

J-1
Administrative Rule
and Regulation
Legislative Oversight

J-2
Board of Indigents'
Defense Services

J-3
Home Rule

J-4
Kansas Public
Employees
Retirement System's
Retirement Plans and
History

J-5
Senate Confirmation
Process

J-6
State Employee
Issues

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State and Local Government

J-1 Administrative Rule and Regulation Legislative Oversight

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations filed by state officers, boards, departments, and commissions. The 1939 law declared all rules and regulations of a general or statewide character were to be filed with the Revisor of Statutes and would remain in force until and unless the Legislature disapproved or rejected the regulations. It was not until 1974 that the Legislature took steps to formalize an oversight process. In that year, all filed rules and regulations were submitted to each chamber. Within 60 days of submission, the Legislature could act to modify and approve or reject any of the regulations submitted. In 1984, the Kansas Supreme Court, in *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 687 P.2d 622 (1984), held a procedure adopted in 1979, which authorized the use of concurrent resolutions to modify or revoke administrative rules and regulations, violated the doctrine of separation of powers under the *Kansas Constitution*.

The 1975 interim Legislative Budget Committee, under Proposal No. 33, found it "important to maintain and even enhance legislative oversight of all regulations in order to make sure that they conform with legislative intent." The 1976 Legislature enacted several amendments to the Rules and Regulations Filing Act (Act).

In that same year, the Legislative Coordinating Council created the Special Committee on Administrative Rules and Regulations to review proposed administrative rules and regulations filed with the Revisor of Statutes. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below. A 1977 law created the Joint Committee on Administrative Rules and Regulations (Joint Committee). In 1988, responsibility for filing and publishing all rules and regulations was statutorily assigned to the Secretary of State. *The Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* of the Kansas Department of Administration provides guidance to agencies on development of and procedures for promulgating rules and regulations.

Rule and Regulation Authority—Examples

Regulations implement or interpret legal responsibilities of a state agency. The statutory authority for the agency to adopt these rules

and regulations is found in enabling legislation, as illustrated in the example language found below.

**Commercial Industrial Hemp Program
(2019 Session)**

The Kansas Department of Agriculture (KDA), in consultation with the Governor and Attorney General, shall submit a plan to the U.S. Department of Agriculture under which the KDA will monitor and regulate the commercial production of industrial hemp within the state . . . The Secretary of Agriculture shall promulgate rules and regulations to implement the plan submitted . . .

AO-K to Work Program (2019 Session)

The State Board of Regents may adopt rules and regulations to implement and administer the provisions of this act.

Powers of the Secretary (KSA 32-807)

The Secretary [of Wildlife, Parks and Tourism] shall have the power to: (a) Adopt, in accordance with KSA 32-805 and amendments thereto [approval, modification and approval, or rejection of proposed rules and regulations by the Wildlife, Parks and Tourism Commission], such rules and regulations as necessary to implement, administer and enforce the provisions of wildlife, parks and tourism laws of this state; . . .

Rules and regulations of the Kansas Lottery are exempt from the Act (KSA 74-8710).

The Rules and Regulations Filing Act (KSA 77-415 through 77-438, and amendments thereto) outlines the statutory requirements for the filing of regulations by most executive branch agencies and for the Legislature’s review of the agency regulations.

The Regulation Adoption Process

Administrative rules and regulations may be temporary or permanent. A temporary rule and regulation, as defined in KSA 77-422, may be adopted by an agency if the State Rules and Regulations Board (Board) finds preservation of the health, safety, welfare, or public peace makes it necessary or desirable to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect after approval by the Director of the Budget, the Secretary of Administration, the Attorney General, and the Board and may remain effective for no more than 120 days, beginning with the date of approval by the Board and filing with the Secretary of State. A state agency, for good cause, may request a temporary rule and regulation be renewed one time for an additional period not to exceed 120 days.

KSA 77-420 and 77-421 outline the process for the adoption of permanent Kansas Administrative Regulations (KAR) in the following steps, which are to be followed in consecutive order:

1. Obtain approval of the proposed rules and regulations from the Director of the Budget (Director). KSA 77-420 requires the Director to review the economic impact statement submitted with the rules and regulations and conduct an independent analysis to determine whether the costs incurred by businesses, local government, or individuals would be \$3.0 million or less over a two-year period. If the impact does not exceed that threshold, the Director will approve the proposed rule and regulation for submission to the Secretary of Administration and Attorney General. If the impact exceeds \$3.0 million, the Director may either disapprove the proposed rule and regulation or approve it, provided the agency had conducted a public hearing prior to submitting the proposed rule and regulation, and the agency found the costs to be accurately determined and necessary for achieving legislative intent, and the Director independently

- concurs with the agency's findings and analysis;
2. Obtain approval of the organization, style, orthography, and grammar of the proposed rules and regulations from the Secretary of Administration;
3. Obtain approval of the proposed rules and regulations from the Attorney General, including whether the rule and regulation is within the authority of the state agency;
4. Submit the notice of hearing, copies of the proposed rules and regulations as approved, the economic impact statement, and the environmental benefit statement, if required by KSA 77-416, to the Secretary of State, and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee and to the Kansas Legislative Research Department (KLRD); the notice also must be published in the *Kansas Register*;
5. Review the proposed rules and regulations with the Joint Committee during the public comment period, which is at least 60 days for all rules and regulations, except for certain hunting and fishing activities and for permanent prior authorization on a prescription-only drug (KSA 2019 Supp. 39-7,120), for which the public comment period is at least 30 days;
6. Hold the public hearing and cause minutes or other records of the meeting to be made;
7. Prepare a statement of the principal reason for adopting the rules and regulations, including reasons for not accepting substantial arguments made in comments and reasons for any substantial change from the proposal;
8. Initiate new rulemaking proceedings if the final rule and regulation would differ in subject matter or effect in any material respect from the rule and regulation as originally proposed or the rule and

regulation is not the logical outgrowth of the rule and regulation as originally proposed;

9. Adopt the rules and regulations; and
10. File the rules and regulations and associated documents with the Secretary of State.

A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register* (KSA 77-426). The Secretary of State, as directed by KSA 77-417, endorses on each rule and regulation filed at the time and date of filing, maintains a file of rules and regulations for public inspection, keeps a complete record of all amendments and revocations, indexes the filed rules and regulations, and publishes the rules and regulations. The Office of the Secretary of State publishes new, amended, or revoked regulations in the *Kansas Register* and compiles the adopted regulations in the KAR Volumes and Supplements and on the Office's website. The Secretary of State is authorized to return to the state agency or otherwise dispose of any document that had been adopted previously by reference and filed with the Secretary of State.

Legislative Review

The 12-member Joint Committee is required by KSA 77-436 to review proposed rules and regulations during the public comment period prior to the required public hearing on the proposed regulations. Recent legislative changes to the Act have not changed this review process.

The Joint Committee may introduce legislation it deems necessary in the performance of its review functions. Provisions of KSA 77-426 authorize the Legislature to adopt a concurrent resolution expressing its concern with any temporary or permanent rule and regulation filed during the preceding year and requesting revocation or amendment of such rule and regulation.

The Joint Committee provides comments reflecting its concerns or recommendations to the agency for consideration at the time of the agency's public hearing on the proposed rules and regulations. KSA 77-436 also requires the Joint

Committee to issue a report of those comments to the Legislature following each meeting. The Joint Committee requests the agency reply to it in writing to respond directly to each comment made, and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption or the withdrawal of the rules and regulations. KLRD maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee.

As part of its review process, the Joint Committee examines economic impact statements that are prepared by agencies, as required by law, and accompany the proposed rules and regulations.

Each year, KLRD prepares a report on the oversight activities of the Joint Committee; the 2020 electronic report is available on the KLRD website at <http://www.kslegresearch.org/KLRD-web/Committees/Committees-JCARR.html>. The report also includes a summary of provisions in legislation enacted in that year that authorize, require, or clarify authority for rules and regulations.

