement upon determination that an emergency exists and that the waiver and change in ownership would be in the best interests of students currently enrolled in the institution. Whenever a change in ownership occurs as a result of death, court order or operation of law, the new owner shall apply immediately for a new certificate of approval.

Comment [s6]: Change to 60 days prior.

(d) At least ~~60~~ 120 days prior to expiration of a certificate of approval, the state board shall forward to the institution a renewal application form, which must be completed and returned no later than 60 days before the expiration of their certificate.

Comment [s7]: Renewal paperwork is mailed out 120 days before expiration in hopes that schools will return paperwork to us 60 days prior to expiration. Reducing the number of schools who do not have renewal paperwork completed before certificate expires.

Comment [s8]: Added date that renewal materials must be returned.

(e) Any institution which is not approved or ~~not~~ yet in operation when its application for a certificate of approval is filed shall not accept payments for tuition, fees or other enrollment charges until receipt of the certificate of approval.

Comment [s9]: Added language

(f) Any institution which does not plan to renew a certificate of approval shall notify the state board of its intent not to renew at least 60 days prior to the expiration date of the certificate of approval.

History: L. 2004, ch. 185, § 10; June 10.

74-32,171. Refusal to issue certificate; appeal. (a) After review of an application for a certificate of approval and if the state board determines that the applicant does not meet the requirements of this act, the state board shall refuse to issue the certificate and set forth the reasons for the determination.

(b) If an applicant, upon written notification of refusal by the state board to issue a certificate of approval, desires to contest such refusal, the applicant shall notify the state board in writing, within 15 days after the date of service of such notice of refusal, of the desire to be heard. Such applicant shall be afforded a hearing in accordance with the provisions of the Kansas administrative procedure act. Upon conclusion of any such hearing, the state board shall issue a certificate of approval or a final refusal to do so.

(c) If an applicant, upon service of notice of refusal by the state board to issue a certificate of approval, fails to request a hearing within 15 days after the date of service of such notice of refusal, the state board's refusal shall be final.

History: L. 2004, ch. 185, § 11; June 10.

74-32,172. Same; revocation or imposition of conditions; notice; hearing. (a) The state board may revoke a certificate of approval or impose reasonable conditions upon the continued approval represented by a certificate. Prior to revocation or imposition of conditions upon a certificate of approval, the state board shall give written notice to the holder of the certificate of the impending action setting forth the grounds for the action contemplated to be taken and affording a hearing on a date within 30 days after the date of such notice. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) A certificate of approval may be revoked or conditioned if the state board has reasonable cause to believe that the institution is in violation of any provision of this act or of any rules and regulations adopted under this act.

History: L. 2004, ch. 185, § 12; June 10.

74-32,173. Same; judicial review; violations of act, injunction. Any action of the state board pursuant to K.S.A. 2007 Supp. 74-32,170, 74-32,171 or 74-32,172, and amendments thereto, is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. If it appears to the state board on the basis of its own inquiries or investigations or as a result of a complaint that any provision of this act has been or may be violated, the state board may request the attorney general to institute an action enjoining such violation or for an order directing compliance with the provisions of this act.

History: L. 2004, ch. 185, § 13; June 10.

74-32,174. Institution's representative, registration with state board; renewal, denial, or revocation of registration. (a) Each representative of an institution shall

register with the state board. Application for registration may be made at any time on a form prepared and furnished by the state board and shall contain such information as may be required by the state board.

(b) Registration of a representative shall be effective upon receipt of notice from the state board and shall remain in effect until expiration of the certificate of approval of the institution employing such representative. Renewal of representative registration shall be in accordance with the renewal application form forwarded to the institution by the state board.

(c) Denial or revocation of registration of a representative by the state board shall be in accordance with the provisions of this act applicable to denial or revocation of a certificate of approval.

(d) A representative employed by more than one institution shall not be required to register for each institution when such institutions have a common ownership.

History: L. 2004, ch. 185, § 14; June 10.

74-32,175. Surety bond or certificate of evidence of insurance.

(a) Before a certificate of approval is issued under this act, a bond in the penal sum of \$20,000 shall be provided by the institution for the period for which the certificate of approval is to be issued. The obligation of the bond shall be that the institution and its officers, agents, representatives and other employees shall be bound, upon closure of the institution, to deliver or make available to the state board the records of all students who are in attendance at the institution at the time of closure or who have attended the institution at any time prior to closure. The bond shall be a corporate surety bond issued by a company authorized to do business in this state. The bond shall be filed with the state board. If the institution ceases operation, the state board may recover against the bond all necessary costs for the acquisition, permanent filing and maintenance of student records of the institution.

(b) In lieu of the corporate surety bond required under subsection (a), an institution may provide any similar certificate or evidence of indebtedness or insurance as may be acceptable to the state board if such certificate or evidence of indebtedness or insurance is conditioned that the requirements of subsection (a) shall be met.

History: L. 2004, ch. 185, § 15; June 10.

74-32,176. Advance payment of tuition and retention of tuition, limitations. (a) Subject to the provisions of subsection (b), no tuition in an amount greater than \$350 shall be collected from a student by any institution more than 30 days before the student receives classroom instruction, and not more than \$150 of such amount may be retained by an institution from any student who fails to enter the institution.

(b) In the case of distance education, no tuition in an amount greater than \$200 shall be collected from a student prior to the first submission of a lesson by the student, and not more than \$75 of such amount may be retained by an institution from any student who fails to enter the institution.

History: L. 2004, ch. 185, § 16; June 10.

74-32,177. Prohibited acts; criminal penalty.

(a) No person shall:

- (1) Operate an institution without a certificate of approval;
- (2) solicit prospective students without being registered as required by this act;

- (3) accept contracts or enrollment applications from a representative who is not registered as required by this act;
 - (4) use fraud or misrepresentation in advertising or in procuring enrollment of a student;
 - (5) use the term "accredited" in the name or advertisement of the institution unless such institution is accredited as defined in this act; and
 - (6) use the term "university" in the name or advertisement of the institution unless such institution is a university as defined by this act.
- (b) Violation of any provision of subsection (a) or of any other provision of this act is a class C nonperson misdemeanor.

History: L. 2004, ch. 185, § 17; June 10.

