

**PRELIMINARY SUMMARY OF LEGISLATION
2020 KANSAS LEGISLATURE**

KL RD

*Providing objective research and fiscal
analysis for the Kansas Legislature*

This publication contains summaries of selected bills enacted by the Legislature as of the end of the legislative day on March 19, 2020. Bills that have not yet been signed by the Governor are included.

As a result of changes in the legislative schedule established in SCR 1615, future supplement(s) will be issued when appropriate.

Highlights, a summary of major legislation, will be prepared after the Legislature adjourns and will be mailed to legislators as soon as possible. *The Summary of Legislation*, which accounts for all bills enacted by the 2020 Legislature, will be distributed at a later date.

These documents are available on the Kansas Legislative Research Department's website: <http://www.kslegislature.org/klrd> (under "Publications").

Kansas Legislative Research Department
300 SW 10th Avenue
Room 68-West, Statehouse
Topeka, Kansas 66612-1504

Telephone: (785) 296-3181
kslegres@klrd.ks.gov
kslegislature.org/klrd

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BUSINESS, COMMERCE, AND LABOR

Extension of UI Benefits; House Sub. for SB 27

House Sub. for SB 27 amends provisions of the Employment Security Law, commonly referred to as unemployment insurance (UI), pertaining to unemployment benefits. Workers who started to file UI claims on or after January 1, 2020, are eligible for a maximum of 26 weeks of benefits. Under previous law, the number of weeks for which a worker may claim benefits was capped at 16 weeks, 20 weeks, or 26 weeks if the Kansas unemployment rate (on a three-month seasonally adjusted average) was less than 4.5 percent, at least 4.5 percent but less than 6.0 percent, or at least 6.0 percent, respectively.

Under current law, workers must wait for a week prior to making a claim and receiving UI benefits. The bill grants to workers an additional week's benefit upon the completion of the third week of unemployment after the waiting week. This amount does not increase the total amount of benefits that a worker may claim.

The bill is effective upon publication in the *Kansas Register* and will sunset on April 1, 2021.

EDUCATION

K-12 Education; Waivers for School Year Attendance Requirements; House Sub. for SB 142

House Sub. for SB 142 clarifies the authority of the State Board of Education (State Board) to grant waivers to the minimum number of school hours required each school year. The bill expands the circumstances in which a local board of education can apply to the State Board for a waiver to include conditions restricting the operation of public schools. The bill also amends the definition of “disaster” to include any declaration of a state of disaster emergency issued by the Governor or the closure of schools by order of the county or joint board of health, a local health officer, or the Secretary of Health and Environment.

KSA 72-3115(b) requires students in kindergarten attend at least 465 school hours, students in grades 1 through 11 attend at least 1,116 school hours, and students in grade 12 attend at least 1,086 school hours per school year.

The bill also includes a statement of legislative intent that school districts shall continue to pay hourly employees, including, but not limited to, paraprofessionals and custodial employees, during any school shutdown due to a disaster.

The bill takes effect upon publication in the *Kansas Register*.

JUDICIARY

Extension or Suspension of Deadlines and Videoconferencing by Order of the Chief Justice During State of Disaster Emergencies; House Sub. for SB 102

House Sub. for SB 102 creates and amends law related to orders by the Chief Justice of the Supreme Court (Chief Justice) regarding deadlines, time limitations, and two-way electronic audio-visual communication (videoconferencing), as follows.

The bill creates provisions stating, notwithstanding any other provisions of law, during any state of disaster emergency declared pursuant to the statute providing for the same, the Chief Justice may issue an order to extend or suspend any statutory deadlines or time limitations, or authorize the use of videoconferencing in any court proceeding, when the Chief Justice determines such action is necessary to secure the health and safety of court users, staff, and judicial officers. The bill further provides that any order issued pursuant to these provisions may remain in effect for up to 150 days after a state of disaster emergency is terminated, and any order in violation of these provisions shall be void. These provisions will expire on March 31, 2021.

The bill amends the speedy trial statute in the Kansas Code of Criminal Procedure to authorize the Chief Justice to issue an order to extend or suspend any deadlines or time limitations in the statute pursuant to the provisions outlined above. The bill requires, upon termination of such order, any trial scheduled during the time such order was in effect be placed back on the court schedule within 150 days.

Similarly, the bill amends the statute in the Code of Civil Procedure governing computation of time to authorize the Chief Justice to issue an order to extend or suspend the computation rules or time limitations established in the statute pursuant to the provisions outlined above.

The bill is effective upon publication in the *Kansas Register*.

LOCAL GOVERNMENT

Valley Center Deannexation; Hillside Cemetery District; SB 155

SB 155 deannexes all City of Valley Center territory within the Hillside Cemetery District, located in Sedgwick and Harvey counties, from the cemetery district, effective June 30, 2020. After July 1, 2020, any territory annexed by the City of Valley Center located within the Hillside Cemetery District will be excluded from the cemetery district upon annexation.

STATE FINANCES

State Budget—Appropriations; SB 66

SB 66 includes adjusted funding for fiscal year (FY) 2020 and FY 2021 for state agencies and FY 2020 and FY 2021 capital improvement expenditures for a number of state agencies.

Summary of Changes to Approved FY 2020 Expenditures

The FY 2020 revised budget totals \$18.7 billion, including \$7.8 billion from the State General Fund (SGF). This approved amount includes \$108.7 million of expenditure authority carried forward from FY 2019. The approved budget includes full-time equivalent (FTE) positions totaling 40,787.