Amendments to Rule and Regulation Procedures

Few bills since 2000 have changed the basic procedures for agency adoption of rules and regulations and legislative review of them.

2008

SB 579 (L. 2008, ch. 25) required state agencies to consider the impact of proposed rules and regulations on small employers. (These provisions were expanded in 2018.) The bill defined “small employer” as any person, firm, corporation, partnership, or association with 50 or fewer employees, the majority of whom are employed in Kansas.

2010

House Sub. for SB 213 (L. 2010, ch. 95) revised the Act by removing obsolete language and

authorized publication of the KAR in paper or electronic form by the Secretary of State. In addition, the bill amended definitions used in the Act and in the exclusion of certain rules and regulations from the Act. Certain procedures to be followed in the rulemaking process and procedures were also revised. One provision requires state agencies to begin new rulemaking procedures when the adopted rules and regulations differ in subject matter or effect in a material respect from those reviewed by the Joint Committee.

2011

HB 2027 (L. 2011, ch. 14) named the Act and simplified the definitions of terms such as “rule and regulation” and removed certain obsolete exclusions. It also expanded the definition of “person” to include individuals and legal or commercial entities that previously had not been included.

The bill gave precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public through the agency website or made available to the public in any other manner required by the Secretary of State.

The bill provided that agency-issued forms, the contents of which are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information.

The bill provided for the following to be exempt from the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline,

or graduation of students from such institution;

- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents; and
- Rules and regulations relating to the emergency or security procedures of a correctional institution and orders issued by the Secretary of Corrections or any warden of a correctional institution, to which other procedures apply.

The bill authorized state agencies to issue guidance documents without following the procedures set forth in the Act. Under the terms of this section (KSA 77-438), guidance documents may contain binding instructions to state agency staff members, except presiding officers, concerning their duties. Presiding officers and agency heads may consider the guidance documents in an agency adjudication, but are not bound by them.

To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill required each state agency to maintain an index of the guidance documents, publish the index on the agency's website, make all guidance documents available to the public, file the index in any other manner required by the Secretary of State, and provide a copy of each guidance document to the Joint Committee.

2012

SB 252 (L. 2012, ch. 61) changed notice requirements from 30 days to 60 days for new rulemaking proceedings when an agency proposes to adopt a final rule and regulation that:

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

- Is not a logical outgrowth of the rule and regulation as originally proposed.

2018

HB 2280 (L. 2018, ch. 117) made several changes to the Act:

- Granted new authority to the Director of the Budget to review and approve proposed rules and regulations;
- Added a member of the minority party and a representative of an appropriations committee to the State Rules and Regulations Board;
- Added a ranking minority member to the Joint Committee;
- Requires reports to the Legislature from the Joint Committee after each meeting; and
- Requires the Legislative Post Audit Committee, in 2021, to direct the Legislative Division of Post Audit to evaluate the implementation of the new provisions contained in the bill.

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State and Local Government

J-2 Board of Indigents' Defense Services

The *U.S. Constitution* grants certain rights and protections to criminal defendants, including the right to be represented by an attorney. This right has been interpreted by the U.S. Supreme Court and the Kansas Supreme Court to require the State to pay for attorneys to represent indigent defendants at most key stages in the criminal justice process.

In Kansas, this requirement is met by the Board of Indigents' Defense Services (BIDS). BIDS provides criminal defense services through:

- Public defender offices in certain parts of the state;
- Contract attorneys (attorneys in private practice contracted by BIDS); and
- Assigned counsel (court-appointed attorneys compensated by BIDS).

In addition to providing trial-level public defenders and assigned counsel, BIDS operates offices tasked with handling defense of capital cases, cases in which conflicts of interest prevent local public defenders from representing a particular defendant, and post-conviction appeals. BIDS is also responsible for paying the other costs associated with criminal defense, such as for expert witnesses and transcription fees. Finally, Legal Services for Prisoners, Inc., a nonprofit corporation, is statutorily authorized to submit its annual budget to BIDS and provides legal assistance to indigent inmates in Kansas correctional institutions.

Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state:

- 3rd Judicial District Public Defender (Topeka);
- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10th Judicial District Public Defender (Olathe);
- Western Kansas Regional Public Defender (Garden City);

- Southeast Kansas Public Defender (Chanute); and
- Southeast Kansas Public Defender Satellite Office (Independence).

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts;
- Northeast Kansas Conflict Office; and
- State *Habeas* Office.

Finally, BIDS operates two other special offices outside of Topeka:

- Wichita Conflicts Office; and
- Death Penalty Defense Unit—Sedgwick County Satellite Office.

BIDS officials monitor the cost per case for each of its offices quarterly to determine the most cost-effective system to deliver constitutionally required defense services and make changes as needed to maintain cost-effectiveness.

BIDS Staffing Report to Legislative Budget Committee

The 2020 Legislature required BIDS to submit a report to the Legislative Budget Committee (LBC) detailing the issues relating to staff vacancies and retention as well as provide a detailed strategy to address staffing concerns. The report, which was presented to the LBC on October 6, 2020, laid out a three-phase plan to address the issues.

According to the report, the core issues relate to excessively high caseloads relative to industry standards, low compensation, and a lack of resources. As a solution, BIDS proposed a three-phase plan with a focus on a client-centered, holistic defense model that would impact the whole of the state's judicial and correctional systems. The plan would address immediate needs *via* the fiscal year (FY) 2022 budget request, with the remaining phases to be implemented in FY 2023 and subsequent years.

Assigned and Contract Counsel

It is not possible for state public defender offices to represent all criminal defendants who need services. For example, if two individuals are co-defendants in a particular matter, it would present a conflict of interest for a single public defender's office to represent both individuals. Additionally, BIDS has determined it is not cost-effective to operate public defender offices in all parts of the state, based on factors such as cost per case and caseload in these particular areas. Instead, BIDS contracts with private attorneys in those areas to provide these services and compensates willing attorneys appointed as assigned counsel by local judges.

BIDS has been directed to monitor assigned counsel expenditures and to open additional public defender offices where it would be cost-effective to do so.

Compensation Rates and Fees

Effective January 18, 2010, assigned counsel were compensated at a rate of \$62 per hour as the result of a BIDS effort to reduce costs and respond to budget cuts. For FY 2016, the rate was increased to \$65 per hour, and for FY 2017, the rate was increased to \$70 per hour. During the summer of 2018, the Board voted to increase the rate for FY 2019 to \$75 per hour.

For FY 2019, the Board increased the rate to the statutory \$80-per-hour cap.

Total fees for defense in felony cases are capped at various levels depending on the classification of the felony and the disposition of the case.

However, if there is a judicial finding that a case is "exceptional" and requires the assigned attorney to work more hours than the cap allows, BIDS is required to exceed these caps. These exceptional fees are included in BIDS' overall budget for assigned counsel payments.

The 2007 Legislature changed the language of the assigned counsel compensation statute to allow BIDS to negotiate rates below the mandated

(at that time) \$80-per-hour rate as an alternative cost-savings strategy. BIDS conducted public hearings in 11 counties, where it was determined it was not cost-effective to utilize assigned counsel at \$80 per hour. BIDS responded to local requests to maintain the assigned counsel system in these counties by negotiating reduced compensation rates. The negotiation was successful, and rates of \$62 per hour and \$69 per hour were implemented. BIDS has determined these rates are more cost-effective than opening additional public defender offices.

The 2006 Legislature approved an increase in compensation rates from \$50 per hour to \$80 per hour for assigned counsel beginning in FY 2007.

This rate had previously been raised from \$30 per hour to \$50 per hour by 1988 legislation in response to a Kansas Supreme Court ruling.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation.

All professional services were treated as assigned counsel costs, including attorney fees, transcription fees, and expert witness fees. The FY 2006 budget added a separate line item for these other expenditures to more accurately account for assigned counsel costs.