74-32,178. Violations of act; injunctions; civil fine. Upon application of the attorney general or a county or district attorney, a district court shall have jurisdiction to enjoin any violation of this act and to enjoin persons from engaging in business in this state. In any action brought to enforce the provisions of this act, if the court finds that a person willfully used any deceptive or misleading act or practice, or operates an institution without first obtaining and maintaining a certificate of approval, the attorney general or a county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this act, a civil penalty not exceeding the penalties provided by the Kanas Consumer Protection Act for each violation. For purposes of this section, a willful intentional violation occurs when the person committing the violation knew or should have known that the conduct of the person consisted of acts or practices which were deceptive or misleading, including operating an institution without first obtaining a certificate of approval from the Kansas Board of Regents. Any violation of this act or any rule and regulation promulgated thereunder is a deceptive act or practice under the Kansas consumer protection act. Any remedy provided by this act shall be construed to be in addition to other remedy provided by the Kansas consumer protection act. A violation of this act shall constitute a violation of the Kansas Consumer Protection Act.

History: L. 2004, ch. 185, § 18; June 10.

74-32,179. Failure to comply with act; refund of money, interest; contracts, void. Any note or contract taken by any institution or its officers, directors, agents or representatives, without having complied with the provisions of this act, shall be null and void and any person who has entered into a contract with such institution or its officers, directors, agents or representatives shall be entitled to a full refund of the money or consideration paid plus interest accruing from the date of payment at a rate per annum equal to the rate specified in K.S.A. 16-207, and amendments thereto, together with other damages sustained by such person.

History: L. 2004, ch. 185, § 19; June 10.

74-32,180. Promissory instruments as payment of tuition. Whenever any institution negotiates any promissory instrument or note received from a student or on behalf of a student as payment of tuition or other fees charged by each institution, any person or assignee or holder to whom the instrument or note is assigned shall take such instrument or note subject to all defenses which would be available to the student from whom or on behalf of whom the instrument or note was received.

Comment [s10]: Add language more specific.

Comment [s11]: Matches language from Kansas Consumer Protection Act - K.S.A. 50-1132.

Comment [MSOffice12]: Currently, this penalty is only available for deceptive type practices. We want the fine to apply for operating without approval.

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History: L. 2004, ch. 185, § 20; June 10.

74-32,181. Fees. (a) The state board shall fix, charge and collect fees for certificates of approval, registration of representatives and providing transcripts to students who attended an institution that has ceased operation by adopting rules and regulations for such purposes, subject to the following limitations:

(1) For institutions domiciled or having their principal place of business within the state of Kansas:

Initial issuance of certificate of approval nondegree granting — not more than.....	\$1,700
Initial issuance of certificate of approval degree granting — not more than.....	\$2,000
Renewal of certificate of approval nondegree granting — not more than.....	\$1,200
Renewal of certificate of approval degree granting — not more than.....	\$1,600
Initial registration of representative — not more than.....	\$150
Annual renewal of registration of representative — not more than.....	\$100

Student transcript from institution that has ceased operation — not more than..... \$10

A. Initial Application Fee (non-refundable)

Initial new school application - non-degree granting	Not more than \$ 3,000
Initial new school application - degree granting	Not more than \$ 6,000

Initial Authorization of degree-level evaluation – Fee is in addition to initial application fee.

Non-degree-granting –	Not more than \$ 2,000
Associate degree-granting -	Not more than \$ 3,000
Baccalaureate degree-granting -	Not more than \$ 6,000
Masters degree-granting -	Not more than \$ 8,000
Professional and/or Doctoral degree-granting -	Not more than \$ 10,000

B. Renewal Application Fee (non-refundable)

Not more than .4% of gross tuition*, subject to the following	
Non-degree granting institutions –	Not more than \$6,000 minimum or \$50,000 maximum
Degree-granting institutions –	Not more than \$12,000 minimum or \$50,000 maximum

(*For a new institution, gross tuition is estimation for the first twelve months.)

C. New Program Fee – Processing fee for adding a non-degree or degree program.

Non-degree new program submission fee – each	Not more than \$ 2,000
Associate degree program submission fee – each	Not more than \$ 3,000
Baccalaureate program submission fee –each	Not more than \$ 6,000
Master's program submission fee – each	Not more than \$ 8,000
Professional and/or Doctoral submission fee – each	Not more than \$ 10,000

D. Program Modification Fee - each program

Not more than \$ 1,000

E. Branch Site Fee: for each site

Initial - non-degree granting	Not more than \$ 3,000
Initial – degree granting	Not more than \$ 6,000

Renewal:

Not more than .4% of gross tuition*, subject to the following	
Non-degree granting institutions –	Not more than \$6,000 minimum or \$50,000 maximum
Degree-granting institutions –	Not more than \$12,000 minimum or \$50,000 maximum
Site Approval Visit	Not more than \$ 1,000

F. Representative Fees:

Initial Registration	Not more than \$ 1,500
Renewal fee	Not more than \$ 1,000

Comment [s13]: Fees have been restructured to more accurately reflect the cost of time spent for reviewing and processing applications. Also, to keep Kansas competitive with the fees other states are charging private institutions wanting to offer training in their states.

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- G. Renewal – Late Submission Fee* Not more than \$ 1,000
- H. Student Transcript Copy Fee Not more than \$ 50
- I. Returned Check Fee Not more than \$ 300
- J. Changes in School Profile Fee
 - Change of school name Not more than \$ 800
 - Change of school location Not more than \$ 800
 - Change of ownership only Not more than \$ 800
 - Change of ownership with additional changes in the institution's programs of instruction. Location, and/or entrance requirements – Must apply for new authorization. Initial Application Fees does apply
- K. Evaluation Team Fee: The applicant institution shall be responsible for any costs connected with the certificate of approval process, renewal inspection, or on-site visit and, if necessary, and subsequent visits, including but not limited to, travel, meals, lodging, subject matter expert fees, and associated costs.

*For a new institution, gross tuition is estimation for the first twelve months.
 ** Short Courses – Instructional programs, test preparations courses, pre-approved by another Kansas State agency before submission to KBOR
 ****Failure to submit completed renewal file or submit requested documentation to complete the renewal before the expiration date of the current certificate of approval

(2) For institutions domiciled or having their principal place of business outside the state of Kansas:

Initial issuance of certificate of approval nondegree granting – not more than.....	\$3,400
Initial issuance of certificate of approval degree granting – not more than.....	\$3,800
Renewal of certificate of approval nondegree granting – not more than.....	\$2,400
Renewal of certificate of approval degree granting – not more than.....	\$2,800
Initial registration of representative – not more than.....	\$300
Annual renewal of registration of representative – not more than.....	\$200

Comment [s14]: See new fee chart attached. Fees have been restructured to better represent the actual cost of time spent in reviewing and processing applications. Also to reflect similar fees from other states.