Major adjustments to the FY 2020 approved budget including the following:

- Legislative Coordinating Council (LCC): Add \$50.0 million, all from the SGF, for the coronavirus disease (COVID-19) response, to be released by the LCC following submission by the Director of the Budget and review by the joint Legislative Budget Committee;
- Adjutant General: Add \$15.0 million, all from the SGF, to the Kansas Division of Emergency Management for the COVID-19 response;
- Office of Information Technology Services: Add \$14.9 million for modernization projects;
- Department of Corrections and Correctional Facilities: Add \$6.1 million, all from the SGF, to expand the Lansing and Winfield Correctional Facilities to provide substance abuse treatment and nursing care;
- Kansas Department of Wildlife, Parks and Tourism: Add \$2.0 million for state park flood repairs;
- Insurance Department: Add \$976,666, all from the SGF, for the refund of estimated privilege fees paid by Amerigroup Kansas;
- Department for Children and Families: Add \$3.6 million, including \$1.3 million, from the SGF, for adoption assistance subsidy expansion; and
- Kansas Board of Regents: Add \$4.5 million for the Excel in Career Technical Education Program.

Offsetting decreases in the FY 2020 approved budget include the following:

- \$40.5 million from all funds, including \$32.9 million from the SGF, for school finance consensus estimates;

- \$10.7 million, all from the SGF, for Medicaid non-caseload home and community based services waiver expenditures and \$15.3 million, all from the SGF, for human services consensus caseload estimates;
- \$9.8 million, all from the SGF, to lapse appropriations for the Department of Corrections from the State Finance Council, which were not approved for release;
- \$6.3 million, all from the SGF, for inmate outsourcing; and
- \$42.3 million from the Evidence-based Juvenile Programs Fund in the Department of Corrections.

Language adjustments in the FY 2020 approved budget include the following:

- Department of Commerce: Add language to extend the sunset on the Sales Tax Revenue (STAR) Bonds program through June 30, 2021;
- Department for Children and Families:
 - Add language to allow the Secretary for Children and Families to request a waiver from the U.S. Department of Agriculture for time-limited assistance provisions under food assistance provisions for able-bodied adults ages 18 through 49 without dependents in the household if the Secretary can establish insufficient jobs in an area using standards not less restrictive than standards in federal regulations in effect on January 1, 2020, in FY 2020; and
 - Add language to amend work participation requirements for Temporary Assistance for Needy Families cash assistance program to include in-home parenting skills training for a single parent with a child between three months and one year of age in FY 2020.

Summary of FY 2021 Approved Budget

The FY 2021 approved budget totals \$19.9 billion, including \$8.0 billion from the SGF. The budget is an all funds increase of \$1.2 billion, or 6.4 percent, and a SGF increase of \$192.9 million, or 2.5 percent, above the FY 2020 approved budget. The approved budget includes FTE positions totaling 40,720.

Major adjustments to the FY 2021 approved budget above the FY 2020 approved budget including the following:

- Department of Education: Add \$135.8 million, including \$118.7 million from the SGF, for the State's new estimates of expenditures for state aid to K-12 schools, which is primarily due to the Base Aid for Student Excellence (BASE) increasing from \$4,436 to \$4,569;
- Kansas Department of Health and Environment (KDHE) – Division of Health: Add \$1.0 billion, including \$58.1 million from the SGF, to:

- Add \$562.5 million, including \$17.5 million from the SGF, for Medicaid expansion;
- Add \$431.0 million, including \$37.2 million from the SGF, for Medicaid regular caseloads, including:
 - Adopt the fall FY 2019 Human Services Consensus Caseload estimates; and
 - Add \$3.0 million, including \$1.2 million from the SGF, to increase Medicaid dental reimbursement rates under KanCare;
- Add \$2.0 million, all from the SGF, for primary health projects for community-based primary care grants;
- Add \$2.0 million, all from the SGF, for the Infant and Toddler Program (tiny-k);
- Add \$900,000, all from the SGF, to increase funds available to local health departments using the statutory formula distribution contained in KSA 65-242:
 - Add language to raise the minimum provided to each of the 100 local health departments under the statutory formula distribution contained in KSA 65-242 to \$12,000;
- Add language prohibiting the expansion of the Kansas Medicaid program without the express consent of the Legislature; and
- Add language transferring the \$17.5 million allocated for Medicaid expansion to the Coronavirus Prevention Fund of the State Finance Council if Medicaid expansion is not passed into law;
- Regents and Post-Secondary Education Institutions: An all funds reduction of \$16.3 million and a SGF increase of \$21.7 million including:
 - \$11.9 million for distribution to State universities;
 - \$8.5 million for Excel in Career Technical Education;
 - \$5.0 million, all from the SGF, for the Cancer Center Research Fund, for FY 2021;
 - \$2.5 million, all from the SGF, for the Comprehensive Grant program with language that the new funds require a 1:1 match; and
 - Add language to allow Wichita State University bonding authority of \$49.0 million to purchase The Flats and The Suites, privately owned student housing units, upon approval from the Board of Regents;
- Department of Corrections and Correctional Facilities: Add \$19.1 million, including \$15.9 million from the SGF:
 - \$7.7 million, all from the SGF, to increase the number of correctional officers in Kansas correctional facilities and expand the Lansing and Winfield Correctional Facilities to provide substance abuse treatment and nursing care; and