Other Costs Affecting BIDS

BIDS is required to pay the fees for expert witnesses and transcription. Most experts utilized by the agency have agreements to work at a reduced rate. However, the agency reported these costs have risen steadily since FY 2008 due to higher transcription costs mandated by the Kansas Supreme Court, new legal requirements for expert testimony, and the expansion of what is effective assistance of defense counsel and defense services.

Death Penalty Cases

Kansas reinstated the death penalty in 1994, following the end of a national moratorium

imposed by the U.S. Supreme Court. (More information about the death penalty in Kansas can be found in the Kansas Legislative Research Department memorandum titled “Death Penalty in Kansas,” located at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.)

As a result, the Death Penalty Defense Unit was established to handle the defense of cases in which the death penalty could be sought. As with all cases handled by public defenders, conflicts of interest and other circumstances raise the possibility that outside counsel will have to be contracted to represent defendants.

Capital cases are more costly than other matters handled by BIDS. Not only do these cases take more time for trial, but they also require defense counsel to be qualified to handle the complexities and special rules of death penalty litigation. According to a report issued by the Kansas Judicial Council Death Penalty Advisory Committee (Advisory Committee) in 2004, a “capital case requires more lawyers (on both prosecution and defense sides), more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial.” On average, BIDS pays outside counsel \$150 per hour for capital cases, almost twice the statutory rate of \$80 per hour.

A study conducted by the Advisory Committee was released on February 13, 2014, and updated cost data for the costs first reported in the Legislative Division of Post Audit’s 2003 report.

The Advisory Committee found BIDS spent an average of \$395,762 on capital cases that went to trial in which prosecutors sought the death penalty, compared to an average of \$98,963 on other death penalty-eligible cases that went to trial without the prosecutor seeking the death penalty.

Other Offices Administered by BIDS

Appellate Defender Office

The Appellate Defender Office is located in Topeka and provides representation to indigent felony defendants with cases on appeal.

Northeast Kansas Conflict Office

The Northeast Kansas Conflict Office, located in Topeka, was established to deal with a large number of conflict cases in Shawnee County. This office also handles off-grid homicide cases in Lyon County.

Sedgwick County Conflict Office

The Sedgwick County Conflict Office was established to defend conflict cases that cannot be handled by the Sedgwick County Public Defender Office and is located in Wichita.

Death Penalty Defense Unit

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost-effective to establish an office with attorneys specially qualified to handle defense in capital cases rather than relying on contract or assigned counsel.

Capital Appeals and Conflicts Office

The primary function of the Capital Appeals and Conflicts Office is to handle representation throughout the long and complex appellate

process that follows the imposition of a death sentence. This office also handles some cases from the Appellate Defender Office, as time allows.

Capital Appeals Office

The Capital Appeals Office was established in 2003 to handle additional capital appeals. Specifically, this office was created to handle the appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict of interest rules, the existing Capital Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office resolved that conflict and doubled BIDS' capacity for handling death penalty appeals.

State Habeas Office

The State *Habeas* Office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for a *writ of certiorari* has been unsuccessful for the defense.

Legal Services for Prisoners

Legal Services for Prisoners, Inc., provides legal services to inmates in Kansas correctional facilities. The goal of the program is to ensure that prisoners' right to access the courts and pursue non-frivolous claims is met. Legal Services for Prisoners submits its annual budget to BIDS. Although Legal Services for Prisoners is not a state agency, its funding is administered through BIDS.

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J-6
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State and Local Government

J-3 Home Rule

Adopted by voters in the 1960 general election and taking effect July 1, 1961, Article 12, Section 5 of the *Kansas Constitution* authorized cities to be “empowered to determine their local affairs and government,” thus significantly altering the relationship between the State and its municipal governments. This article will briefly examine what is meant by the “home rule” so granted, its history in Kansas, and its variations within the state.

What Is Home Rule?

“Home rule” is defined as limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a feature of state and municipal government in the United States since 1875, where state constitutions frequently have been amended to confer general or specifically enumerated self-governing powers on cities and towns, and sometimes on counties and townships.

In the United States, local governments are considered “creatures of the State” as well as subdivisions of the State; and as such, are dependent upon the State for their existence, structure, and scope of powers. State legislatures have plenary power over the local units of government they create, limited only by such restrictions they have imposed upon themselves by state law or in their state constitutions, most notably home rule provisions. In an opinion in 1868, the Iowa Supreme Court expressed this philosophy of statutory construction to reflect this rule of dependency in what became known as “Dillon’s Rule” or the Dillon Rule (named for the justice who wrote the decision). The U.S. Supreme Court also expressed this philosophy in *Hunter v. Pittsburgh*, 207 U.S. 161 (1907).

Dillon’s Rule states a local government has only those powers granted in express words, those powers necessarily or fairly implied in the statutory grant, and those powers essential to the accomplishment of the declared objects and purposes of the local unit. Any fair, reasonable, or substantial doubt concerning the existence of power is resolved by the courts against the local government.

In contrast, under home rule, local governments have all powers except for those expressly prohibited by the State or those which

conflict with state statute. This difference in the source of a local government's powers is the central difference between Dillon's Rule states and home rule states.

City, County, and School District Home Rule—A Brief History of Kansas Home Rule Provisions

Constitutional Home Rule Grant for Cities

After July 1, 1961, cities were no longer dependent upon specific enabling acts of the Legislature. The key constitutional language contained in Article 12, Section 5 of the *Kansas Constitution*, reflecting the broad scope of the grant of home rule power for Kansas cities, reads in part as follows:

- “Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges, and other exactions”
- “Cities shall exercise such determination by ordinance passed by the governing body with referendum only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments applicable uniformly to all cities . . . and to enactments of the legislature prescribing limitations of indebtedness.”
- “Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.”
- “Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self government.”

The Home Rule Amendment applies to all cities regardless of their size. Further, the Home Rule Amendment is self-executing in that there is no requirement that the Legislature enact any law implementing it, nor are cities required to hold an election or adopt a charter, constitution, or some type of ordinance declaring their intent to exercise home rule powers.

Although the Home Rule Amendment grants cities the power to levy taxes and fees, the Legislature may restrict this power by establishing not more than four classes of cities; cities of the first, second, and third class have been defined in law. These classes exist for purposes of imposing revenue limitations or prohibitions. The 2006 Legislature reduced the number of classes of cities to one for the purpose of restoring uniformity of local retailers' sales taxes (KSA 2019 Supp. 12-187).

Cities can be bound only by state laws uniformly applicable to all cities, regardless of whether the subject matter of the state law is one of statewide or local concern. If a nonuniform law covers a city, the city may pass a charter ordinance and exempt itself from all or part of the state law and provide substitute or additional provisions. If there is no state law on a subject, a city may enact its own local law. Further, if there is a uniform law that does not expressly preempt local supplemental action, cities may enact additional non-conflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

Home rule for counties was enacted by statute in 1974. The county statutory grant is patterned after the Home Rule Amendment.

The County Home Rule Act provides that “the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate” subject only to the limits, restrictions, and prohibitions listed in the Act (KSA 2019 Supp. 19-101a). The statutory grant, likewise, contains a statement of legislative intent that the home rule powers granted to counties shall be liberally construed to give counties the

largest measure of self government (KSA 2019 Supp. 19-101c).

County home rule is self-executing in the same manner as city home rule. The power is there for all counties to use. No charter or local constitution need be adopted nor any election held to achieve the power, except in the case of Johnson County, which is covered by a special law authorizing the adoption of a charter by county voters. Voters in Johnson County approved the charter in November 2002. The 2020 Legislature considered a bill that would have provided for a similar charter commission for Sedgwick County. The bill passed the Senate but died in the House.

Counties can be bound by state laws uniformly applicable to all counties. Further, nonuniform laws can be made binding on counties by amending the County Home Rule Act, which now contains 38 limitations on county home rule. The Act, with regards to limits, restrictions, and limitations on the counties, was last amended in 2019.