Student transcript from institution that has ceased operation – not more than.....\$10

- A. Initial Application Fee (non-refundable)
 - Initial new school application - non-degree granting Not more than \$ 6,000
 - Initial new school application – degree granting Not more than \$10,000
- Initial Authorization of degree-level evaluation – Fee is in addition to initial application fee.
 - Non-degree-granting – Not more than \$ 4,000
 - Associate degree-granting - Not more than \$ 6,000
 - Baccalaureate degree-granting - Not more than \$ 8,000
 - Masters degree-granting - Not more than \$10,000
 - Professional and/or Doctoral degree-granting - Not more than \$12,000

Comment [s15]: Fees have been restructured to more accurately reflect the cost of time spent for reviewing and processing applications. Also, to keep Kansas competitive with the fees other states are charging private institutions wanting to offer training in their states.

- B. Renewal Application Fee (non-refundable)
 - Not more than .6% of gross tuition*, subject to the following
 - Non-degree granting institutions – Not more than \$ 9,000 minimum or \$50,000 maximum
 - Degree-granting institutions – Not more than \$15,000 minimum or \$50,000 maximum

C. New Program Fee – Processing fee for adding a non-degree or degree program.

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Non-degree new program submission fee – each	Not more than \$ 4,000
Associate degree program submission fee – each	Not more than \$ 6,000
Baccalaureate program submission fee –each	Not more than \$ 8,000
Master's program submission fee – each	Not more than \$10,000
Professional and/or Doctoral submission fee – each	Not more than \$12,000
D. Program Modification Fee - each program	Not more than \$ 2,000
E. Branch Site Fee: for each site	
Initial - non-degree granting	Not more than \$ 6,000
Initial – degree granting	Not more than \$10,000
Renewal:	
Not more than .6% of gross tuition*, subject to the following	
Non-degree granting institutions –	Not more than \$9,000 minimum or \$50,000 maximum
Degree-granting institutions –	Not more than \$15,000 minimum or \$50,000 maximum
Site Approval Visit	Not more than \$ 2,000
F. Representative Fees:	
Initial Registration	Not more than \$ 2,500
Renewal fee	Not more than \$ 3,000
G. Renewal – Late Submission Fee*	Not more than \$ 3,000
H. Student Transcript Copy Fee	Not more than \$ 50
I. Returned Check Fee	Not more than \$ 300
J. Changes in School Profile Fee	
Change of school name	Not more than \$ 1,000
Change of school location	Not more than \$ 1,000
Change of ownership only	Not more than \$ 1,000
Change of ownership with additional changes in the institution's programs of instruction.	
Location, and/or entrance requirements – Must apply for new authorization.	
Initial Application Fees does apply.	
K. Evaluation Team Fee:	The applicant institution shall be responsible for any costs connected with the certificate of approval process, renewal inspection, or on-site visit and, if necessary, and subsequent visits, including but not limited to, travel, meals, lodging, subject matter expert fees, and associated costs.

*For a new institution, gross tuition is estimation for the first twelve months.

** Short Courses – Instructional programs, test preparations courses, pre-approved by another Kansas State agency before submission to KBOR

****Failure to submit completed renewal file or submit requested documentation to complete the renewal before the expiration date of the current certificate of approval

(b) The state board shall determine on or before June 1 of each year the amount of revenue which will be required to properly carry out and enforce the provisions of the Kansas private and out-of-state postsecondary educational institution act for the next ensuing fiscal year and shall fix the fees authorized for such year at the sum deemed necessary for such purposes within the limits of this section. Prior to adoption of any such fees, the state board shall afford the advisory commission an opportunity to make recommendations on the proposed fees.

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(c) Fees may be charged to conduct onsite reviews for degree granting and non degree granting schools or to review curriculum in content areas where the state board does not have expertise.

Comment [s16]: Addition to be more specific.

(d) The applicant for a new or renewed certificate shall be responsible for the actual costs incurred by the Board in connection with the approval process.

Comment [s17]: More specific statement to recover all costs.

History: L. 2004, ch. 185, § 21; June 10.

74-32,182. Private and out-of-state postsecondary educational institution fee fund. (a) The state board shall remit all moneys received pursuant to the provisions of this act to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount remitted in the state treasury and shall credit the same to the private and out-of-state postsecondary educational institution fee fund to be used for the purpose of administering this act. All expenditures from such fee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state board or the board's designee.

(b) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the private and out-of-state postsecondary educational institution fee fund interest earnings based on: (1) The average daily balance of moneys in such fee fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

History: L. 2004, ch. 185, § 22; June 10.

74-32,183. Severability. If any clause, paragraph, subsection or section of the Kansas private and out-of-state postsecondary educational institution act is found to be unconstitutional or invalid, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such unconstitutional or invalid clause, paragraph, subsection or section.

History: L. 2004, ch. 185, § 23; June 10.

NEW STATUTES FOR PRIVATE AND OUT-OF-STATE POSTSECONDARY INSTITUTIONS

Comment [s18]: Add new statute for requiring institutions to provide data annually to KBOR.

Provision of data to Kansas Board of Regents

Within the limits of appropriations therefore, the board of regents shall develop and maintain a statewide data collection system to collect and analyze private and out-of-state postsecondary educational information, including, but not limited to student, course, financial aid, and program demographics that will assist the board in improving the quality of private and out-of-state postsecondary education.

Legislative Proposal

Amend current law pertaining to the 45-day "veto" provision for Board of Regents action on Technical Education Authority recommendations.

Background

The Postsecondary Technical Education Authority (TEA) was established as a part of the Kansas Board of Regents to assist with the coordination of postsecondary technical education within the state. K.S.A. 72-4482 is the statute that delineates the powers and duties of the postsecondary technical education authority and establishes the vice president of workforce development as the executive director of the authority.

Rationale/Consequences

The postsecondary technical education authority is now in its third year of existence and has embarked on a number of technical education initiatives to focus attention on and support the coordination of the postsecondary technical education system within the state. A standing agenda item for the Kansas Board of Regents is a report from the TEA where recommendations are forwarded. In the case of program approval, all recommendations from the TEA are forwarded through the Regents approval process. Amending the 45-day veto requirement will increase the positive interplay between the TEA and the Board and will eliminate the need for the Board to take negative action on a TEA recommendation for purely procedural reasons.

Fiscal and Administrative Impact

None.

Impact on other State Agencies

None.

Draft of Proposed Legislation**Chapter 72.--SCHOOLS****Article 44.--VOCATIONAL EDUCATION**

72-4482. Same; powers and duties; vice-president of workforce development and executive director of authority.

