

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: The 2022 Task Force on Community and Technical College State Funding
From: Office of Revisor of Statutes
Date: August 30, 2022
Subject: Statutory Overview - State Aid for Community and Technical Colleges

Kansas community colleges and technical colleges receive state funding pursuant to a statutory based funding system. The amount of such funding is determined by a cost-model that differentiates between the general educational courses and technical educational courses provided by such colleges. Funding for the provision of general educational courses is determined using a non-tiered cost model and appropriated under the non-tiered course credit hour grant account in the state general fund. Funding for the provision of technical education courses is determined using a tiered cost model and appropriated under the postsecondary tiered technical education state aid account in the state general fund. These accounts are appropriated to the State Board of Regents (State Board) for distribution to community colleges and technical colleges based on such cost model.

Brief History of the Establishment of the Tiered and Non-tiered Cost-Model

In 2007, the Kansas Legislature established the postsecondary technical education authority and directed the authority to coordinate state-wide planning for postsecondary technical education and to make recommendations and reports to the State Board regarding funding, coordination, planning, accountability, study and improvements to the postsecondary technical education system.¹

In 2009, the Kansas Legislature directed the postsecondary technical education authority to develop a new funding distribution formula for postsecondary technical education programs that is tiered to recognize cost differentials between technical programs, is responsive to program growth and takes into consideration industries critical to the Kansas economy and any other

¹ 2007 HB 2556; L. 2007, chg. 199; See K.S.A. 74-32,401 et seq.

factors that are deemed necessary or advisable. The Legislature also directed the authority to establish and recommend to the State Board the rates to be used in such funding distribution formula.²

In 2011, the Kansas Legislature enacted legislation that established the current tiered and non-tiered funding model for community colleges and technical colleges.³ The enactment created the postsecondary tiered technical education state aid act which established the current system for tiered technical education state aid.⁴ The 2011 enactment also revised other statutes relating to community college and technical college funding to establish the non-tiered state aid model.

Postsecondary Tiered Technical Education State Aid

The postsecondary tiered technical education state aid act provides that each community college and technical college is eligible to receive postsecondary tiered technical education state aid based on the tiered technical course credit hours that are approved by the State Board and delivered to students who are Kansas residents.⁵ The chief administrative officer of each community college and technical college is required to certify under oath to the State Board the total number of enrolled credit hours of students who are state residents.⁶

The amount of postsecondary tiered technical education state aid is determined by the State Board using a credit hour cost calculation model that: (1) Is tiered to recognize and support cost differentials in the provision of technical education courses; (2) takes into consideration target industries critical to the Kansas economy; (3) is responsive to program growth; (4) takes into consideration local taxing authority for credit hours generated by in-district students; and (5) includes other factors and considerations deemed necessary or advisable by the State Board.⁷ No tiered technical education state aid may be provided for any course designated as a non-tiered course.⁸

² See K.S.A. 74-32,402(a)(11).

³ 2011 SB 143; L. 2011, ch. 97.

⁴ K.S.A. 71-1801 et seq.

⁵ K.S.A. 71-1803.

⁶ K.S.A. 71-603 (community colleges); K.S.A. 74-32,431 (technical colleges).

⁷ K.S.A. 71-1803.

⁸ K.S.A. 71-620.

Non-Tiered Course Credit Hour Grants

Each community college and technical college is eligible for a non-tiered course credit hour grant for the non-tiered course credit hours approved by the State Board and delivered to students who are Kansas residents.⁹ The chief administrative officer of each community college and technical college is required to certify under oath to the State Board the total number of enrolled credit hours of students who are state residents.¹⁰

The State Board is charged with determining the amount of the non-tiered course credit hour grants.¹¹ No non-tiered course credit hour grant shall be provided for any course that is designated as a tiered course.¹²

Key Statutory Definitions Relating to Tiered and Non-Tiered State Aid

- "Non-tiered course" means any postsecondary credit-bearing course offered by an eligible institution and identified by the state board as not meeting the definition of a tiered technical course. Non-tiered courses include courses that are generally designed to: (1) Contribute to academic knowledge or skills across multiple disciplines and occupations, such as communication, writing, mathematics, humanities, social or behavioral science and natural or physical science courses, some of which may be considered for transfer as general education credit toward a baccalaureate degree; (2) contribute to general knowledge or skills in areas such as critical thinking and reasoning, problem solving, use of technology and teamwork skills; (3) provide instruction in basic or foundational skills necessary for individuals to effectively participate in technical programs; (4) prepare individuals for certification or licensure exams or re-certifications and skill updates; or (5) allow individuals to explore various career opportunities. Seminars, workshops or other courses that are supplemental to the primary instruction required for the occupationally specific technical program shall be considered non-tiered courses, unless otherwise specified by the state board.¹³
- "Tiered technical course" means a postsecondary credit-bearing course included in the sequence of courses comprising a technical program, which course is itself designed to provide competency-based applied instruction to prepare individuals with occupationally specific knowledge and skills necessary for employment, and which the state board has identified as a tiered technical course.¹⁴

⁹ K.S.A. 71-620 (community colleges); K.S.A. 74-32,468 (technical colleges).

