

BRIEFING BOOK

KLRD

Kansas Legislative Research Department

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Kansas Legislator Briefing Book

Prepared for the 2023 Kansas Legislature

This publication contains briefs on timely topics that may be relevant during the current Legislative Session. Previous Briefing Book articles and more in-depth resources and memoranda continue to be updated with the latest information and are available on the Kansas Legislative Research Department website at www.kslegresearch.org.

For this and future editions, the Briefing Book has been redesigned and refocused to be a more concise and useful resource for legislators. Articles have a standard length of two pages to efficiently convey the most important points about each topic, and more graphics are included to illustrate large amounts of data in a concise format. The topics covered are also especially topical and timely in nature; previous Briefing Book articles that provided introductory overviews of broader government topics have been moved to the KLRD website.

The goal of these changes is to provide a publication that is compact, easy to read, and relevant to even the most veteran lawmakers as a new session begins in the Statehouse.

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AGRICULTURE AND NATURAL RESOURCES

Administration of Water in Kansas

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The administration of water in Kansas – generally regarding its allocation, cleanliness, and availability – is, for the most part, divided among three state agencies:

- Division of Water Resources (DWR), Kansas Department of Agriculture (KDA);
- Bureau of Water, Kansas Department of Health and Environment (KDHE); and
- Kansas Water Office.

The following state agencies and entities have limited roles in the administration of water:

Adjutant General's Office
Department of Commerce
Division of Conservation, KDA
Bureau of Environmental Field Services, KDHE

Bureau of Environmental Remediation, KDHE
Bureau of Waste Management, KDHE
Kansas Biological Survey
Kansas Corporation Commission
Kansas Department of Wildlife and Parks
Kansas Forest Service
Kansas Geological Survey
Kansas State Research and Extension

State Agency Roles

Division of Water Resources, KDA

The DWR in the KDA is under the direction of the Chief Engineer, who administers 30 laws and responsibilities, including the Kansas Water Appropriation Act (Act).

The Chief Engineer also governs how water is allocated and used; regulates the construction of dams, levees, and other changes to streams; oversees the State's four interstate river compacts; and coordinates the National Flood Insurance Program in Kansas.

One of the most important programs the DWR administers is the Water Appropriation program, which is authorized by the Act and directed by rules and regulations regarding water rights.

This program also coordinates with groundwater management districts, irrigation districts, rural water districts, public wholesale water supply districts, and water assurance districts; administering the Water Transfer Act and Water Banking Act; administers intensive groundwater use control areas (IGUCAs); and performs other functions related to water rights and use.

In 2020, the Kansas Water Appropriation Act turned 75-years-old. It continues to be amended by the Legislature nearly every legislative session as needs, technologies, and available water continue to change over time.

Bureau of Water, KDHE

Much of the authority for maintaining water quality rests with the Bureau of Water in KDHE. Although most of the State's water quality programs have their home in KDHE, some do not. For example, when oil and gas activities have been the source of water pollution, the Kansas Corporation Commission has authority for remediation.

Examples of water quality programs administered by KDHE include:

- Clean drinking water standards;
- Harmful algal blooms management and surface water quality standards;
- The Livestock Waste Management program;
- Municipal, commercial, and industrial wastewater lagoon regulations;
- Watershed management; and
- The Water Well program.

Kansas Water Office

The Kansas Water Office was established as the water planning, policy, coordination, and marketing agency for the State. The primary function of the agency is the development and implementation of the Kansas Water Plan, determined in coordination with the Kansas Water Authority, which consists of 24 members. The Kansas Water Authority also receives input from 14 regional advisory committees that represent the 14 watersheds in the state.

The Kansas Water Office also oversees various water projects that occur all over the state for water conservation, water management,

technology and crop varieties, and additional sources of water supply. In addition, the agency monitors the storage capacity of the federal reservoirs in Kansas, and climate and drought conditions and outlook.

2021 House Committee on Water

The House Committee on Water was created for the 2021 Legislative Session. The Committee held informational hearings throughout the Session, learning from the state agencies and entities about their operations and responsibilities. The Committee discussed how these operations and responsibilities potentially could be modified or consolidated.