Counties may act under home rule power if there is no state law on the subject. Counties also may supplement uniform state laws that do not clearly preempt county action by passing non-conflicting local legislation.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is that county home rule is granted by statute, whereas the city home rule is granted directly by the people. Because of its constitutional origins, only the voters of Kansas can ultimately repeal city home rule after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for amendment or repeal, or a constitutional convention has recommended a change. The Legislature can restrict city home rule powers only by enacting uniform laws that apply in the same way to all cities unless the subject matter is one of the few specific areas listed in the Home Rule Amendment, such as taxing powers and debt limitations. By contrast, the Legislature has more authority to restrict or repeal statutory county

home rule. Finally, the other factor distinguishing city and county home rule is the existence of numerous exceptions to county home rule powers found in the County Home Rule Act.

Unified Governments

An added complexity to the issue of home rule is the establishment of unified governments that merge county and city governments within a county. This has occurred twice in Kansas: Wyandotte County in 1997 and Greeley County in 2009. Statutes creating these unified governments specify they will have the powers, functions, and duties of cities of the first class for Wyandotte County (KSA 2019 Supp. 12-345) and of the third class for Greeley County (KSA 2019 Supp. 12-365). As noted above, statutorily granted powers can be altered more easily than provisions of the *Kansas Constitution*.

Statutory Expansion of School District Powers

In 2003, school boards were granted expanded administrative powers referred to by some as limited home rule powers. The statute enumerating the powers of boards of education (KSA 2019 Supp. 72-1138) was amended to expand the powers of those boards as follows:

- The board may transact all school district business and adopt policies the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools;
- The power granted by this subsection shall not be construed to relieve a board from compliance with state law or to relieve any other unit of government of its duties and responsibilities prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities are required of another unit of government; and
- The board shall exercise the power granted by this subsection by resolution of the board of education.

“Ordinary” versus “Charter” Ordinances or Resolutions

Ordinary Home Rule Ordinances

City home rule must be exercised by ordinance. The term “ordinary” home rule ordinance was coined after voter approval of the Home Rule Amendment, but is not specifically used in the *Kansas Constitution*. The intent of using the term is to distinguish ordinances passed under home rule authority that are not charter ordinances from all other ordinances enacted by cities under specific enabling acts of the Legislature. Similar terminology is used to refer to “ordinary” county home rule resolutions.

There are several instances in which cities and counties may use ordinary home rule ordinances or resolutions. The first occurs when a city or county desires to act and there is no state law on the subject sought to be addressed by the local legislation. A second instance allows cities or counties to enact ordinary home rule ordinances or resolutions when there is a uniform state law on the subject, but the law does not explicitly preempt local action. The city or county may supplement the state law as long as there is no conflict between the state law and the local addition or supplement.

A third instance involves situations where either uniform or nonuniform enabling or permissive legislation exists, but a city or county chooses not to utilize the available state legislation and instead acts under home rule.

City Charter Ordinances and County Charter Resolutions

A city charter ordinance is an ordinance that exempts a city from the whole or any part of any enactment of the Legislature that is nonuniform in its application to cities and that provides substitute or additional provisions on the same subject. A county charter resolution may be used in essentially the same manner.

Procedures for passage of city charter ordinances require a two-thirds vote of the members of the governing body of the city. Publication of the charter ordinance is required once each week for two consecutive weeks in the official city newspaper. The charter ordinance is subject to a 10 percent protest petition and election procedure.

County charter resolutions must be passed by a unanimous vote in counties where a three-member commission exists, unless the board determines ahead of time to submit the charter resolution to a referendum, in which case a two-thirds vote is required. In counties with a five- or seven-member commission, a two-thirds vote is required to pass a charter resolution unless the charter resolution will be submitted to a vote, in which case a majority is required.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a 2 percent or 100 electors (whichever is greater) protest petition and election procedure.

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J-1
Administrative Rule
and Regulation
Legislative Oversight

J-2
Board of Indigents'
Defense Services

J-3
Home Rule

J-4
Kansas Public
Employees
Retirement System's
Retirement Plans and
History

J-5
Senate Confirmation
Process

J-6
State Employee
Issues

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State and Local Government

J-4 Kansas Public Employees Retirement System's Retirement Plans and History

KPERS Overview—Brief History of State Retirement and Other Employee Benefit Plans

The primary purpose of the Kansas Public Employees Retirement System (known generally as KPERS and referenced in this article as the Retirement System) is to accumulate sufficient resources to pay benefits. The Retirement System administers three statewide plans:

- **KPERS.** The largest plan, usually referred to as the regular KPERS plan or as KPERS, includes state, school, and local groups composed of regular state and local public employees; school district, vocational school, and community college employees; Board of Regents (Regents) classified employees and certain Regents unclassified staff with pre-1962 service; and state correctional officers. As of October 2020, this plan has 148,199 active members;
- **Kansas Police and Firemen's Retirement System (KP&F).** A second plan is known as the KP&F Retirement System for certain designated state and local public safety employees. As of October 2020, this plan has 7,797 active members; and
- **Kansas Retirement System for Judges.** A third plan is known as the Kansas Retirement System for Judges that includes the state judicial system's judges and justices. As of October 2020, this plan has 257 active members.

All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas. Retirement and death benefits paid by the Retirement System are considered off-budget expenses. Starting in fiscal year (FY) 2000, retirement benefit payments, as proposed by the Governor and approved by the Legislature, were classified as off-budget, non-reportable expenditures. As the retirement benefit payments represent a substantial amount of money distributed annually to retirees and their beneficiaries, the historical growth in payments is tracked for informational purposes.

The Retirement System also administers several other employee benefit and retirement plans: a public employee death and long-term disability benefits plan, an optional term life insurance plan, a voluntary deferred compensation plan, and a legislative session-only employee's retirement plan. The Legislature has assigned other duties to the agency in managing investments of moneys from three state funds: the Kansas Endowment for Youth Fund, the Senior Services Trust Fund, and the State Treasurer's Unclaimed Property Fund.

The Retirement System is governed by a nine-member Board of Trustees (Board). Four members are appointed by the Governor and confirmed by the Senate, one member is appointed by the President of the Senate, one is appointed by the Speaker of the House, two are elected by Retirement System members, and one member is the State Treasurer. The Board appoints the Executive Director, who administers the agency operations for the Board.

The Retirement System manages approximately \$20.0 billion in actuarially-valued assets. Annually, the Retirement System pays out more in benefits than it collects in employer and employee contributions. The gap between current expenditures and current revenues is made up with funding from investments and earnings. The financial health of the Retirement System may be measured by its funded ratio, which is the relationship between the promised benefits and the resources available to pay those promised benefits. In the most recent actuarial valuation on December 31, 2019, the funded ratio for the Retirement System was 70.0 percent, and the unfunded actuarial liability (UAL) was \$9.007 billion. This is the amount of financing shortfall when comparing the Retirement System assets with promised retirement benefits.

The Legislature in 2015 passed SB 228, authorizing the issuance of \$1.0 billion in taxable bonds. In August 2015, the Kansas Development Finance Authority issued the bonds with an effective interest rate of 4.69 percent. The bonds, with interest paid semi-annually over a 30-year period, will be paid off in 2045. The bonds' proceeds became part of the Retirement

System's valuation on December 31, 2015. Debt service for the bonds is subject to appropriation and is not an obligation of KPERS.

A Brief History of KPERS

KPERS was created under law passed by the 1961 Legislature, with an effective date of January 1, 1962. Membership in the original KPERS retirement plan (now referred to as KPERS Tier 1) was offered to state and local public employees qualified under the new law and whose participating employers chose to affiliate with KPERS. As of October 2020, there are 60,995 active members in the KPERS Tier 1 plan. Another KPERS tier was created in 2007 for state, school, and local public employees becoming members on and after July 1, 2009. KPERS Tier 2 has many characteristics of the original plan, but with certain modifications to ensure employees and employers will share in the total cost of providing benefits. A third tier was implemented January 1, 2015, for all new employees.