(K.S.A. 2008 Supp. 72-4482 is here by amended to read as follows)

(a) The postsecondary technical education authority shall:

(1) Have delegated authority from the board of regents to coordinate state-wide planning for postsecondary technical education, new postsecondary technical education programs and contract training. Such planning shall be conducted in coordination with federal agencies, the state board of education and other state agencies and Kansas business and industry;

(2) recommend for adoption by the state board of regents rules and regulations for the supervision of postsecondary technical education;

(3) review existing and proposed postsecondary technical educational programs and program locations and make recommendations to the state board of regents for approval or disapproval of such programs for state funding purposes;

(4) review requests of state funding for postsecondary technical education and make recommendations to the state board of regents for amounts of state funding and the distribution thereof;

(5) develop benchmarks and accountability indicators of programs to be utilized in the awarding of state funding and make recommendations relating thereto to the state board of regents;

(6) develop and advocate annually a policy agenda for postsecondary technical education;

(7) conduct continuous studies of ways to maximize the utilization of resources available for postsecondary technical education and make recommendations for improvement in the use of such resources to the state board of regents;

(8) conduct studies to develop strategies and programs for meeting needs of business and industry and make recommendations relating thereto to the state board of regents;

(9) make reports on the performance of its functions and duties together with any proposals and recommendations it may formulate with respect thereto to the state board of regents and the legislature; and

(10) coordinate the development of a seamless system for the delivery of technical education between the secondary-school level and the postsecondary-school level; and

(11) (A) develop and recommend to the state board of regents a credit hour funding distribution formula for postsecondary technical training programs that (i) is tiered to recognize and support cost differentials in providing high-demand high-tech training, (ii) takes into consideration target industries critical to the Kansas economy, (iii) is responsive to program growth and (iv) includes other factors and considerations as deemed necessary or advisable; and (B) establish and recommend to the state board of regents the rates to be used in such funding distribution formula.

(b) Recommendations adopted by the authority pursuant to subsection (a) shall be submitted to the state board of regents. ~~A recommendation of the authority shall be implemented by the state board unless the state board, by majority vote thereof, vetoes the recommendation within 45 days of the submission of the recommendation to the state board.~~ The state board of regents shall act upon such recommendations within 45 days of submission.

(c) (1) Subject to the provisions of paragraph (2), the state board of regents and the postsecondary technical education authority shall appoint a vice-president of workforce development who shall serve as the executive director of the postsecondary technical education authority. The vice-president for workforce development shall be in the unclassified service under the Kansas civil service act. Such person shall not be a member of the authority and shall serve at the pleasure of the state board of regents.

(2) The state board of regents shall develop a procedure for the appointment of the vice-president of workforce development. Such procedure shall provide for the participation of the Kansas association of community college trustees and the Kansas association of technical schools and colleges, or the successor or organizations thereof, in the selection of the vice-president of workforce development.

History: L. 2007, ch. 199, § 2; May 24. (Amended 2009)

Purchasing Pilot Project

1) Legislative Proposal- K.S.A. 76-769 authorized the Board of Regents to select one regional university and one research university to participate in a three-year purchasing pilot program. Under the pilot program the two universities would be exempt from the basic state purchasing statute as well as the Prison Made Goods Act. The pilot project will sunset on June 30, 2010 unless legislation is passed to extend the exemptions. The proposal is to make permanent the terms of K.S.A. 76-769 and expand its scope to all Regents universities. The proposal also seeks to exempt universities from the statutes covering the procurement of professional services, negotiated procurement processes, and mandated use of the State Division of Printing; and broadens the exemption to more fully include the University Press and certain real estate leases.

2) Issue Background- Fort Hays State University and the University of Kansas were selected by the Board of Regents to participate in the purchasing pilot project. Each university has documented significant cost and administrative savings in each of the first 2-years of the pilot program. The other Regents universities are currently working under memoranda of agreements with the state division of purchases but cannot achieve the full measure of authority provided by K.S.A. 76-769 due to the restrictions contained in current state law.

3) Rationale/Consequences- Unless legislation is passed in the 2010 legislative session the pilot program will sunset and all Regents universities will revert to operating under the basic state purchasing statutes that govern all state agencies. This will result in material inefficiency and lost savings.

3) Fiscal and Administrative Impact- FHSU and KU have reported material savings and efficiencies that were only possible due to the flexibility inherent in the purchasing pilot program. These savings and efficiencies have been achieved without incurring additional cost or administrative burden. The loss of the flexibility would result in the loss of the savings and administrative inefficiencies documented by the pilot universities.

4) Impact on other State Agencies- None. The Regents universities would continue to collaborate with the state division of purchases, participate in projects, and utilize contracts that provide mutual benefit. The state division of purchases would achieve administrative savings by no longer having to process transactions for the Regents universities.

5) Questions Legislators May Ask / Possible Political Hurdles / Anticipated Opposition or Allies- There will be questions regarding why combining the entire state volume does not provide the best pricing, how decentralization achieves administrative efficiencies and how removing the state educational institution volume from state contracts will affect state agency pricing. There will be questions from vendors desiring safeguards and oversight. There will also be questions regarding in-state or even local jurisdiction preferences. The state will be neutral. Vendors may have questions but likely will not oppose. Correctional Industries may oppose.

6) Draft of Proposed Legislation-

76-769 Pilot project, a Acquisition of goods and services for certain state educational institutions; duties and functions of state board of regents and director of purchases; guidelines, exemptions and limitations; reports to legislature. (a) With regard to the acquisition of supplies, materials, equipment, goods, property, articles, products or services, a pilot project shall be conducted by the state board of regents in accordance with the provisions of this section. The state board of regents shall select not more than two of the state educational institutions, as defined by K.S.A. 76-711, and amendments thereto, to be the pilot universities in accordance with this section. The state board of regents shall select one of the following state educational institutions to be a pilot university: Emporia state university, Fort Hays state university or Pittsburg state university. The state board of regents may select one of the following state educational institutions to be a pilot university: Kansas state university, Wichita state university or the university of Kansas. If the state board of regents does not select Kansas state university, Wichita state university or the university of Kansas to be a pilot university, then the state board of regents shall select a second one of the following state educational institutions to be a pilot university: Emporia state university, Fort Hays state university or Pittsburg state university. During the period from June 1, 2007, through June 30, 2010:

(a)(1) The acquisition of any supplies, materials, equipment, goods, property, printing, certain real estate leases, or services, including professional services as defined in K.S.A. 75-37,131, for all state educational institutions, as defined by K.S.A. 76-711, and amendments thereto for the pilot universities shall may be in accordance with policies adopted by the state board of regents and no such acquisition during such period shall be subject to any statewide purchasing contract or other contract that is entered into under the provisions of K.S.A. 75-1005, 75-3737a through 75-3741b, 75-3742 through 75-3744, 75-37,130 through 75-37,134 and amendments thereto or any rules and regulations or policies adopted thereunder and that requires any state agency to make any such acquisition under any such contract, but nothing herein shall be construed as limiting the state educational institution pilot universities from using contracts or services established by the director of purchases;

~~(2) the acquisition of any travel services for the pilot universities shall be in accordance with policies adopted by the state board of regents and no such acquisition during such period shall be subject to any statewide travel services contract or other travel services contract that is entered into under the provisions of K.S.A. 75-3737a through 75-3744 and amendments thereto or any rules and regulations or policies adopted thereunder and that requires any state agency to acquire travel services under any such contract; and~~

(b) (3) The acquisition of any articles or products produced by inmates in the custody of the secretary of corrections that may be required for state educational institutions the pilot universities shall may be in accordance with policies adopted by the state board of regents and no such acquisition during such period shall be subject to the

provisions of the prison-made goods act of Kansas requiring any such acquisition to be made from the secretary of corrections as provided in K.S.A. 75-5273 through 75-5282 and amendments thereto, or any rules and regulations or policies adopted thereunder.

~~(c) (b) The state board of regents shall submit a report to the legislature at the beginning of the regular session in 2007, 2008, 2009 and 2010 regarding the activities of the pilot universities under the provisions of subsection (a). Each such report shall include any new or amended policies adopted by the state board of regents for implementation of such activities, the amounts and kinds of expenditures by the pilot universities for activities under each paragraph of subsection (a), and shall include information regarding any savings experienced and any issues or problems encountered for all such acquisitions for the pilot universities under the provisions of subsection (a).~~

~~(c) The director of purchases shall submit a report to the legislature at the beginning of the regular session in 2007, 2008, 2009 and 2010 regarding the impact of the pilot project conducted pursuant to subsection (a) on the purchasing system of the department of administration and on the purchases and purchasing activities of state agencies other than pilot universities, including information regarding amounts and kinds of expenditures by such other state agencies and regarding other issues or problems encountered as a result of the pilot project. shall be authorized to approve lease agreements between the state educational institution and its affiliated corporations or local units of government. The state board of regents shall be further authorized to approve lease agreements for non-occupied space that is less than 10,000 gross square feet or for a term not to exceed twenty-four months.~~

(d) K.S.A. 76-392 is hereby repealed.

Surplus Property Exemption

1) Legislative Proposal- Exempt all state educational institutions from the State Surplus Property Act. The relevant statutory cites are K.S.A. 75-6601 through 75-6608 and K.S.A. 74-2124, and amendments thereto.

2) Issue Background- All state agencies outside of Shawnee County currently operate under delegated authority from the state of Kansas department of administration so we have some flexibility in managing the disposition of surplus property. However, current statutes prohibit the sale of surplus at a fixed price. This is an impediment to the operation of an efficient and effective surplus property program that is administered by local agencies and educational institutions. As an example, highly specialized scientific equipment has a very limited number of potential buyer's. Having the expanded latitude to set price and terms in these transactions would ease the process of obtaining value for specialized pieces of equipment.

3) Rationale/Consequences- Passage of this legislation would allow state educational institutions to gain full control over their supply chain and thus be able to design the most efficient and effective program for their institution. The additional authority gained through the state surplus property exemption when combined with the purchasing authority granted by the expansion of KSA 76-769 would allow institutions cradle to grave control over their property acquisition, use, and disposal processes. Since we have been delegated authority, we have shown that we can be good stewards of the state's resources and operate more efficiently on a local basis.

4) Fiscal and Administrative Impact- The ability to design and operate an institution specific surplus program would increase opportunities for reuse (green and sustainability related programs) of property at the institution as well as facilitate revenue generation opportunities. There should be minimal cost impact since the universities have already been delegated authority to manage surplus property disposition.

5) Impact on other State Agencies- None. The authority has already been delegated and this legislation would simply streamline current operations.

6) Questions Legislators May Ask / Possible Political Hurdles / Anticipated Opposition or Allies- There may be questions about how to protect against deals with donors, insuring competition and transparency and use of proceeds.

7) Draft of Proposed Legislation

State universities as defined in K.S.A. 76-711 and amendments thereto are exempted from K.S.A. 75-6601 through 75-6608 and K.S.A. 74-2124, and amendments thereto.

2010 Legislative Proposal

Legislative Proposal: to amend KSA 76-718, KSA 76-308, KSA 76-410a and KSA 76-604.

Issue Background: Kansas statute KSA 76-718a provides for the investment of the Permanent University Fund, invested by the Kansas University Endowment Association under KSA 76-308, the State Agricultural University Fund, invested by the Kansas State University Foundation under KSA 76-410a, and the State Normal School Fund, invested by the Emporia State University Foundation under KSA 76-604.

Rationale/Consequences: This proposal is presented to address an obsolete issue in the current statute wording and to offer an additional investment option supported by the recent adoption of the Uniform Prudent Management of Institutional Funds Act by the State of Kansas.

Fiscal Administrative Impact: None.

Impact on other State Agencies: Should be no impact on the universities or any other state agency. It is anticipated over the long term the proposal has a potential financial benefit to the universities if the endowment investment option is selected as the respective funds are long term in nature, matching the long term investment objectives and subsequent greater returns of the universities' foundation and endowment investment pools.

Questions Legislators May Ask/Possible Political Hurdles: A possible question is why this change at this time? We are proposing the change to address the updated regulatory authorities of financial institutions. In addition, the proposed amendments allow for the addition of the endowment pools as an investment option. The respective pools of money are permanent endowment pools in nature, as stated in the authorizing statutes, and therefore their investment objectives are compatible with those of the respective institutions endowment pools. Including this investment option has the dual benefits of better matching the investment objectives of the pools of funds with authorized investment options and simplifying the implementation of actual investment of the funds through existing investment pools at each institution.

Draft Proposed Legislation:

76-718a. Investment of moneys in certain funds by investing agents for certain state educational institutions. The Kansas ~~University e Endowment association~~ Association is hereby authorized to act as the investing agent for the permanent university fund referred to in K.S.A. 76-308, and the amendments thereto. The Kansas ~~state State university University foundation~~ Foundation is hereby authorized to act as the investing agent for the state agricultural university fund referred to in K.S.A. 76-410a and amendments thereto. The Emporia ~~state State university University foundation~~ Foundation, Inc., is hereby authorized to act as the investing agent for the state normal school fund referred to in K.S.A. 76-604, and amendments thereto.