- \$8.3 million, all from the SGF, for a full year lease payment on the Lansing Correctional Facility;
- Department for Children and Families: Add \$12.1 million, including \$13.7 million from the SGF, for enhancement initiatives in the Department for Children and Families and human services consensus caseload adjustments; including:
 - \$1.6 million, including \$484,529 from the SGF, for adoption assistance subsidy expansion;
 - \$13.7 million, including \$9.0 million from the SGF, to adopt the fall FY 2019 Human Services Consensus Caseload Estimates;
 - \$4.0 million, including \$2.0 million from the SGF, to develop a new Comprehensive Child Welfare System; and
 - \$7.5 million, including \$3.8 million from the SGF, to increase Family First prevention staff;
- Department for Aging and Disability Services: Add \$60.1 million, including \$34.8 million from the SGF, to:
 - Add \$5.6 million, including \$21.2 million from the SGF, for Human Services Consensus Caseloads Estimates expenditures, including:
 - Add \$41.0 million, including \$35.5 million from the SGF, for the fall 2019 Human Services Consensus Caseloads Estimate;
 - Delete \$42.0 million, including \$17.0 million from the SGF, to not rebase the reimbursement rate for Medicaid nursing facilities; and
 - Add \$6.6 million, including \$2.7 million from the SGF, to provide a 1.0 percent increase in the reimbursement rate for Medicaid nursing facilities;
 - Add \$22.1 million, including \$9.0 million from the SGF, to provide a 5.0 percent increase in the provider reimbursement rates for the Medicaid Home and Community Based Services Intellectual/Developmental Disability waiver;
 - Add \$6.4 million, including \$2.6 million from the SGF, for the Medicaid Home and Community Based Services Technology Assisted waiver. Add language directing this funding to be used to increase the provider reimbursement rates for the Specialized Medical Care (T1000) services code from the current rate of \$31.55 per hour to \$37.00 per hour for in-home Medicaid Care registered nurse/licensed practical nurse nursing services for this waiver;
 - Add \$5.0 million, all from the SGF, for regional mental health inpatient beds;
 - Add \$4.0 million, all from the SGF, for eight acute care psychiatric beds for youth in Hays;
 - Add \$3.0 million, all from the SGF, for Senior Care Act services;
 - Add \$2.0 million, all from the SGF, to increase grant funding for community mental health centers;

- Add \$1.0 million, all from the SGF, for a psychiatric residential treatment facility pilot program at Ember Hope in Newton;
- Add \$750,000, all from the SGF, for the Douglas County Community Crisis Center;
- Add \$5.3 million, all from the State Institutions Building Fund, to remodel the Biddle Building at Osawatomie State Hospital in preparation of the agency ending the moratorium on voluntary admissions and to certify additional beds for federal reimbursements; and
- Add \$2.7 million, all from the State Institutions Building Fund, for infrastructure costs and the continued support and maintenance for an electronic records and patient management system for the state hospitals;
- Kansas Department of Transportation: \$80.8 million, all from special revenue funds, for the 11th year of the Transportation Works for Kansas Program;
- Department of Agriculture and Kansas Water Office: Add \$2.4 million, mostly from the State Water Plan Fund, for a variety of water projects including cost-share payments for conservation practices (\$250,000), streambank stabilization (\$250,000), watershed dams (\$200,000), Conservation Reserve Enhancement Program (\$297,699), water injection dredging (\$660,000), watershed conservation practices (\$300,000), and dewatering in Haysville (\$200,000); and
- Department of Administration: Add language capping municipal bond interest rates at the daily yield of the 10-year treasury bonds for FY 2021, plus 6.0 percent on bonds excluded from federal gross income and 7.0 percent on bonds included in federal gross income.

Revenue Adjustments – FY 2021

- Kansas Water Office: Transfer \$2.0 million from the SGF to the State Water Plan Fund, bringing the total transfer amount to \$6.0 million;
- State Highway Fund: Delete \$98.1 million from the transfer from the State Highway Fund to the SGF, which reduces the transfer to \$133.7 million; and
- Extend ongoing SGF transfers:
 - Transfer \$16.2 million from the Economic Development Initiatives Fund to the SGF; and
 - Transfer \$2.8 million from the Expanded Lottery Act Revenues Fund to the SGF.

The following is a summary table that reflects all changes to both SGF receipts and SGF expenditures from various enacted bills.

STATE GENERAL FUND RECEIPTS, EXPENDITURES, AND BALANCES

**SB 66 – Conference Profile
(Dollars in Millions)**

	Actual FY 2019	SB 66 FY 2020	SB 66 FY 2021
Beginning Balance	\$ 761.7	\$ 1,105.1	\$ 447.5
Receipts (November 2019 Consensus)	7,376.2	7,652.1	7,100.1
Governor’s Revenue Adjustments	0.0	(399.6)	124.6
Legislative Receipt Adjustments	0.0	400.4	(130.6)
Adjusted Receipts	7,376.2	7,652.9	7,828.2
Total Available	\$ 8,137.9	\$ 8,758.0	\$ 8,755.0
Less Expenditures	7,032.8	7,831.1	8,024.1
Ending Balance	\$ 1,105.1	\$ 926.8	\$ 730.9
Ending Balance as a % of Expenditures	15.7 %	11.8 %	9.1 %

Note: The Department of Corrections retains \$45.0 million in expenditure authority from the Evidence-based Juvenile Programs Fund in FY 2021 that the Governor has recommended it not exercise.

Nursing Facility Quality Care Assessment and the Healthcare Access Improvement Program; HB 2168

HB 2168 establishes a sunset date of July 1, 2030, for the Nursing Facility Quality Care Assessment and amends law concerning the hospital provider assessment known as the Healthcare Access Improvement Program (HCAIP).

The bill makes the following changes for the hospital provider assessment:

- The annual hospital provider assessment rate increases from 1.83 percent to 3.0 percent;
- Taxable revenue expands to include outpatient net operating revenue;
- The hospital provider assessment is based on the net operating revenue for the hospital’s fiscal year three fiscal years prior to the assessment year; and
- Distributions of hospital provider assessment revenues generated from health maintenance organizations are no longer included in the assessment law.