Tier 1 of the KPERS plan is closed to new membership and Tier 2 closed to most new membership on December 31, 2014; certain state correctional personnel are eligible for membership. Tier 3 of the KPERS plan became effective for new employees hired after January 1, 2015. The cash balance plan is a defined benefit, contributory plan according to the Internal Revenue Service (IRS).

School districts generally were not authorized to affiliate with KPERS until the 1970s, but there were three affiliating in 1963 as the first exceptions to the general rule. Two more school districts affiliated in 1966. Later in 1966, four of the five school districts that had affiliated with KPERS were dissolved by the Legislature as of July 1, 1966. No other school districts became affiliated with KPERS until 1971, when a general law brought the old State School Retirement System (SSRS) and its individual members into KPERS.

The 1970 Legislature authorized affiliation with KPERS on January 1, 1971, for any

public school district, area vocational-technical school, community college, and state agency that employed teachers. Other public officials and officers not addressed in the original 1961 legislation had been authorized, beginning in 1963, to participate in KPERS as the result of a series of statutory amendments to KSA 74-4910, *et seq.*, that broadened participation to include groups defined as public rather than exclusively governmental. Amendments to KSA 74-4901 also broadened the definition of which governmental officials and officers were eligible for KPERS membership.

KPERS Tier 1

The Legislature in 2012 modified the KPERS Tier 1 plan design components and the participating employer funding requirements for contributions. Several provisions enhanced supplemental funding for KPERS, first by providing that 80.0 percent from sales of state property would be transferred to the KPERS Trust Fund and, second, by providing for annual transfers of up to 50.0 percent of the balance from the Expanded Lottery Act Revenues Fund (ELARF) to the KPERS Trust Fund after other statutory expenses have been met.

KPERS Tier 2

The Legislature in 2007 established a Tier 2 plan for KPERS state, school, and local employees effective July 1, 2009, and made the existing KPERS members a “frozen” group in Tier 1 that no new members could join. The employee contribution rate for the “frozen” KPERS Tier 1 remained 4.0 percent, until 2014 when it increased from 4.0 percent to 5.0 percent, and in 2015 when it increased from 5.0 percent to 6.0 percent. The contribution rate remains at 6.0 percent today.

The Tier 2 plan for employees hired on or after July 1, 2009, continued the 1.75 percent multiplier; allowed normal retirement at age 65 with 5 years of service, or at age 60 with at least 30 years of service; provided for early retirement at age 55 with at least 10 years of service and an actuarial reduction in benefits; included an automatic,

annual 2.0 percent cost-of-living adjustment (COLA) at age 65 and older; and required an employee contribution rate of 6.0 percent.

The Legislature in 2012 established a Tier 3 plan for KPERS state, school, and local employees effective January 1, 2015, and made the existing KPERS members, hired between July 1, 2009, and December 31, 2014, a “frozen” group in Tier 2 that no new members could join, except for certain state correctional personnel. The employee contribution rate for the “frozen” KPERS Tier 2 remained set at 6.0 percent, but the COLA was eliminated and a new, higher multiplier of 1.85 percent was authorized to be applied retroactively for all years of credited service and for future years of service. As of October 2020, there are 29,542 active members in the KPERS Tier 2 plan.

KPERS Tier 3

The Legislature in 2012 implemented a third tier of the KPERS plan, enacting three major changes: higher employer contributions, higher member contributions, and a cash balance plan for new members beginning January 1, 2015. As of October 2020, there are 57,662 active members in the KPERS Tier 3 plan. KPERS Tier 3 has the following plan design components:

- Normal retirement age—age 65 and 5 years of service, or age 60 and 30 years of service;
- Minimum interest crediting rate during active years—4.0 percent;
- Discretionary Tier 3 dividends—modified formula based on KPERS funded ratio for awarding discretionary credits and capped for early years;
- Employee contribution—6.0 percent;
- Employer service credit—3.0 percent for less than 5 years of service; 4.0 percent for at least 5, but less than 12, years of service; 5.0 percent for at least 12, but less than 24, years of service; and 6.0 percent for 24 or more years of service;

- Vesting (the period of employment necessary for benefits to accrue)—5 years;
- Termination before vesting—interest would be paid for the first 2 years if employee contributions are not withdrawn;
- Termination after vesting—option to leave contributions and draw retirement benefits when eligible, or withdraw employee contributions and interest but forfeit all employer credits and service;
- Death prior to retirement—5-year service requirement and if spouse had been named primary beneficiary, provide retirement benefit for spouse when eligible;
- Early retirement—age 55 with 10 years of service;
- Default form of retirement distribution—single life with 10-year certain annuity;
- Annuity conversion factor—2.0 percent less than the actuarial assumed investment rate of return;
- Benefits option—partial lump sum paid in any percentage or dollar amount up to 30.0 percent maximum;
- Post-retirement benefit—COLA may be self-funded for cost-of-living adjustments;
- Electronic and written statements—the Board shall provide information specified. Certain quarterly reporting is required; and
- Powers reserved to adjust plan design—the Legislature may prospectively change interest credits, employer credits, and annuity interest rates.

Calculation of Retirement Benefits and Eligibility for KPERS

KPERS Tier 1 and Tier 2 retirement benefits are calculated by a formula based on years of credited service multiplied by a statutory percentage for the type of service credit multiplied by final average salary.

For credited service, two categories were defined in the 1961 KPERS legislation: participating service, which was equal to 1.0 percent of defined salary for each year, and prior service equal to 0.5 percent of defined salary for each year. In 1965, the Legislature raised the prior service multiplier to 0.75 percent. In 1968, the prior service multiplier was raised to 1.0 percent, and the participating service multiplier was increased to 1.25 percent for all years of service.

In 1970, legislation set the participating service for school employees to be the same as other regular KPERS members, which was 1.25 percent at that time. The prior service multiplier for education employees was set at 1.00 percent for years under the SSRS and 0.75 percent for years of school service not credited under the SSRS. In 1982, legislation increased the participating service credit for state, school, and local KPERS members from 1.25 percent to 1.40 percent of final average salary for all participating service credited after July 1, 1982.

In 1993, legislation raised the multiplier to 1.75 percent for all years participating service for members who retired on or after July 1, 1993. Three different qualifications for normal retirement were established: age 65, age 62 with 10 years of service, and 85 points (any combination of age plus years of service).

Legislation enacted in 2012, as subsequently clarified during the 2013 Legislative Session, applied a multiplier of 1.85 percent to Tier 2 members retiring under early retirement provisions, as well as to those retiring at the normal retirement dates.

Contribution Rates for KPERS

KPERS Tiers 1, 2, and 3 are participatory plans in which both the employee and employer make contributions. In 1961, employee contributions were statutorily set at 4.0 percent for the first \$10,000 of total annual compensation. The \$10,000 cap was eliminated by 1967 legislation.

Tier 2 employee contribution rates were set at 6.0 percent by statute beginning July 1, 2009. Tier 1

employee contribution rates increased from 4.0 percent to 5.0 percent in 2014, and to 6.0 percent on January 1, 2015.

In 1961, initial employer contributions were set at 4.35 percent (3.75 percent for retirement benefits and 0.60 percent for death and disability benefits) of total compensation of employees for the first year, with future employer contribution rates to be set by the Board, assisted by an actuary and following statutory guidelines.

In 1970, the employer contribution rate for public education employers was set at 5.05 percent from January 1, 1971, to June 30, 1972, with subsequent employer contribution rates to be set by the Board. In 1981, the Legislature reset the 40-year amortization period for KPERS until December 31, 2022, and accelerated a reduction in the employer contribution rates in FY 1982 to 4.30 percent for state and local units of government (KPERS non-school) and to 3.30 percent for education units of government (KPERS school).