Such investing agents shall invest and reinvest moneys in such funds in:

(a) Time deposit, open accounts for periods of not less than 30 days, or certificates of deposit for periods of not less than 90 days, in commercial banks located in Kansas or offered by financial institutions to the extent of the insurance provided by the FDIC or NCUSIF;

(b) United States treasury bills or notes with maturities as the investing agent shall determine; or

(c) Permanent endowment fund of said endowment association or foundation, insured savings and loan associations to the extent of the insurance provided by the F.S.L.I.C.

History: L. 1974, ch. 294, § 11; L. 1977, ch. 237, § 32; L. 1980, ch. 295, § 2; L. 1989, ch. 48, § 99; L. 1992, ch. 16, § 2; July 1.

76-308. Permanent university fund. The original principal of the permanent university fund shall at no time be ~~diminished distributed~~ for any purpose whatsoever. ~~The permanent university fund shall be administered by the state board of regents for the benefit of the university of Kansas, and~~ The earnings of such fund shall be subject to appropriation by the legislature. K.S.A. ~~58-3601~~ 58-3610 *et seq.* shall apply to the permanent university fund, except as otherwise provided by this section and K.S.A. 76-718a.

History: R.S. 1923, 76-308; L. 1974, ch. 294, § 8; July 1.

76-410a. State agricultural university fund. The original principal of the state agricultural university fund shall at no time be ~~diminished distributed~~ for any spending purpose whatsoever. ~~Such fund shall be administered by the state board of regents for the benefit of Kansas state university, of agriculture and applied science and~~ The earnings of such fund shall be subject to appropriation by the legislature. K.S.A. ~~58-3601~~ 58-3610 *et seq.* shall apply to the state agricultural university fund, except as otherwise provided by this section and K.S.A. 76-718a.

History: L. 1974, ch. 294, § 10; July 1.

76-604. State normal school fund. The moneys original principal of the state normal school fund shall at no time be distributed for any purpose whatsoever. ~~constitute a perpetual fund, the principal of which shall remain forever undiminished. The state normal school fund shall be administered by the state board of regents for the benefit of Emporia state university, and~~ The earnings of such fund shall be subject to appropriation by the legislature. K.S.A. ~~58-3601~~ 58-3610 *et seq.* shall apply to the state normal school fund, except as otherwise provided by this section and K.S.A. 76-718a.

History: R.S. 1923, 76-604; L. 1974, ch. 294, § 9; L. 1977, ch. 237, § 18; April 21

Gifts and bequests

- 1) Legislative Proposal: KSA76-156a was enacted in 1969 to authorize specific endowment associations and foundations to act as authorized agents to invest “endowments and bequests” received by Regents institutions. Over the years many gifts of varying dollar magnitudes have been directed to the educational institutions rather than to the endowment associations and foundations. The “endowments and bequests” language is not well defined, although the legislative intent to allow the endowment associations and foundations to receive and manage these resources in concert with the other funds they receive directly from donors is clear. Several institutions have established agency fund accounts for gifts they define to be “endowments and bequests,” while others may be following a practice similar to the proposed legislation. Nearly all gifts are restricted by the donor for specific uses at the specified institution, and the related endowment associations and foundations have established procedures to ensure the donors’ wishes are honored. The proposed legislation will resolve any issues regarding the original intent of the existing legislation, reduce the institution’s administrative effort to establish separate “agency” fund accounts, and eliminate the inefficiency and duplication of effort required by the endowment associations and foundations to manage these accounts.
- 2) Issue Background: See above
- 3) Fiscal and Administrative Impact: Minimal fiscal impact but will reduce administrative efforts at the Universities that have established agency accounts at their respective endowment/foundations.
- 4) Impact on Other State Agencies: None.
- 5) Questions Legislators may Ask/Possible Political Hurdles/Anticipated Opposition or Allies: None anticipated.
- 6) Draft of Proposed Legislation:

NEW STATUTE

(a) Subject to Subsection (c), each gift, donation, bequest, devise or endowment of any property, whether tangible, intangible, real or personal, made to any State University, shall, upon written approval and subject to any conditions established by the President or Chancellor of such State University or his or her designee in such approval, be deemed to be a gift, donation, bequest, devise or endowment to the Official Foundation for such State University for all purposes.

(b) All agency funds and all student scholarship or loan funds held or managed by the Official Foundation of any State University for such State University, pursuant to a statute in effect immediately prior to the effective date of this statute shall, upon written approval and subject to any conditions established by the President or Chancellor of such State University or his or her designee in such approval, hereafter be deemed to be the property of such Official Foundation for all purposes.

(c) If any gift, donation, bequest, devise or endowment of any property has heretofore or is hereafter made to a State University, upon the express written condition that such gift, donation, bequest, devise or endowment not be transferred to the Official Foundation for such State University, then the provisions of Subsection (a) shall not apply to such gift, donation, bequest, devise or endowment. Notwithstanding the provisions of Subsection (a), a gift, donation, bequest, devise or endowment that otherwise would vest in the respective Official Foundation pursuant to Subsection (a) will not so vest until the earlier of: (i) such Official Foundation accepting such gift, donation, bequest, devise or endowment, including any conditions established in the approval thereof by the President or Chancellor of such State University, in a written notice of such acceptance given to the President or Chancellor for the respective State University; or (ii) the passage of thirty (30) days after the President or Chancellor for the respective State University, or their designee, gives written notice to the Official Foundation of such gift, donation, bequest, devise or endowment including any conditions established in the approval thereof by the President or Chancellor of such State University and the failure of such Official Foundation within such thirty (30) day period to give such President or Chancellor written notice that such Official Foundation either disclaims or thereby is assigning to a third party entity wholly owned, or to a non-member, non-stock not for profit entity wholly controlled by such Official Foundation (a "Foundation Subsidiary"), in whole or in part, the gift, donation, bequest, devise or endowment of any property that was described in such President's or Chancellor's notice that otherwise would become property of such Official Foundation pursuant to Subsection (a). If written notice of such disclaimer or of such an assignment to a Foundation Subsidiary of such Official Foundation is delivered to the President or Chancellor, as the case may be, of the respective State University within such thirty (30) day period, then for all purposes such property disclaimed or so assigned will be deemed never to have belonged to such Official Foundation and, in the case of an assignment, the portion thereof so assigned shall be deemed for all purposes to be the property of the Foundation Subsidiary subject to any conditions established in the approval thereof by the President or Chancellor of such State University.