During the 2021 Interim, the Committee met in Garden City, where the Committee members learned about water issues in southwest Kansas. The Committee members toured sites and listened to stakeholders. The Committee also held an informational meeting at Garden City Community College.

During the 2022 Legislative Session, the Committee continued discussion on water in the state and introduced legislation regarding water administration, including state agency and entity configuration. The legislation did not pass.

2022 Special Committee on Water

During the 2022 Interim, a Special Committee on Water consisting of Senate and House members met in Topeka, where the Committee members listened to water stakeholders discuss concerns and suggestions for the future of water administration in Kansas.

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AGRICULTURE AND NATURAL RESOURCES

Cotton in Kansas

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Cotton Production in Kansas

Cotton was introduced in Kansas in the 19th century. Though it has never been a mainstream crop in the state's agriculture sector, Kansas currently ranks 14th nationwide in cotton production.

Additionally, production has been steadily increasing. Since 1996, cotton production and ginning in the state has expanded, with more than 220 active cotton growers producing 2.4 million cotton bales in the last 26 years.

Infrastructure and Improvements

Kansas cotton production has increased partially due to the expansion of critical infrastructure, which includes four cotton gins in Anthony, Cullison, Moscow, and Winfield, and two warehouses in Clearwater and Liberal that can store cotton until it is sold. Millions of dollars have been invested in expanding the four gin locations and building the second warehouse in Clearwater in recent years.

What is a Cotton Gin?

The cotton gin is a machine that separates the fiber from the plant. "Ginning" is the process of using the machine to remove seed and debris from the fiber and compressing the fiber into cotton bales that are then sold for further processing into cotton textiles.

Why Do Farmers Grow Cotton?

Water. Cotton is drought-tolerant and does not require as much water to produce compared to corn and soybeans. In discussions at legislative committee meetings, various legislative agricultural tours, and the 2022 Kansas Ag Growth Summit (Summit), farmers stated they decided to grow cotton because they are interested to learn about the plant and want to see if it would be successful as a non-irrigated crop, perhaps outside irrigation crop circles. Other farmers discussed the current drought situation and water availability going forward.

Climate. Cotton thrives in hot temperatures and requires consistent heat with summer rainfall.

Crop Rotation. Some cotton growers in southwest Kansas include cotton as part of their crop rotation, which provides soil health, weed management, and other benefits.

Value-added Agriculture. The debris separated from the fiber can be sold as supplemental livestock feed, mulch, or compost, which is a value-added agriculture practice that avoids waste.

What Are the Barriers to Growing Cotton?

2,4-d Loss. Cotton is one of the more susceptible specialty crops to 2,4-d, which is a widely used herbicide that is also used as a pesticide on traditional row crops. It was announced during

the Cotton Sector Breakout Session at the Summit that 2,4-d resistant seed has been developed for the Kansas climate and will be available in the future.

Infrastructure. At the Summit, it was discussed that there is a need for more cotton acres to be planted – currently, the infrastructure outweighs the amount of cotton being grown. However, should additional cotton acres be grown, the state’s ginning capacity could be easily overwhelmed.

Costs. The cost of machinery to produce cotton can be prohibitive. A large number of acres would need to be planted in order to justify the purchase of harvesting machinery. New cotton growers usually employ a traveling cotton custom processor from Oklahoma or Texas to pick their cotton crop.

A new John Deere cotton picker can cost up to \$600,000, compared to a new John Deere combine that can cost around \$450,000.

Out-of-state Warehouses. At the Summit, frustration was expressed that some Kansas cotton growers send their ginned cotton to warehouses in Oklahoma and Texas instead of the two Kansas locations. Local economies miss out on the dollars that are spent by truckers hauling the cotton bales from the cotton gins.

International Trade. At the Summit, it was stated that because of some international relations, there is some difficulty finding export customers for U.S. cotton.