In addition, the selection criteria of the Healthcare Access Improvement Panel (Panel), which administers HCAIP, is modified, as follows:

- The two members appointed by the Kansas Medical Society will no longer be required to be licensed to practice medicine or surgery;

- A member will be appointed by the Community Care Network of Kansas instead of by the Kansas Association for the Medically Underserved; and
- The membership of the Panel is expanded to include one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, and one member from the Office of the Medicaid Inspector General, appointed by the Attorney General.

The bill requires all disbursements related to HCAIP be paid from moneys appropriated to the Healthcare Access Improvement Fund (Fund) and further provides no State General Fund (SGF) appropriations will be used to supplement the Fund. On July 1 of each year, the Kansas Department of Health and Environment (KDHE), with the approval of the Panel, will adjust the disbursement process to ensure the amount of disbursements does not exceed the amount of funds appropriated to the Fund. In addition, the bill requires the annual report created by the Panel to provide evidence that the disbursements for HCAIP have been made in accordance with disbursement provisions of the bill and are budget neutral to the SGF.

The bill requires KDHE to submit any information necessary to the federal Centers for Medicare and Medicaid Services to gain approval to implement the changes directed by the bill and also requires the Secretary of Health and Environment to certify such approval and publish notice of approval in the *Kansas Register*.

STATE GOVERNMENT

Reorganization of the State Employee Health Plan; ERO No. 45

Executive Reorganization Order (ERO) No. 45 moves the State Employee Health Plan (SEHP) and the State Self Insurance Fund (SSIF) from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Administration (KDOA). The SEHP administers the Kansas employee health insurance benefit program and supports the Kansas Health Care Commission, which sets rates and programs for state employee health insurance benefits. The SSIF administers workers compensation claims for state employees when they are injured on the job working for the State.

ERO 45 establishes the Division of the State Employee Health Benefits Plan (Division) within the KDOA, transferring to KDOA all powers, duties, and functions of the KDHE staff currently administering the SEHP and SSIF. The Office of the Governor indicates the reorganization will align those programs with other employee-focused services and provide improved administrative efficiencies and support.

The head of the Division established by ERO 45 is the Director of the State Employee Health Benefits Plan (Director), who is appointed by and serves at the pleasure of the Secretary of Administration and is an unclassified employee under the Kansas Civil Service Act (Act). Section 1(a) of the Act requires the Director's salary to be approved by the Governor. All officers and employees involved with the administration and support of the SEHP and SSIF within the KDHE will transfer to the KDOA. State employee benefits, including retirement benefits, leave balances, and rights that had accrued, or vested, prior will transfer along with those officers and employees. Transferred employees who were classified will retain their classified status.

With respect to related fund and account balances, ERO 45 transfers all relevant funds within the State Treasury to the KDOA for the Division, to be used for the purpose for which the appropriation was originally made. The Division also succeeds to all relevant property, property rights, contracts, and records, and the Governor will be the final authority in resolving any conflict surrounding this succession. ERO 45 also states no lawsuits, proceedings, or criminal actions that have begun or have the potential to begin by or against any state agency or program are abated by the reorganization taking place under ERO 45.

ERO 45 also establishes the State Workplace Health and Safety Program within the KDOA's SSIF program. The Secretary of Administration is to implement, and the Kansas Department of Labor Division of Industrial Health and Safety is to assist with, a program to include, but not be limited to, these activities: workplace health and safety hazard surveys in all state agencies, including on-site interviews with employees; workplace health and safety hazard prevention services, including inspection and consultation services; procedures for identifying and controlling workplace hazards; development and dissemination of health and safety informational materials, plans, rules, and work procedures; and training for supervisors and employees in healthful and safe work practices.

Article 1, § 6 of the Kansas Constitution provides that an ERO becomes effective on the July 1 following its transmittal to the Legislature unless, within 60 calendar days and before the adjournment of the Legislative Session, either the Senate or the House of Representatives adopts a resolution disapproving the ERO. ERO 45 was not considered prior to the March 30 deadline and is therefore adopted, going into effect on July 1, 2020.

Sale of Surplus State Property; HB 2595

HB 2595 removes the 30-day waiting period before offering surplus property for sale to the general public. Current law allows the Secretary of Administration, through the Kansas Surplus Property Program, to sell state surplus property to the general public only after the property has been offered to qualified individuals and entities for at least 30 days.

State Government—Disaster Emergency Declaration; HCR 5025

HCR 5025 extends the Governor's March 12, 2020, state of disaster emergency declaration for the state regarding novel coronavirus disease (COVID-19) through May 1, 2020, subject to additional extensions by concurrent resolution of the Legislature.

The resolution provides that, if the Legislature is not in session, the Governor could apply to the State Finance Council (Council) to extend the state of disaster emergency declaration, and the Council could authorize one additional extension of the declaration for a specified period not to exceed 30 days, by a majority vote of the legislative members of the Council. Following such Council action, the Legislative Coordinating Council (LCC), representing the Legislature when the Legislature is not in Session, is:

- Authorized to ratify a declaration, terminate a state of disaster emergency, revoke an order or proclamation, or assume any other power granted the Legislature in the statutes governing state of disaster emergency declarations;
- Authorized to grant additional extensions of such state of disaster emergency, for specified periods not to exceed 30 days each, by a majority vote of five members;
- Required to meet at least once every 30 days to review the state of disaster emergency, consider any orders or proclamations issued since the previous LCC meeting, and consider whether such orders or proclamations, if any, are an exercise of any power listed in KSA 2019 Supp. 48-925(c)(2), (c)(4), (c)(7), (c)(8), or (c)(11); and
- Authorized to review and revoke all orders and proclamations issued by the Governor pursuant to KSA 2019 Supp. 48-925(b). The chairperson of the LCC, in consultation with the Attorney General, Adjutant General, and any other parties the chairperson deems necessary, shall determine if an order or proclamation of a power listed in KSA 48-925(c)(2), (c)(4), (c)(7), (c)(8), or (c)(11) has been issued. If the chairperson determines the order or proclamation is an exercise of such power, the LCC shall meet to consider such order or proclamation within three calendar days and may revoke such order or proclamation at the meeting.