¹⁰ K.S.A. 71-620 (community colleges); K.S.A. 74-32,431 (technical colleges).

¹¹ K.S.A. 71-620 (community colleges); K.S.A. 74-32,468 (technical colleges).

¹² *Id.*

¹³ K.S.A. 71-1802(f)

¹⁴ K.S.A. 71-1802(j).

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS

- "Technical program" means any program of study comprised of a sequence of tiered technical courses and non-tiered courses, which program is identified by the state board as a technical program for funding purposes. Technical programs must: (1) Be designed to prepare individuals for gainful employment in current or emerging technical occupations requiring other than a baccalaureate or advanced degree; (2) lead to technical skill proficiency, an industry-recognized credential, a certificate or an associate degree; and (3) be delivered by an eligible institution.¹⁵
- "Credit hour" means the basic unit of collegiate level instruction, as determined by the state board, in a subject or course offered by an eligible institution at a postsecondary level not higher than those programs or courses normally offered to freshmen and sophomores in four-year public institutions of postsecondary education, in a program that has been approved by the state board.¹⁶

¹⁵ K.S.A. 71-1802(i).

¹⁶ K.S.A. 71-601(a); K.S.A. 71-1802(c).

FY 23 Appropriations for Tiered and Non-Tiered State Aid

The Legislature appropriated the following amounts from the state general fund to the following accounts for fiscal year 2023: \$66,064,478 to the postsecondary tiered technical education state aid account; and \$95,407,915 to the non-tiered course credit hour grant account

Pursuant to proviso language that accompanied each such appropriation, the Legislature directed the State Board to distribute the moneys in a manner that provides each eligible institution with an amount of moneys that is not less than the amount of moneys that the institution received from each such account in fiscal year 2022.¹⁷

Additionally, the Legislature directed the State Board to use funding appropriated in FY 23 to implement the legislative intent for FY 24 and FY 25 as follows:

- In FY 24, to implement the funding formula for postsecondary tiered technical education state aid and non-tiered course credit hour grants so that those community colleges and technical colleges who were overfunded in FY 23 will receive 50% of the amount of such overfunding and the remaining 50% will be distributed based on each eligible institution's calculated gap; and
- In FY 25, to fully implement the funding formula for postsecondary tiered technical education state aid and non-tiered course credit hour grants.

¹⁷ 2022 SB 267; L. 2022, ch. 81 sec. 109.

Residency for State Aid Purposes

A student's residency status for community college and technical college state aid is determined pursuant to state statute and State Board rules and regulations.

For community colleges, K.S.A. 71-406 provides that persons enrolling in any community college who have not been residents of the state for at least six months prior to enrollment are deemed nonresidents of the state for state aid purposes. In addition, K.S.A. 71-407 provides that the following persons, their spouses and dependents, may be considered residents of the state for community college state aid purposes:

- (1) Persons who are in active military service of the United States;
- (2) persons who are domiciliary residents of the state, who were in active military service prior to becoming domiciliary residents of the state, who were present in the state for a period of not less than two years during their tenure in active military service, whose domiciliary residence was established in the state within 30 days of discharge or retirement from active military service under honorable conditions, but whose domiciliary residence was not timely enough established to meet the residence duration requirement of K.S.A. 71-406, and amendments thereto;
- (3) persons who are employees of a community college;
- (4) persons having special domestic relations circumstances;
- (5) persons who have lost their resident status within six months of enrollment;
- (6) persons who are not domiciliary residents of the state, who have graduated from a high school accredited by the state board of education within six months of enrollment at a community college, who were domiciliary residents of the state at the time of graduation from high school or within 12 months prior to graduation from high school, and who are entitled to admission at a state educational institution pursuant to K.S.A. 72-116, and amendments thereto; and
- (7) persons who are domiciliary residents of the state, whose domiciliary residence was established in the state for the purpose of accepting, upon recruitment by an employer, or retaining, upon transfer required by an employer, a position of full-time employment at a place of employment in Kansas, but the domiciliary residence of whom was not timely enough established to meet the residence duration requirement of K.S.A. 71-406, and amendments thereto.