A document provided at the Cotton Sector Breakout Session at the Summit stated that according to the USDA Foreign Agriculture Service, the top five export customers of raw cotton fiber in 2021 were Turkey, China, Pakistan, Vietnam, and Portugal.

However, the document stated that export potential exists for any country experiencing growth in its gross domestic product.

Kansas Cotton Boll Weevil Act

Boll weevils are a pest that feeds on cotton plants and live in Mexico and southern Texas. While not a current threat to Kansas cotton, a boll weevil outbreak can happen quickly and is devastating. Because Kansas has increased its cotton acres in recent years, other cotton growing states requested that Kansas create its own boll weevil program to manage a potential outbreak.



A boll weevil. Photo by Steve Ausmus, USDA/ARS.

The 2022 Legislature passed HB 2559, which establishes the Kansas Cotton Boll Weevil Act and creates the Kansas Cotton Boll Weevil program. The bill authorizes a board to administer and implement the program, and authorizes the implementation of a boll weevil eradication plan with the Secretary of Agriculture.

The bill also authorizes the board to annually set an assessment per cotton bale at an amount not to exceed \$2.

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AGRICULTURE AND NATURAL RESOURCES

Western Water Issues

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Water Shortage Declared

On August 16, 2021, the U.S. Bureau of Reclamation (Reclamation) declared the first-ever official water shortage on the Colorado River. This declaration triggered significant mandatory water cuts in the Colorado River Basin. While Kansas is not part of the Colorado River Basin, it does have a vested interest in western water issues, as the state relies on Colorado supplying an adequate amount of water each year.

The Colorado River

The Colorado River runs 1,450 miles through seven states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming) and Mexico. Water from the Colorado River is used to irrigate 5.5 million acres of agricultural land and to provide municipal and industrial (M&I) water supplies to 40 million people.

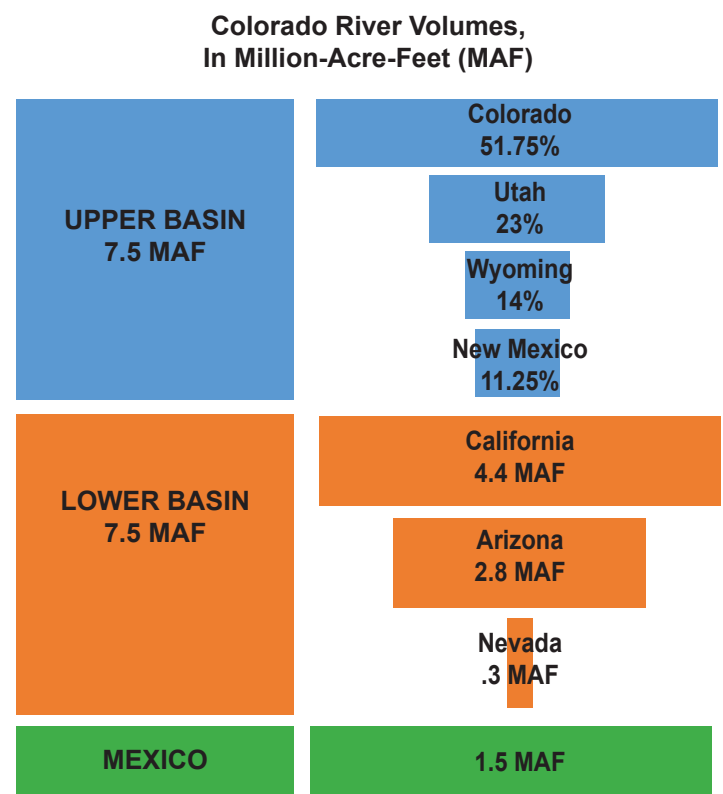
Water from the Colorado River is regulated by dams and stored in reservoirs. Two major dams along the Colorado River are the Glen Canyon Dam and the Hoover Dam. Each of these dams

has an associated storage reservoir. Lake Powell, associated with the Glen Canyon Dam, has a storage capacity of 26.2 million acre-feet (MAF). Lake Mead, associated with the Hoover Dam, has a storage capacity of 26.1 MAF.