Actuarially recommended employer contribution amounts for the state and school group are determined by assessing the unfunded actuarial liability (UAL) of both groups and combining the separate amounts to determine one amount.

During the 1980s, the Legislature capped the actuarial contribution rates for employers on numerous occasions in statutory provisions. In 1988, the Legislature established two employer contribution rates: one for the state and schools and one for the local units of government.

Previously, the state and local employer rate had been combined as the KPERS non-school group. The amortization period for the combined state and school group was extended from 15 to 24 years, with employer contribution rates set at 3.1 percent for the State and 2.0 percent for the Local employers in FY 1990. In 1993, legislation introduced the statutory budget caps that would limit the amount of annual increase for employer contributions and provided a 25.0 percent increase in retirement benefits for those who retired on and after July 1, 1993, and an average 15.0 percent increase in retirement

benefits for those who retired before July 1, 1993. In order to finance the increased benefits, the Legislature anticipated phasing in higher employer contributions by originally setting a 0.1 percent annual cap on budget increases. The Legislature reduced the statutory rate for participating employer contributions for FY 2016 and FY 2017 to 10.91 percent and 10.81 percent, respectively. In FY 2018 and subsequent fiscal years, the contribution rate may increase by no more than 1.20 percent above the previous year's contribution rate. According to the most recent actuarial analysis provided to KPERS, the statutory rate for the state-school group will equal the actuarial contribution rate in FY 2022 at 14.09 percent. In calendar year 2029, the funded ratio is estimated to reach 80.0 percent, which is the minimum ratio for which pension plans are considered by retirement experts to be adequately funded. The state-school "legacy" UAL, which is estimated to be \$6.242 billion, is projected to be eliminated sometime after calendar year 2040. The failure of employers participating in KPERS to contribute at the actuarial rate since 1993 has contributed to the long-term funding problem.

The long-term solvency can also be affected by market performance, changes to benefits, and actuarial assumptions, especially the assumed rate of return. Historically, the assumed rate of investment return was 8.0 percent; in 2017, the Board reduced the rate to 7.75 percent, resulting in an increase in the UAL of approximately \$500.0 million.

Retirement Benefits and Adjustments

The original 1961 KPERS legislation provided for the non-alienation of benefits. The KPERS Act stated, "No alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." (KSA 74-4923)

The 1961 legislation exempted the KPERS retirement benefits from all state and local taxation. In other words, no taxes shall be

assessed, and no retroactive reduction of promised benefits may be enacted. Any change in benefits must be prospective, unless it involves a benefit increase, which may be retroactive in application, as in the case of increasing the multiplier for all years of service credit.

An automatic COLA was not included in the original 1961 legislation. Over the years, the Legislature provided additional *ad hoc* post-retirement benefit adjustments for retirees and their beneficiaries.

Other Recent Revisions

Working after retirement. With regard to substantive policy, the Legislature enacted a new working-after-retirement provision, which took effect on January 1, 2018. For retirees under the age of 62, there is a 180-day waiting period before returning to work. If the retiree is 62 or older, the current 60-day waiting period applies. There must be no prearranged employment agreement between the retiree and the public employer that is affiliated with KPERS. For covered positions, the employer pays the statutory contribution rate on the first \$25,000 of compensation and for that portion of compensation greater than \$25,000, the contribution rate is equal to 30.0 percent.

Covered positions for non-school employees are those that are not seasonal or temporary and whose employment requires at least 1,000 hours of work per year; covered positions for school employees are those that are not seasonal or temporary and whose employment requires at least 630 hours of work per year or at least 3.5 hours a day for at least 180 days. For non-covered positions, the employer makes no contributions.

None of the above provisions sunset.

Starting on January 1, 2018, all retirees who had retired prior to that date in state, local, and licensed or unlicensed school positions are not subject to an earnings limitation. Employers will pay the statutory contribution rate on the first \$25,000 of compensation and for that portion of compensation greater than \$25,000, the

contribution rate will be equal to 30.0 percent for retirees employed in covered positions.

Employer contributions. With regard to fiscal policy, the aforementioned 2012 legislation also modified the rate of increase in the annual caps on participating employer contributions. The 0.6 percent cap increased to 0.9 percent in FY 2014, 1.0 percent in FY 2015, 1.1 percent in FY 2016, and 1.2 percent in subsequent fiscal years until the UAL of the state and school group reaches an 80.0 percent funded ratio.

Legislation in 2016 provided the Governor with enhanced allotment authority and specifically allowed for the reduction of FY 2016 employer contributions to KPERS. In total, \$97.4 million in previously approved FY 2016 employer contributions to the state-school group were delayed.

Legislation in 2017 froze FY 2017 employer contributions at FY 2016 levels, reducing approved contributions by approximately \$64.1 million. FY 2018 employer contributions remained at their statutory level, and FY 2019 employer contributions were reduced by approximately \$194.0 million from their statutory amount. Repayment of the FY 2017 and FY 2019 reductions were approved *via* layered amortization of a level dollar amount over 20 years.

Legislation in 2018 transferred \$56.0 million from the State General Fund (SGF) to the KPERS Trust Fund in FY 2018, which was due to receipts exceeding consensus revenue estimates for the fiscal year by at least that amount. An additional \$82.0 million was transferred from the SGF to the KPERS Trust Fund in FY 2019.

Legislation in 2019 repaid the total reduction in FY 2016 employer contributions authorized in 2016. Additional interest was included for a total amount repaid of \$115.0 million from the SGF to the KPERS Trust Fund in FY 2019. Separate legislation transferred an additional \$51.0 million from the SGF to the KPERS Trust Fund in FY 2020.

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J-1
**Administrative Rule
and Regulation
Legislative Oversight**

J-2
**Board of Indigents'
Defense Services**

J-3
Home Rule

J-4
**Kansas Public
Employees
Retirement System's
Retirement Plans and
History**

J-5
**Senate Confirmation
Process**

J-6
**State Employee
Issues**

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State and Local Government

J-5 Senate Confirmation Process

State law in Kansas requires that certain appointments by the Governor or other state officials be confirmed by the Senate prior to the appointee exercising any power, duty, or function of the office. If a majority of the Senate votes on the question of confirmation of an appointment to an office and the appointment is not confirmed, the office shall become vacant at that time (KSA 75-4315b). When the Senate is not in session, the Senate Committee on Confirmation Oversight (Committee) reviews appointments and makes recommendations related to the appointments to the full Senate.

The Committee has six members with proportional representation from the two major political parties (KSA 2019 Supp. 46-2601). One of the members of the Committee is the Majority Leader of the Senate, or the Majority Leader's designee, who serves as chairperson. The Minority Leader of the Senate, or the Minority Leader's designee, serves as vice-chairperson. If a vacancy occurs in an office or in the membership of a board, commission, council, committee, authority, or other governmental body and the appointment to fill the vacancy is subject to confirmation by the Senate, the Committee may authorize, by a majority vote, the person appointed to fill the vacancy to exercise the powers, duties, and functions of the office until the appointment is confirmed by the Senate. A list of those positions subject to Senate confirmation is included on the following pages, along with tables outlining the confirmation process for gubernatorial appointees and non-gubernatorial appointees.

Acting State Officers

State law provides that the Governor and other appointing authorities may appoint an acting state officer to certain positions (including department secretaries) to serve for a period not greater than six months, during which time the acting state officer shall have and exercise all of the powers, duties, and functions of the office in which he or she is acting (KSA 75-4315a).