The resolution further states, for the purposes of the ratification, the Governor shall not have the power or authority pursuant to either KSA 2019 Supp. 48-925(c)(8), or any other executive authority, to temporarily or permanently seize, or authorize seizure of, any ammunition or to suspend or limit the sale, dispensing, or transportation of firearms or ammunition.

[Note: The specific powers referenced by statutory subsection in the resolution are as follows:

- Utilize all available resources of the state government and of each political subdivision as reasonably necessary to cope with the disaster [KSA 2019 Supp. 48-925(c)(2)];
- Subject to any applicable requirements for compensation under current law, commandeer or utilize any private property if the Governor finds such action necessary to cope with the disaster [KSA 2019 Supp. 48-925(c)(4)];
- Control ingress and egress of persons and animals to and from a disaster area, the movement of persons and animals within the area, and the occupancy by persons and animals of premises therein [KSA 2019 Supp. 48-925(c)(7)];
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles [KSA 2019 Supp. 48-925(c)(8)]; and
- Perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population [KSA 2019 Supp. 48-925(c)(11)].]

Disapproval of ERO No. 46, Kansas Energy Office; HR 6031

HR 6031 disapproves Executive Reorganization Order (ERO) No. 46, which was issued by the Governor on January 30, 2020.

ERO 46 would have established the Kansas Energy Office (Energy Office) as an independent entity, effective July 1, 2020, rather than continue it within the Kansas Corporation Commission (KCC). The ERO stated the Energy Office would be under the direction of the Director of the Kansas Energy Office (Director). The Director would have been appointed by the Governor. The ERO would have transferred the balances of all funds and accounts appropriated to the KCC for activities related to the Energy Office from the KCC to the Energy Office.

Disapproval of ERO No. 44, Merging Certain Agencies; HR 6032

HR 6032 disapproves Executive Reorganization Order (ERO) No. 44, which was issued by the Governor on January 30, 2020.

ERO 44 would have merged the Kansas Department for Aging and Disability Services (KDADS), Juvenile Services from the Department of Corrections (DOC) and oversight of the Kansas Juvenile Correctional Complex, and the Department for Children and Families (DCF), and renamed this agency the Kansas Department of Human Services (DHS), effective July 1, 2020.

This merger would have transferred to and imposed upon DHS and the Secretary of Human Services all jurisdiction, powers, functions, and duties from DCF, KDADS, Juvenile Services, and oversight of the Juvenile Correctional Complex, as well as all the jurisdiction, powers, functions, and duties for which these agencies are serving as the operating agency or grants manager for another agency.

The ERO stated whenever the secretaries of, or names of, these agencies, or predecessor agencies—the Department of Social and Rehabilitation Services, Department on Aging, and the Juvenile Justice Authority—are referred to or designated by any statute, rule and regulation, contract, or other document, such reference should be deemed to apply to DHS. The ERO further stated DHS would be the successor to the powers, duties, and functions of these agencies, and any potential remaining rights, titles, or interest belonging to the Department of Social and Rehabilitation Services, Department on Aging, and Juvenile Justice Authority in real property. Actions performed by DHS would have had the same force and effect as if performed by the above entities, in which the same powers, duties, and functions were vested prior to July 1, 2020.

The ERO would have transferred to DHS from DCF, KDADS, and DOC the following: rules and regulations authority; fees, funds, grant funds, advisory group funds, loan repayment funds, and account balances; property and property rights; liability; and liability for accrued compensation or salaries of personnel, including officers and employees, except the right, title, and interest of Larned Juvenile Correctional Facility and funds related to the maintenance and management of Larned Juvenile Correctional Facility.

TRANSPORTATION AND MOTOR VEHICLES

Eisenhower Legacy Transportation Plan; House Sub. for SB 173

House Sub. for SB 173 authorizes and directs the Secretary of Transportation (Secretary) to initiate a program to be called the Eisenhower Legacy Transportation Program (Program). The bill specifies the types of projects authorized, addresses local funding and new and continuing grant programs, authorizes alternative procurement methods under certain circumstances, increases city connecting links payments, adds reporting requirements, requires at least \$8 million to be spent in each county through fiscal year (FY) 2030, states 16.154 percent of sales tax shall be levied for the State Highway Fund (SHF), and makes additional changes to law.

Eisenhower Legacy Transportation Program (New Section 1)

The bill states the Program shall provide for the construction, improvement, reconstruction, and maintenance of the state highway system and provide for selection of projects that will allow for the flexibility to meet emerging and economic needs. The bill states program expenditures may include, but not be limited to, preservation, preservation plus, expansion and economic opportunity, and modernization projects, described below:

- *Preservation projects.* The bill requires the Secretary to establish targets for state highway system condition that reflect reasonable, realistic expectations and use reasonable, sound, and accepted methods to determine the annual preservation investment needed to achieve such state targets and long-term cost effectiveness. The bill states it is the intent of the Legislature that the Secretary spend from the SHF an amount equal to or exceeding ten times the determined average annual preservation investment prior to completion of the program. The bill requires the Secretary to manage cash-flow and project lettings to provide reasonable assurance that preservation will be fully funded each year. For this purpose, the bill specifies “preservation projects” refers to maintenance, repairs, or replacement of existing infrastructure. The bill authorizes federal funding from grants or stimulus to be used for preservation projects;
- *Preservation plus projects.* The bill authorizes safety or technology elements to be added in a preservation plus project. The bill states such elements may include, but not be limited to, adding paved shoulders, passing lanes, traffic signals, or intelligent transportation system elements or laying broadband fiber or the conduit for broadband fiber. The bill states it is the intent of the Legislature that the Secretary has the authority to enhance preservation plus projects by adding safety or technology improvements, or both. The bill authorizes federal funding from grants or stimulus to be used for preservation plus projects;
- *Expansion and economic opportunity projects.* The bill authorizes expansion and economic opportunity projects, or projects that improve access, relieve congestion, and enhance economic development opportunities, to be selected using criteria determined by the Kansas Department of Transportation (KDOT) that include, but are not limited to, engineering and traffic data, local consultation, geographic distribution, and an economic impact analysis evaluation; and