The Law of the River

The laws and agreements governing Colorado River operations are referred to as "The Law of the River," stemming primarily from the Colorado River Compact of 1922.

This agreement divided the Colorado River Basin into the Upper Basin and the Lower Basin. Each basin region was apportioned 7.5 MAF per year for beneficial consumptive use.



Problems Facing the Colorado River

Supply and Demand Imbalance

When the Colorado River Compact of 1922 was approved, the appropriations of water supply were based on the average flows during the preceding ten-year period, which included several wet years.

The data from this period indicated the average annual flows of the Colorado River totaled 16.4 MAF. But historical data collected by Reclamation from 1906 to 2020 shows that natural flows averaged closer to 14.7 MAF annually.

Thus, water supplies were over-allocated and subject to overuse. Even though this accounting error has been identified, the problem of overuse is likely to persist. By 2050, Reclamation estimates demand for water from the Colorado River will increase to an amount between 18.1 MAF and 20.4 MAF per year, and the number of people who rely on the Colorado River is projected to double by 2060.

Drought

In addition to the growing demand for water, a study conducted by the U.S. Geological Survey revealed natural flows from the Colorado River have declined approximately 20.0 percent over the last century. Between 2000 and 2020, flows averaged about 12.4 MAF annually. Reclamation found the current drought (2000 to 2021) has been the driest 22-year period on record, and it has resulted in 8 of the 20 driest years on record.

The drought has negatively affected water storage operations along the Colorado River. In June 2021, modeling completed by Reclamation showed there is a 17.0 percent chance that Lake Powell could sink so low by 2024 that hydroelectric generation at the Glen Canyon Dam would become impossible.

Mitigation Efforts

The affected states and Mexico have been working to combat the declining natural flows and elevations of Lake Mead and Lake

Powell. Mitigation techniques include using alternative water sources, like aquifers, changing landscaping regulations to incentivize reduced water use, investing in waste water treatment and reuse, and studying the potential of desalination plants to transform saltwater into freshwater.

In August 2022, Reclamation released the Colorado River Basin August 2022 24-Month Study, which determined a Tier 2a shortage level. Lake Powell will operate in the Lower Elevation Balancing Tier, which includes limiting water year 2023 releases to protect Lake Powell from declining below 3,525 feet. Lake Mead will operate in its first-ever Level 2a Shortage Condition in 2023. In this condition, shortage reductions and water savings contributions are required for the Lower Basin States and Mexico, as follows:

- Arizona will experience a 21.0 percent reduction;
- Nevada will experience an 8.0 percent reduction; and
- Mexico will experience a 7.0 percent reduction.

The Future of the Colorado River

Over the next few years, the states, Mexico, Native American Tribes, and the federal government will negotiate a new framework to determine how to distribute water supplies, as the current guidelines expire in 2026.

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COMMERCE, LABOR, AND ECONOMIC DEVELOPMENT

Job Creation Programs

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Kansas, through the Kansas Department of Commerce and Kansas Department of Revenue, hosts a variety of job creation incentive programs. These programs include both tax incentives and more direct business incentives.

Attracting Powerful Economic Expansion (APEX)

APEX is the most recent economic incentive program created by the 2022 Legislature. The APEX program includes many of the incentives offered in other Kansas programs and enhances them.

APEX is limited to businesses making capital investments in excess of \$1.0 billion and provides incentives for both the qualifying firm and up to five qualified suppliers.

All APEX offers are subject to approval of the State Finance Council. Each time an APEX project is approved, the Kansas Corporate Tax Rate is reduced by 0.5 percent.

Qualifying Firm Incentives:

- Refundable investment tax credits up to 15.0 percent of qualifying capital investment;
- Partial rebate of payroll up to 10.0 percent per year, not to exceed 10 years;
- Training reimbursement up to 50.0 percent of qualifying expenses, not to exceed \$5.0 million annually; \$25.0 million total;
- Relocation reimbursement up to 50.0 percent for non-Kansas residents; limited to \$1.0 million annually and \$10.0 million total; and
- 100.0 percent sales tax exemption up front for materials to construct facility.