The State Board has promulgated rules and regulations that govern community college and technical college residency determinations for state aid purposes. The rules and regulations provide that community colleges and technical colleges shall determine residency for state aid purposes pursuant to statutes and rules and regulations that apply to such colleges including, for community colleges, K.S.A. 71-406 and 71-407.¹⁸ The rules and regulations also provide that community colleges and technical colleges may consider the following factors when determining residency for state aid purposes:

- A Kansas driver's license;
- Evidence of payment of Kansas real estate taxes;
- Payment of Kansas income taxes;
- Reliance on Kansas sources for support;
- Acceptance of permanent employment in Kansas;
- Ownership of a home in Kansas;
- Registration to vote in Kansas; and
- Commitment to an educational program that indicates an intent to maintain a permanent presence in Kansas upon graduation.¹⁹

The residency rules and regulations direct community colleges and technical colleges to consider K.S.A. 48-3601 when setting tuition rates based on residency. This statute requires the colleges to provide in-state tuition and fees for active duty military servicemembers, certain veterans of the armed forces, and their spouses and dependents.²⁰

Each community college and technical college president is required to designate a person as an admissions officer who shall determine the residency status of each enrolled student.²¹

Key Statutory Definitions Relating to Residency Determinations

- "Residence" means the place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be considered the person's residence.
- "Domiciliary resident" means a person who has present and fixed residence in Kansas where the person intends to remain for an indefinite period and to which the person intends to return following absence.

¹⁸ K.A.R. 88-26-7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ K.A.R. 88-26-8.

Institutional Performance Agreements

In 1999, the Legislature enacted the Kansas higher education coordination act which made significant changes to the role of the State Board and the method in which community colleges and technical colleges were supervised and coordinated.²² The act brought community colleges and technical colleges under the supervision of the State Board of Regents instead of the State Board of Education.

As part of the higher education coordination act, in fiscal year 2000, the Legislature directed the State Board to review and approve core indicators of quality performance that should be implemented for the postsecondary educational institutions.²³ The State Board was also charged with selecting performance indicators that will be used to determine allocations of state moneys on the basis of performance.²⁴

During fiscal year 2001, pursuant to State Board oversight, state law directed the institutions to develop institutional improvement plans showing how the performance indicators will be implemented and measured by each such institution.²⁵ In the following fiscal year, institutions were required to begin implementation of their institutional improvement plans and the data collection and measurement necessary to evaluate each indicator included in the institution's plan.²⁶

Commencing on July 1, 2004, state law provided that the State Board shall enter into a performance agreement with each institution based on each institution's approved improvement plan. Such performance agreements are required to incorporate the goals, priorities, policies and mission objectives that are identified in the institution's improvement plan and shall provide the performance measures that will be used to demonstrate compliance and progress. State law requires the institutional improvement plans to be updated on at least once every three-years therefore, the performance agreements are also updated pursuant to schedule.²⁷

On and after July 1, 2005, state law has provided that each postsecondary institution's receipt of new state funds shall be contingent upon each institution's compliance with its performance agreement. In each fiscal year, the State Board is required to consider each institution's level of compliance with its performance agreement and determine the amount of

²² 1999 SB 345; L. 1999, ch 147.

²³ K.S.A. 74-3202c(b)(7).

²⁴ K.S.A. 74-3202d.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

new state funds that an institution is eligible to receive based upon such compliance. If the State Board limits an allocation of new state funds to an institution in one fiscal year, state law provides that the amount the institution would have otherwise been eligible to receive shall be considered received by the institution in the subsequent fiscal year for the purpose of determining the institution's base budget in the subsequent fiscal year and the amount of new state funds that the institution may be eligible to receive in such year. "New state funds" is defined as the amount of state moneys received by an institution in a preceding fiscal year versus the amount of state moneys that the institution is eligible to receive in the applicable fiscal year excluding those moneys that are designated by the Legislature to a specific institution or purpose.²⁸

Postsecondary educational institutions that have entered into performance agreements with the State Board are exempt from the requirements of K.S.A. 75-3718b, which requires as part of the state budget process, a program service inventory, an integrated budget fiscal process and a performance-based budgeting system for state agencies and programs.²⁹

²⁸ *Id.*

²⁹ K.S.A. 75-3718b.