- *Modernization projects.* The bill authorizes modernization projects to improve safety, condition, or service of the highway system (e.g., widening lanes or shoulders and building rail grade separations). Those projects are to be selected using KDOT criteria to include, but not be limited to, engineering data, local consultation, and geographic distribution.

The bill requires KDOT to develop criteria for the incorporation of practical improvements into project designs.

Previously Selected Projects

The bill requires the Program to provide for the completion of modernization and expansion projects selected for construction under the Transportation Works for Kansas Program (T-Works) [KSA 68-2314b] and that those projects be let prior to July 1, 2023. The bill requires the Secretary to let to construction contract at least one phase of each remaining T-Works project before any modernization or expansion project, or both, under the Program is let to construction. The bill allows completing a reconstruction of an interchange at I-135 and 36th Street in Harvey County to be optional. If that project is not constructed, the bill requires the estimated construction costs for that project to be used on other construction projects in KDOT's south central district.

Local Programs

The bill requires the Program to provide for assistance, including credit and credit enhancements, to cities and counties in meeting their responsibilities for transportation improvements. The bill states such programs may use criteria developed by KDOT for the incorporation of practical improvements into project designs. The bill authorizes expenditures for purposes including, but not limited to, the following:

- Apportionment of the Special City and County Highway Fund to assist with city and county responsibilities for roads and bridges not on the state highway system;
- Sharing federal aid with cities and counties to assist with their responsibilities for roads and bridges not on the state highway system;
- Programs to assist cities with city connecting links and local partnership programs to resurface or geometrically improve city connecting links or to promote economic development;
- Programs similar to KDOT's local bridge improvement program, to replace or repair bridges not on the state highway system;
- Programs to assist cities and counties with railroad crossings of roads not on the state highway system; or
- Programs that allow local governments to exchange federal aid funds for state funds.

Transportation Other than Construction of Roads and Bridges

The bill requires the Program to provide for the following types of programs in accordance with new or continuing law:

- A railroad program for the preservation and revitalization of rail service in the state;
- An aviation program to provide assistance for planning, constructing, reconstructing, or rehabilitating the facilities of public use general aviation airports;
- Public transit programs to aid elderly persons, persons with disabilities, and the general public;
- A transportation technology program to provide for multimodal transportation-related projects that support innovative technology; and
- A multimodal program to provide improvement assistance for bike facilities, pedestrian facilities, or other transportation-sensitive economic opportunities on a local or a regional basis.

Project Delivery

The bill states the program shall allow the Secretary to award certain state highway system projects using delivery procurement methods other than design-bid-build. [*Note:* Alternative project delivery is further discussed in Section 4.]

Broadband

The bill states the Program shall provide for a broadband infrastructure construction program. [*Note:* Broadband construction is further discussed in Section 3.]

Uses of Certain Revenues

The bill requires SHF revenues, which include motor fuel taxes, vehicle registration fees, sales and compensating use taxes, and eligible federal aid, to be used in the following order of priority:

- To pay bond obligations;
- To pay for agency operations;
- To make city connecting link payments;
- To pay for needed preservation projects; and
- Pursuant to other purposes and authority given to the Secretary.

The bill requires new bonds issued for the purposes of the Program to be paid using all SHF revenues, including sales or compensating use tax revenues.

Project Selection

The bill requires the Secretary to determine the projects to be selected, using KDOT selection methods and criteria. The bill states consideration may be given to additional criteria that could include projects that remove transportation infrastructure from the state highway system, identify priority corridors, include local monetary participation, or reduce project size.

The bill states legislative intent for the Secretary to develop a metric-driven process that determines a reasonable and fair minimum amount of SHF moneys to be spent on new modernization and expansion projects in each KDOT district over the duration of the Program. The bill requires the process for determining the minimum amount for each district to be subject to the following limits:

- The minimum amount for each district added together must total at least 50 percent of the estimated cost of constructing all modernization and expansion projects let to contract in the Program;
- If the estimated cost of constructing all Program modernization and expansion projects increases or decreases by more than 10 percent, the minimum amount must be adjusted;
- At least 40 percent of the minimum amount or adjusted minimum amount for each district must be let to construction contract by the end of year 5 of the Program and 100 percent of the minimum amount by year 10; and
- T-Works projects are not to be considered when determining the minimum amounts.

The bill requires the Secretary to select projects for development every two years, but does not require the Secretary to construct every project selected for development. The bill requires project selection after consultation with local jurisdictions.

The bill states it is the intent of the Legislature that the Secretary take the actions necessary to have transportation improvement projects ready to let to construction as cash-flow management allows.

Long-range Planning

The bill requires the Secretary to develop a long-range transportation plan before June 30, 2030, to include recommendations for a new transportation program for the state. The bill requires the plan to examine, but not be limited to, project selection criteria and selection methods used in the Program, transportation funding sources, and Program project categories. The bill states the plan shall be developed after consultation with the Governor and state and local elected officials.

Innovative Technologies Grants (New Section 2)

The bill authorizes the Secretary to participate in or make grants for projects to plan, assess, and field new capabilities and innovative technologies for modes of transportation including, but not limited to, aviation and highway transportation. The bill states the new capabilities should represent increased efficiency for state operations, public cost savings, increased safety, or economic development.