**Alphabetical List of Appointments
Subject to Senate Confirmation**

- Adjutant General
- Administration, Secretary
- Aging and Disability Services, Secretary
- Agriculture, Secretary
- Alcoholic Beverage Control, Director
- Bank Commissioner
- Banking Board
- Board of Tax Appeals, Members and Chief Hearing Office
- Central Interstate Low-Level Radioactive Waste Commission
- Children and Families, Secretary
- Civil Service Board
- Commerce, Secretary
- Corporation Commission
- Corrections, Secretary
- Court of Appeals, Judge
- Credit Union Administrator
- Crime Victims Compensation Board
- Employment Security, Board of Review
- Export Loan Guarantee Committee
- Fire Marshal
- Gaming Agency, Executive Director
- Healing Arts, Executive Director of State Board
- Health and Environment, Office of Inspector General
- Health and Environment, Secretary
- Highway Patrol, Superintendent
- Historical Society, Executive Director
- Hospital Authority, University of Kansas
- Human Rights Commission
- Indigents' Defense Services, State Board
- Kansas Bureau of Investigation, Director
- Kansas City Area Transportation District
- Kansas Development Finance Authority, Board of Directors
- Kansas National Guard, General Officers
- Labor, Secretary
- Librarian, State
- Long-Term Care Ombudsman
- Lottery Commission Members and Executive Director
- Mo-Kan Metropolitan Development District and Agency Compact
- Pooled Money Investment Board
- Property Valuation, Director
- Public Employee Relations Board
- Public Employees Retirement System Board of Trustees
- Racing and Gaming Commission Members and Executive Director
- Regents, State Board
- Revenue, Secretary
- Securities Commissioner
- Transportation, Secretary
- Veterans' Affairs Office, Commission on, Director
- Water Authority, Chairperson
- Water Office, Director
- Wildlife, Parks and Tourism, Secretary

Senate Confirmation Process: Gubernatorial Appointments	
Step 1	The Governor appoints an individual to a vacancy requiring Senate confirmation.
Step 2	The Governor's Office collects completed copies of the appointee's nomination form, statement of substantial interest, tax information, and background investigation, including fingerprints.
Step 3	The Governor's Office submits completed copies of the appointee's nomination form and statement of substantial interest to the Kansas Legislative Research Department (KLRD) <i>via</i> the chairperson of the Committee.
Step 4	KLRD and Revisor of Statutes staff review the file for completeness.
Step 5	If the file is complete, KLRD staff informs the chairperson of the Committee that the file is available for review.
Step 6	The appointment is considered by the Committee (during Session, the appointment may be considered by an appropriate subject-matter committee).
Step 7	If the Committee votes to recommend and authorize the appointee, the appointee may exercise the powers, duties, and functions of the office until the full Senate votes on confirmation.
Step 8	The full Senate votes on confirmation during the next Session (or current if Session is underway).

Senate Confirmation Process: Non-gubernatorial Appointments	
Step 1	The chairperson of the Committee is notified by the appointing authority that an appointment has been made requiring Senate confirmation.
Step 2	The appointing authority submits completed copies of the appointee's nomination form, statement of substantial interest, tax information release form, and written request for a background investigation to the KLRD <i>via</i> the chairperson of the Committee.
Step 3	The Director of Legislative Research submits a written request to the Kansas Bureau of Investigation (KBI) for a background check, including fingerprints. The Director also submits a request to the Department of Revenue to release the appointee's tax information.
Step 4	KBI and Department of Revenue officials complete the background and tax investigations. The information is sent to KLRD.
Step 5	The Director of Legislative Research informs the appointing authority and appointee the file is complete and available for review.
Step 6	The appointing authority and appointee may exercise the option to review the information and decide whether to proceed with the nomination.
Step 7	If the appointing authority and nominee decide to proceed with the nomination, the Director of Legislative Research informs the chairperson and vice-chairperson of the Committee the file is available for review.
Step 8	The appointment is considered by the Committee.
Step 9	If the Committee votes to recommend and authorize the appointee, the appointee may exercise the powers, duties, and functions of the office until the full Senate votes on confirmation.
Step 10	The full Senate votes on confirmation during the next Session (or current if Session is underway).

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J-1
Administrative Rule
and Regulation
Legislative Oversight

J-2
Board of Indigents'
Defense Services

J-3
Home Rule

J-4
Kansas Public
Employees
Retirement System's
Retirement Plans and
History

J-5
Senate Confirmation
Process

J-6
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Issues

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State and Local Government

J-6 State Employee Issues

Classified and Unclassified Employees

The state workforce is composed of classified and unclassified employees. HB 2391 (2015) revised the Kansas Civil Service Act to direct all persons in newly hired positions, including any rehired employee and any current employee who voluntarily transfers, or is voluntarily promoted or demoted, into an unclassified position. If federal law requires a state agency to maintain personnel standards on a merit basis and that agency has converted classified positions to unclassified positions, the state agency must adopt a binding statement of agency policy to meet the federal requirements.

Classified employees are selected through a competitive process, while unclassified positions can be filled through direct appointment, with or without competition. While unclassified employees are essentially at will employees who serve at the discretion of their appointing authority, classified employees are covered by the "merit" or "civil service" system, which provides additional employment safeguards. These safeguards are as follows:

- All actions, including recruitment, hiring, classification, compensation, training, retention, promotion, discipline, and dismissal of state employees, shall be:
 - Based on merit principles and equal opportunity;
 - Made without regard to race, national origin or ancestry, religion, political affiliation, or other non-merit factors and shall not be based on sex, age, or disability except where those factors constitute a *bona fide* occupational qualification or where a disability prevents an individual from performing the essential functions of a position; and
 - Employees are to be retained based on their ability to manage the duties of their position.

Characteristics of State Employees

In fiscal year (FY) 2019, a profile of classified state employees reflected the following.

The “average” classified employee	The “average” unclassified employee
Is 46 years of age	Is 45 years of age
Has 14 years of service	Has 10 years of service
Earns \$43,941 per year	Earns \$50,119 per year
Source: SHARP (Statewide Human Resource and Payroll System) (June 2019)—Includes classified and unclassified, benefit-eligible employees, including full- and part-time employees. Excludes Regents universities, legislators, student employees, classified temporary, and unclassified non-benefit-eligible temporary employees.	

State Employee Benefits

Among the benefits available to most state employees are medical, dental, and vision plans; long-term disability insurance; deferred compensation; and a cafeteria benefits plan, which allows employees to pay dependent care expenses and non-reimbursable health care expenses with pre-tax dollars. In addition, state employees accrue vacation and sick leave. The vacation leave accrual rate increases after 5, 10, and 15 years. In general, the State also provides nine to ten days of holiday leave for state employees.

Retirement Plans

Most state employees participate in the Kansas Public Employees Retirement System (KPERs). Employees contribute 6.0 percent of earnings bi-weekly based on salary. The state contribution is set by law each year. In addition to the regular KPERs program, there are plans for certain law enforcement groups, correctional officers, judges and justices, and certain Board of Regents unclassified employees. Contributions from both the employee and the State differ from plan to plan.

Compensation of State Employees

Kansas statutes direct the Director of Personnel Services, after consultation with the Director of the Budget and the Secretary of Administration, to prepare a pay plan for classified employees, which “shall contain a schedule of salary and wage ranges and steps.” The statutes also provide that this pay plan can be modified by provisions in an

appropriation bill or other act. When the Governor recommends step movement on the classified pay plan, a general salary increase, or both, funding equivalent to the percentage increase for classified employees generally is included in agency budgets to be distributed to unclassified employees on a merit basis.

The previous Kansas Civil Service Basic Pay Plan consisted of 34 pay grades, each with 13 steps. The difference between each step was approximately 2.5 percent, and the difference between each salary grade was approximately 5.0 percent. Employees typically are hired into a job at the minimum of the salary grade. Until recently, assuming satisfactory work performance, classified employees would receive an annual 2.5 percent step increase, along with any other general adjustment in salary approved by the Legislature. No classified step movement was recommended or approved from FY 2001 to FY 2006. In FY 2007, the Legislature approved a 2.5 percent step movement, effective September 10, 2006. There has been no further step movement since FY 2009.

New Classified Employee Pay Plans

The 2008 Legislature established five new pay plans for executive branch classified state employees and authorized multi-year salary increases for classified employees, beginning in FY 2009, who are identified in positions that are below-market in salary.