(d) No property, whether tangible, intangible, real or personal, which is or becomes the property of an Official Foundation or any Foundation Subsidiary, whether pursuant to Subsections (a), (b), (c) or otherwise, shall be deemed to be public funds or state moneys for any purpose whatsoever under any statute or regulation of the State of Kansas, including without limitation KSA 45-240 as amended from time to time. Without limiting the generality of the preceding sentence, all real property which is or becomes property of an Official Foundation or a Foundation Subsidiary, whether pursuant to Subsections (a), (b), (c) or otherwise, shall be exempt from the guidelines for the disposition of surplus real estate applicable to real estate owned by agencies or subdivisions of the State of Kansas.

(e) All property which becomes property of an Official Foundation or a Foundation Subsidiary pursuant to Subsections (a), (b) or (c) shall be received, held, administered, invested, reinvested and expended solely for the benefit of such Official Foundation's respective State University, including faculty or staff thereof, subject to any lawful restrictions created by any agreement or other instrument which governs such gift, donation, bequest, devise, endowment or student scholarship or loan fund, whether by the donor thereof or in the approval thereof by the President or Chancellor of the respective State University; provided that unless such lawful restrictions provide otherwise, any such property may be commingled with other property of such Official Foundation and the Official Foundation or Foundation Subsidiary may charge and deduct a reasonable administrative fee for services provided in fulfilling its obligations under this Subsection (e), and be reimbursed for its actual out of pocket expenses incurred in performing such services, from the rents, profits, income or principal of such property.

(f) Definitions: For purposes of this Section, each of the following shall be deemed to be State Universities: the University of Kansas, including without limitation its campuses and all academic and administrative units thereof, including any college, school, department or other unincorporated subdivision; Kansas State University, including without limitation its campuses and all academic and administrative units thereof, including any college, school, department or other unincorporated subdivision; Wichita State University, including without limitation its campuses and all academic and administrative units thereof, including any college, school, department or other unincorporated subdivision; Fort Hays State University, including without limitation its campuses and all academic and administrative units thereof, including any college, school, department or other unincorporated subdivision thereof; Emporia State University, including without limitation its campuses and all academic and administrative units thereof, including any college, school, department or other unincorporated subdivision thereof; and Pittsburg State University, including without limitation its campuses and all academic and administrative units thereof, any school, college, department or other unincorporated subdivision thereof.

(g) For purposes of this Section, The Kansas University Endowment Association is hereby designated as the Official Foundation for the University of Kansas; The Kansas State University Foundation is hereby designated as the Official Foundation for Kansas State University. The Wichita State University Foundation is hereby designated as the Official Foundation for Wichita State University. The Fort Hays State University Endowment Association is hereby designated as the Official Foundation for Fort Hays

State University. The Emporia State University Foundation, Inc., is hereby designated as the Official Foundation for Emporia State University. The Pittsburg State University Foundation, Inc., is hereby designated as the Official Foundation for Pittsburg State University.

(h) The provisions of Subsections (a) and (b) shall not apply to any fees, tuition or other charges of any nature collected by a State University.

(i) The provisions of Subsections (a) and (b) shall not apply to any gift, donation or transfer made by an Official Foundation or Foundation Subsidiary to its respective State University.

(j) The provisions of Subsections (a) and (b) shall not apply to any appropriated funds provided to a State University by the State of Kansas, the Board of Regents, any agency, municipality or other subdivision of the State of Kansas or the United States of America or any agency thereof; provided, however, that the Official Foundation (or at the designation of the Official Foundation one of its respective Foundation Subsidiaries) may receive, hold, administer, invest, reinvest and expend any of such appropriated funds or moneys and any funds or property which the Official Foundation timely disclaims in compliance with Subsection (c) in accordance with, and subject to the terms and conditions of, a written agreement entered into between such Official Foundation or its designated Foundation Subsidiary and its respective State University which is otherwise authorized by (i) applicable statutes, (ii) applicable regulations or (iii) the terms and conditions of a written agreement between such State University and, or of another governing instrument issued by, the State of Kansas, the Board of Regents, any agency, municipality or other subdivision of the State of Kansas or the United States of America or any agency thereof.

(k) No Official Foundation or Foundation Subsidiary has authority to commit its respective State University thereof to expend any public funds or state moneys for any purpose whatsoever.

(l) The provisions of 76-156a shall not apply to a gift, donation, bequest, devise or endowment transferred pursuant to subsection (a).

(m) The provisions of this statute shall not supersede the provisions of KSA 76-718a.

(n) KSA 76-347, 76-349, 76-360, and 76-362 are hereby repealed.

Legislative Proposal

Summary of Legislative Proposal

Fort Hays State University requests approval of the Kansas Board of Regents to seek legislation authorizing the sale of two tracts of land owned by the University to the City of Hays. One tract of land will be sold to the City of Hays in order to locate a community sports complex. Fort Hays State University is erecting an intercollegiate soccer stadium in conjunction with construction of the sports complex, and the property on which the soccer stadium will be located will be retained by the University. The second tract of land sought to be transferred is University owned-property adjacent to a municipal golf course and driving range, and the parties have agreed to exchange this property as part of the sports complex land transaction.

Background

Over the course of the last two years, a group of Hays residents joined together to seek community support for the construction of a sports complex. The University cooperated with this group of citizens and informed the public that it planned to locate an intercollegiate soccer stadium to house the University's newly created men's and women's soccer programs adjacent to and in conjunction with the sports complex. In November of 2008 a sales tax initiative was placed on the ballot, seeking authorization for the City of Hays to impose a 1/2% city wide retailer's special purpose sales tax for construction and maintenance of a sports complex. The voters approved the initiative and authorized the construction of a sports complex to cost no more than 8 million dollars. The ballot initiative specifically identified the property on which the complex would be located as being City owned property at the specific location on which the complex is now proposed to be constructed.

City officials and the University have agreed in principal to the transfer of 120 acres of University-owned property at the intersection of Old Highway 40 and US Highway 183 Alternate in Hays, where the sports complex is proposed to be located. The property was appraised on January 23, 2009 and the property was valued at \$300,000.

The parties have also agreed that the University will sell and the City will buy 10.037 acres of property, which was appraised on the same date as the sports complex property for \$20,074. This property is adjacent to a driving range serving the City of Hays Municipal Golf Course and the parties believe it to be in the best interests of both of them for the land to be transferred to the City as part of the sports complex land transaction. The parties have agreed in principal for the total sales price for both tracts of property to be \$320,574.