The bill establishes the Transportation Technology Development Fund, which the bill requires to be used to provide assistance with the planning, assessment, and fielding of new capabilities for all modes of transportation including, but not limited to, aviation and highway transportation. Expenditures from this fund are to be made in accordance with the provisions of appropriations acts. The bill states grants made by the Secretary from this fund will be upon such terms and conditions as the Secretary deems appropriate.

The bill requires the Director of Accounts and Reports to transfer \$2.0 million from the SHF to the Transportation Technology Development Fund on July 1, 2020, and each July 1 thereafter, through July 1, 2030. The Secretary is authorized to transfer additional moneys between the Transportation Technology Development Fund and the SHF.

Broadband Grants (New Section 3)

The bill authorizes the Secretary, working jointly with the Office of Broadband Development within the Department of Commerce, to make grants for construction projects that expand and improve broadband service in Kansas. The bill requires grants made by the Secretary to reimburse grant recipients for up to 50 percent of actual construction costs in expanding and improving broadband service. Such grant reimbursements will be upon the terms and conditions the Secretary deems appropriate, in coordination with the Secretary of Commerce.

The bill establishes the Broadband Infrastructure Construction Grant Fund, to be used to provide grants for the expansion of broadband service in Kansas. Expenditures from this fund will be made in accordance with the provisions of appropriations acts. The bill requires the Director of Accounts and Reports to transfer \$5.0 million from the SHF to the Broadband Infrastructure Construction Grant Fund on July 1, 2020, 2021, and 2022. On July 1, 2023, and each July 1 thereafter, through July 1, 2030, the bill requires the transfer to be \$10.0 million. The bill authorizes the Secretary to notify the Director of Accounts and Reports to transfer all remaining and unencumbered funds from the Broadband Infrastructure Construction Grant Fund to the SHF at the end of each fiscal year.

Alternative Procurement (New Section 4)

The bill authorizes the Secretary to use procurement methods other than a design-bid-build contract to the lowest bidder if certain requirements are met:

- Projects selected for alternative delivery shall not include preservation projects;
- Three projects utilizing toll revenues for construction and maintenance, one every three years, are authorized;

- Not more than 3 percent of moneys spent in the Program can be used on alternative delivery;
- The bill requires an additional 2 percent to be available for alternative delivery starting in FY 2023;
- The bill excludes the dollar values of the three projects utilizing toll revenues and projects obtained through federal grants or stimulus when determining these limits;
- The project must cost at least \$100 million; and
- A contract or contracts for alternative delivery projects can include, but will not be limited to, services for preconstruction, design, construction, construction management, maintenance, operation, financing, or a combination thereof.

The bill requires KDOT to develop and utilize criteria for selecting whether alternative delivery or design-bid-build procurement is in the best interest of the state. The bill requires the selection criteria to include, but not be limited to, the need for an accelerated schedule, safety needs, project complexity, opportunity for innovation, and economic development. The bill prohibits any project to be selected for alternative delivery without having been evaluated under the KDOT selection criteria.

The bill requires KDOT to develop and utilize procedures for advertising, receiving, and evaluating proposals; awarding contracts; and administering contracts in its alternative delivery procurement program. The bill specifies procurement procedures in continuing law (on topics including notification, letting to the lowest responsible bidder, negotiations with the contracting firm, and project descriptions) will not apply to alternative delivery projects.

The bill requires the alternative delivery procedures to include the following:

- A two-phase best value competitive selection or contracting process, including a first-phase short list of no more than four proposers identified using a request for qualifications and a second phase of submission of price, technical proposals, or both in response to a request for proposals;
- Advertisement of requests for qualifications in the *Kansas Register* for at least three consecutive weeks;
- Prequalification of contractors by the Secretary in accordance with statutes, regulations, and KDOT procedures governing prequalification and licensing;
- A bond for performance and payment or alternative security guaranteeing contract performance and payment obligations for supplies, materials, and labor; and

- A requirement that firms and key personnel identified in the qualifications phase and scored to determine the short list may not be replaced during the project without KDOT's written approval.

The bill states a contracting entity selected for an alternative delivery project will not be in violation of laws governing technical professions and the contract shall not be void if such contractor obtains professional services by subcontracting with an entity or entities licensed or holding a certificate of authorization to perform professional services in accordance with laws governing technical professions.

The bill states a contracting entity selected for an alternative delivery project that is responsible for preparing or furnishing design plans and specifications, through its own organization or by subcontracting, will be liable for damages arising from design defects in the plans and specifications that result in injury to persons or damage to property occurring after completion of the contract and KDOT acceptance of the project. The bill states that would be the case if and to the extent such injury or damage arises from a failure to exercise the degree of learning and skill ordinarily possessed by a reputable contractor or by a technical professional practicing in Kansas in the same or similar locality and under similar circumstances.

Short Line Rail Improvement Fund (New Section 5)

The bill establishes the Short Line Rail Improvement Fund (SLRI Fund) to be administered by the Secretary. The SLRI Fund will be subject to appropriations acts and expenditures will require the written approval of the Secretary. The bill requires expenditures from the SLRI Fund to be made for a qualified railroad track maintenance expenditure constructed by an eligible entity and to be matched on a basis of 70 percent state moneys to 30 percent eligible entity moneys.

The bill requires transfer of \$5.0 million from the SHF to the SLRI Fund on July 1, 2020, 2021, and 2022.

The bill defines an "eligible entity" as a class II or class III railroad as defined in federal regulations in effect as of January 1, 2020, or any owner or lessee industry track located on or adjacent to a class II or class III railroad in Kansas. The bill defines "qualified railroad track maintenance expenditure" as gross expenditures for maintenance, reconstruction, or replacement of railroad track and related structures in Kansas, if the track was owned or leased by an eligible entity as of January 1, 2020.