The legislation authorized a four-year appropriation totaling \$68.0 million from all funds, including \$34.0 million from the State General Fund (SGF), for below-market pay adjustments

(excluding the FY 2009 appropriation of \$16.0 million). Due to budgetary considerations, the appropriation for FY 2012 was eliminated, bringing the total appropriation to \$58.7 million. The State Finance Council approved an appropriation of \$11.4 million, including \$8.1 million from the SGF, for FY 2013.

Finally, the legislation codified a compensation philosophy for state employees, which was crafted by the State Employee Pay Philosophy Task Force. This philosophy was endorsed by the State Employee Compensation Oversight Commission during the 2007 Interim. The pay philosophy includes:

- The goal of attracting and retaining quality employees with competitive compensation based on relevant labor markets;
- A base of principles of fairness and equity to be administered with sound fiscal discipline; and
- An understanding that longevity bonus payments shall not be considered as part of the base pay for classified employees.

The following table reflects classified step movement and base salary increases since FY 1997.

Fiscal Year	Salary Adjustment
1997	Step Movement: 2.5 percent Base Adjustment: None
1998	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
1999	Step Movement: 2.5 percent Base Adjustment: 1.5 percent
2000	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
2001	Step Movement: 2.5 percent Base Adjustment: None
2002	Step Movement: None Base Adjustment: 3.0 percent, with 1.5 percent effective for full year and 1.5 percent effective for half a year
2003	Step Movement: None Base Adjustment: None
2004	Step Movement: None Base Adjustment: 1.5 percent effective for last 23 pay periods
2005	Step Movement: None Base Adjustment: 3.0 percent
2006	Step Movement: None Base Adjustment: 2.5 percent, with 1.25 percent effective for full year and 1.25 percent effective for half a year
2007	Step Movement: 2.5 percent, effective September 10, 2006 Base Adjustment: 1.5 percent
2008	Step Movement: None Base Adjustment: 2.0 percent

Fiscal Year	Salary Adjustment
2009	Step Movement: None Base Adjustment: 2.5 percent; Below-Market Salary Adjustments
2010	Step Movement: None Base Adjustment: None; Below-Market Salary Adjustments
2011	Step Movement: None Base Adjustment: None; Below-Market Salary Adjustments
2012	Step Movement: None Base Adjustment: None
2013	Step Movement: None Base Adjustment: None
2014	Step Movement: None Base Adjustment: None Employee Bonus: \$250 Bonus
2015	Step Movement: None Base Adjustment: None
2016	Step Movement: None Base Adjustment: None
2017	Step Movement: None Base Adjustment: None
2018	Step Movement: None Base Adjustment: 2.5 percent < 5 years; 5.0 percent > 5 years with no adjustment; 2.5 percent Judicial
2019	Step Movement: None Base Adjustment: 5.0 percent if not included in 2017 Legislative Pay Plan; 2.5 percent if included at 2.5 percent in 2017 Legislative Pay Plan; 5.0 percent uniformed corrections officers; 5.0 percent nonjudicial; 2.0 percent judicial
2020	Step Movement: None Base Adjustment: 2.5 percent if not otherwise receiving an increase for FY 2020; 15.9 percent for uniformed corrections officers; 5.0 percent for other correctional employees who routinely work with offenders
2021	Step Movement: None Base Adjustment: None

FY 2021. The 2020 Legislature authorized 40,719.9 full-time equivalent (FTE) positions for FY 2021, which is a net decrease of 67.4 positions below the FY 2020 approved number of FTE positions. Included among the adjustments are the following:

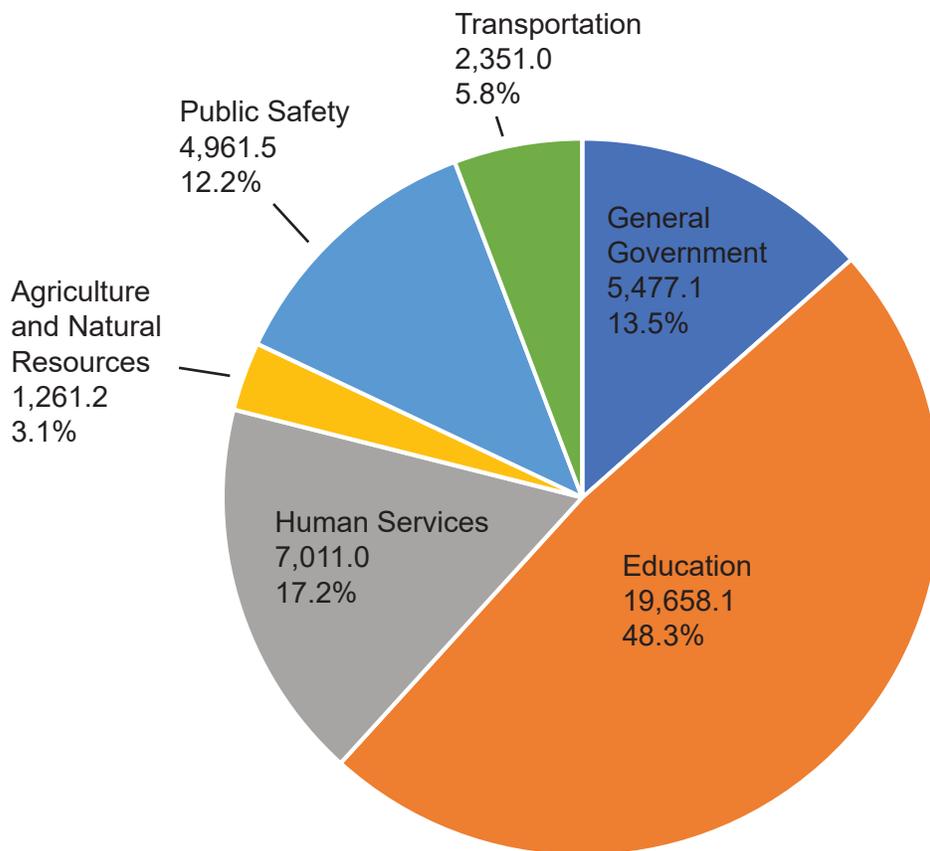
- Added 24.0 FTE positions in the Topeka Correctional Facility for correctional officers in the Security program for FY 2021;
- Added 10.0 FTE positions in the Department for Children and Families (DCF) to increase staff for the Prevention and Protection Services program located at the DCF Service Centers for FY 2021;
- Added 8.0 FTE positions in DCF for regional case management positions for the Family First Prevention Services program for FY 2021;

- Added 7.0 FTE positions in the Office of the Attorney General to expand the Medicaid Fraud Control Unit for FY 2021. This addition allows the unit to meet current needs for law enforcement, analytical, and prosecution capacity to combat provider fraud and abuse of patients; and
- Deleted 119.5 FTE positions in the Lansing Correctional Facility for a continued staff reduction plan as operations migrate to the new facility for FY 2021. The position decrease is primarily in both the Security and Support Services programs.

FTE positions are permanent positions, either full time or part time, but mathematically equated to full time. For example, two half-time positions equal one full-time position. For purposes of this article, FTE position totals also include unclassified temporary positions that are considered “permanent” because they are authorized to participate in the state retirement system.

The following chart reflects approved FY 2021 FTE positions by function of government.

FY 2021 FTE Positions by Function of Government



Total: 40,719.9 FTE

Note: Numbers may not add due to rounding.

Largest employers. The following table lists the ten largest state employers and their number of FTE positions.

Agency	FTE Positions
University of Kansas	5,340.5
Kansas State University	3,754.0
University of Kansas Medical Center	3,333.9
Department for Children and Families	2,545.9
Department of Transportation	2,351.0
Wichita State University	2,188.9
Judicial Branch	1,868.0
Kansas State University – ESARP	1,159.2
Department of Revenue	1,078.7
Department of Health and Environment – Health	1,058.5
* Source: 2020 IBARS (Kansas Internet Budgeting and Reporting System) Approved	

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