Rationale/Consequences

The citizen committee advocating construction of a sports complex felt for many reasons that the proposed location for the complex was the best available in the City of Hays. The committee believed that there was ample land for construction of the type of complex desired, and the property was easily accessible. While locating the sports complex in conjunction with the University's soccer stadium was not actually placed on the ballot, it is believed that this co-

location was an important factor in the passage of the sales tax increase, because there are economies of scale to be realized by both parties due to the co-location of the sports complex and soccer stadium. On the other hand, placing the sports complex at the proposed site was in the language of the ballot initiative, and the initiative requires the property to be owned by the City of Hays.

Therefore, if this proposal is not adopted and the legislation not passed, the intent of the citizens of the City of Hays will not be realized and likely another ballot initiative would be needed to locate the sports complex at an alternative location. Further, the economies of scale sought to be realized by building the sports complex in conjunction with the University soccer stadium would not be achieved.

Fiscal and Administrative Impact

This land transaction will result in the University receiving \$320,574 in exchange for transferring this land. In addition, both tracts of property sought to be transferred have been maintained by the University's buildings and grounds and farm personnel, and therefore there will be some cost savings due to the University not having to maintain the property any longer.

Impact on other State Agencies

This proposal is not believed to have any effect on other state agencies.

Possible Political Hurdles

It is not anticipated that there will be any political hurdles to the passage of legislation authorizing the sale of property to the City of Hays. The citizens of Hays unanimously voted to approve the construction of a City-owned sports complex at the location where the complex is sought to be constructed. The University cooperated with this effort and supports the location of the sports complex at the proposed site.

Proposed Legislation

Attached.

(a) The state board of regents is hereby authorized and empowered, for and on behalf of Fort Hays State University to sell and convey all of the rights, title and interest, excepting any and all mineral rights, in the following tracts of real estate, and any improvements thereon, to the City of Hays, Kansas:

That part of the North Half of Section 5, Township 14 South, Range 18 West, of the 6th Principal Meridian, Ellis County, Kansas, described as follows:

Commencing at the southeast corner of the Northwest Quarter of said Section 5; thence on an assumed bearing of North 00 degrees 44 minutes 11 seconds East, along the east line of said Northwest Quarter, a distance of 170.04 feet to the point of beginning of the land to be described, said point being on the northeast side of a tract (Tract A) owned by the City of Hays, Kansas and recorded in Deed Book 180, Page 714, at the Ellis County Register of Deeds, said point also being on the east side of another tract (Tract B) owned by the City of Hays and recorded in Deed Book 619, Page 54; thence continuing North 00 degrees 44 minutes 11 seconds East, along the east line of said Northwest Quarter, also being the east line of said Tract B, a distance of 142.28 feet to the northeasterly corner of said Tract B; thence North 39 degrees 47 minutes 40 seconds West, along the northeast side of said Tract B, a distance of 120.06 feet to the northerly corner of said Tract B; thence South 50 degrees 12 minutes 20 seconds West, along the northwest side of said Tract B, a distance of 92.69 feet to a point on the northeast side of said Tract A; thence North 39 degrees 51 minutes 08 seconds West, along the northeast side of said Tract A, a distance of 1,051.20 feet; thence North 53 degrees 08 minutes 44 seconds East a distance of 462.95 feet to a point on the southerly right of way line of U.S. Highway 183 Alternate; thence South 25 degrees 39 minutes 58 seconds East, along said southerly right of way line, a distance of 308.99 feet; thence continuing along said southerly right of way line, on a curve to the left, an arc distance of 981.18 feet, said curve having a radius of 2,939.79 feet, a central angle of 19 degrees 07 minutes 23 seconds, a chord length of 976.64 feet and a chord bearing of South 35 degrees 13 minutes 39 seconds East; thence South 39 degrees 07 minutes 13 seconds West a distance of 313.64 feet to the easterly corner of said Tract A; thence North 39 degrees 51 minutes 08 seconds West, along the northeast side of said Tract A, a distance of 77.83 feet to the point of beginning. This tract contains 10.037 acres.

That part of the north Half of Section 31, Township 13, South, Range 18 West, of the 6th Principal Meridian, Ellis County, Kansas described as follows:

Commencing at the northeast corner of the Northeast Quarter of said Section 31; thence on an assumed bearing of South 00 degrees 36 minutes 33 seconds West, along the east line of said Northeast Quarter, a distance of 1,256.60 feet; thence North 89 degrees 23 minutes 27 seconds West a distance of 63.00 feet to the point of beginning of the land to be described; thence South 01 degrees 54 minutes 27 seconds East a distance of 500.00 feet; thence North 89 degrees 23 minutes 27 seconds West a distance of 1,400.00 feet; thence South 00 degrees 36 minutes 33 seconds West a distance of 600.00 feet; thence North 89 degrees 23 minutes 27 seconds West a distance of 1,720.82 feet; thence North 00 degrees 17 minutes 18 seconds East a distance of 2,317.01 feet to a point on the north line of the Northwest Quarter of said Section 31; thence North 89 degrees 53 minutes 44 seconds East, along the north line of said Northwest Quarter a

distance of 540.86 feet to the northwest corner of the Northeast Quarter of said Section 31; thence North 89 degrees 54 minutes 15 seconds East along the north line of the northeast Quarter of said Section 31, a distance of 650.01 feet; thence South 56 degrees 42 minutes 52 seconds East, along a line that is parallel with and 260.00 feet southerly of the center of the Union Pacific Railroad, a distance of 2,282.28 feet to the point of beginning. This tract contains 120.000 acres.

(b) Conveyance of such rights, title and interest in such real estate, and any improvements thereon, shall be executed in the name of the state board of regents by its chairperson and executive officer. The deed for such conveyance may be by warranty deed or by quitclaim deed as determined to be in the best interests of the state by the state board of regents in consultation with the attorney general. Any proceeds from the sale of such real estate, and any improvements thereon, shall be deposited in the state treasury and credited to the appropriate account or accounts of the restricted fees fund of Fort Hays State University for the use and benefit of Fort Hays State University.

(c) No sale and conveyance of real estate and improvements thereon as authorized by this section shall be made by the state board of regents until the deeds and conveyances have been reviewed and approved by the attorney general and if a warranty deed is to be the instrument of conveyance, a title review has been performed or title insurance has been obtained and the title opinion or the certificate of title insurance, as the case may be, has been approved by the attorney general.