Driver's Education Scholarship Grant Program (New Section 6)

The bill directs the Secretary to develop a driver's education scholarship grant program to assist qualified individuals in becoming safe drivers. The bill allows any entity that desires to provide a driver's education program to submit an application for a competitive grant for an amount to be determined by the Secretary for the purpose of paying the costs of scholarships to attend driver's education. Amounts available will be subject to appropriations. The bill limits a scholarship for a qualified individual to not more than \$200, to be awarded upon completion of the driver's education program. The bill authorizes the Secretary to adopt rules and regulations to establish criteria and for other matters necessary for this program.

The bill defines a qualified individual for this purpose as a resident of Kansas younger than age 30 whose household income is positive and not more than 200 percent of the most recent federal poverty level published by the U.S. Department of Health and Human Services for the tax year prior to the year in which the application is submitted.

The bill requires the Secretary to provide a report on this program to the House Committees on Appropriations and Transportation and the Senate Committees on Ways and Means and Transportation on or before January 9, 2023.

The provisions related to the driver's education scholarship grant program will expire June 30, 2023.

City Connecting Links (Section 7)

The bill increases from \$3,000 to \$5,000 per year per lane per mile the amount the Secretary is required to annually distribute to cities for the maintenance of streets and highways in cities the Secretary has designated as city connecting links. Continuing law authorizes the Secretary to maintain such streets and pay for that maintenance from the SHF with the consent of the city governing body.

The bill authorizes the remainder of the SHF to be spent for any purpose specified in Section 1.

KDOT Annual Report (Section 8)

The bill adds requirements for the written report required under continuing law to be provided to the Governor and each member of the Legislature by the tenth day of the Legislative Session, to require the report:

- Be posted on the KDOT official website and require KDOT to notify all persons or entities who have requested notification of the posting;
- Include annual expenditures from and more detailed information about:
 - Anticipated annual payouts of construction projects already under contract and any proposed construction projects for the next three fiscal years, listing preservation projects separately from modernization and expansion projects;
 - Proposed construction projects to be let to contract in the current fiscal year and anticipated annual payouts for the next three fiscal years for those projects;
 - Anticipated expenditures for the next three fiscal years on remaining agency debt service, programs, and operations; and
 - Include a comparison of annual revenue expected into the SHF, including ending balance carryovers, for the next three fiscal years;
- For any Program construction project that is more than \$5 million, an explanation of all initial bids submitted and the actual final cost of construction for that project;

- Include all revenue available for the SHF, including, but not limited to, the SHF balance from the previous year, motor fuel taxes, registration fees, sales and compensating use taxes, and bond proceeds;
- Include all committed expenditures identified by program (e.g., debt service payments, agency operations, aviation, project development costs) and construction payouts by program category (i.e., preservation, modernization, and expansion);
- Include a report of projects that have been let but not paid out and how those projects have been identified to achieve state highway system condition targets; and
- Include a detailed explanation of the methods or criteria used in selecting projects under Program highway or local programs, including an explanation of the amounts expended and projects selected for construction or development and when and where the next local consults are to take place.

For the report due in 2021, the bill requires the report to include a detailed explanation of the methods or criteria used in selecting projects under T-Works and in the awarding of assistance to cities, counties, or other transportation providers and specific recommendations for any statutory changes necessary to successfully complete T-Works or for efficient and effective operation of KDOT.

The bill adds the Transportation Technology Development Fund and the Broadband Infrastructure Construction Grant Fund created by the bill to the funds about which allocation and expenditure information is required in the annual report. The bill requires information about grants under those new funds and on funding shifts between the SHF and the Coordinated Public Transportation Assistance Fund, the Rail Service Improvement Fund, the Public Use General Aviation Airport Development Fund, the Transportation Technology Development Fund, and the Broadband Infrastructure Construction Grant Fund.

The bill requires the annual report to include information concerning the condition and performance of the state highway system.

“\$8 Million Promise” (Section 9)

The bill requires the Secretary to expend or commit to expend at least \$8 million in each county from the revenue provided under the provisions of the Program from July 1, 2020, through June 30, 2030.

Changes to Fund Transfers and Balances (Sections 10, 11, and 12)

The bill authorizes the Secretary to transfer moneys in addition to the \$11.0 million required each year from the SHF to the Coordinated Public Transportation Assistance Fund. The bill also authorizes the Secretary to transfer moneys from the Coordinated Public Transportation Assistance Fund to the SHF. The bill requires the amount remaining in the fund and the amount spent or dedicated for grants or projects for public transportation in each fiscal year to be not less than \$11 million.

The bill requires the amount remaining in the Rail Service Improvement Fund and the amount spent or dedicated for loans or grants in each fiscal year to be not less than \$5 million. Under continuing law, \$5.0 million is to be transferred each July 1 from the SHF to the Rail Service Improvement Fund.

The bill authorizes the Secretary to transfer moneys in addition to the \$5.0 million required each year from the SHF to the Public Use General Aviation Airport Development Fund. The bill also authorizes the Secretary to transfer moneys from the Public Use General Aviation Airport Development Fund to the SHF. The bill requires the amount remaining in the fund and the amount spent or dedicated for grants in each fiscal year to be not less than \$5 million.

Retailer's Sales and Compensating Use Taxes (Sections 13 and 14)

The bill amends law to state, starting July 1, 2021, 16.154 percent of the 6.5 percent retailer's sales tax and the same percentage of the compensating use tax shall be levied for the SHF and such tax moneys are to be deposited into the SHF for SHF purposes and for city connecting links.

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