Qualifying Supplier Incentives:

- Refundable investment tax credits, scaled, up to 10.0 percent of first \$100.0 million of qualifying capital investment;
- Partial rebate of payroll withholding tax up to 65.0 percent per year, not to exceed 10 years;
- Training reimbursement up to 50.0 percent of qualifying expenses, not to exceed \$250,000 annually; \$1.3 million total; and
- 100.0 percent sales tax exemption up front for materials to construct facility.

Business Incentive Programs

Promoting Employment Across Kansas

Through PEAK, companies can retain 95.0 percent of payroll withholding tax for up to ten years.

Kansas Department of Transportation (KDOT) Economic Development Program

This program funds transportation improvements that can be shown to support job growth and capital investment in the state.

Utility Incentive Programs

These programs provide discounted rates or other cost-saving tools to assist companies looking to establish or grow their operations in Kansas.

Tax Credits and Financing Programs

High Performance Incentive Program (HPIP)

HPIP provides a 10.0 percent income tax credit on eligible capital investment, a sales tax exemption that will be used with the company's eligible capital investment for the qualified facility, and a training tax credit up to \$50,000.

Industrial Revenue Bonds (IRBs)

IRBs are issued by cities, counties, and the Kansas Development Finance Authority. Proceeds from the sale of the bonds to private investors are made available to enable creditworthy companies to purchase land and pay the costs of constructing and equipping new facilities or the costs of acquiring, remodeling and expanding existing facilities. Interest payable on all IRBs is exempt from Kansas income taxation, which reduces the rates by 2.0 to 2.5 percent below comparable taxable bonds.

Sales Tax and Revenue (STAR) Bonds

This financing tool that allows Kansas municipalities to issue bonds to finance the development of major commercial, entertainment, and tourism projects. The bonds are paid off through the sales tax revenue generated by the development.

Tax Increment Financing (TIF)

This program is applicable to industrial, commercial, intermodal transportation

area, and residential projects that use the incremental increase in property taxes to finance improvements within the TIF district.

Real Property Tax Abatement

A property tax abatement up to 100.0 percent property tax for 10 years on real property is available if industrial revenue bonds are utilized or the abatement qualifies under the State Constitution. Abatement on real property is offered by the city or county where the property is located.

Personal Property Tax Exemption

Kansas law exempts the property tax on commercial and industrial machinery and equipment purchased or transferred into Kansas after June 30, 2006. Savings will depend on the fair market value of the property, depreciation, the local mill levy rate, and whether all equipment qualifies for the property tax exemption. The exemption can cover items such as computers, furniture, office equipment, business machinery, and manufacturing and warehouse equipment.

Kansas Aviation Tax Credits

An employer hiring incentive and tuition reimbursement for newly hired employees up to \$5,000 per year and up to \$25,000 total, an employer non-refundable tax credit of 10.0 percent of compensation up to \$75,000 in credits per employee, and an employer tax credit of up to 50.0 percent of employee tuition in a qualified program for up to four years.

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COMMERCE, LABOR, AND ECONOMIC DEVELOPMENT

Local Community Involvement in Economic Development Projects

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This brief provides information on how communities collaboratively prepare for economic development projects.

Considerations for Economic Development Projects

Preparing for new business ventures in a community includes many stakeholders, such as economic development leaders, universities and colleges, housing developers, and other current business leaders. These stakeholders collaborate to define the community's assets and opportunities with input from the residents.

To begin the conversation, communities conduct a needs assessment to determine what resources are currently available. Additionally, community leaders survey residents to determine their interests in their community, priorities of all stakeholders, and issues that need to be addressed before considering a new business. Some options for collecting information are conducting written surveys via mail, which would

cover several topics and assist in determining which factors matter to the most residents. Topics that could be addressed in these surveys include housing, child care and education, transportation, and health. For some communities, a lack of housing or child care may already be an issue. A new business with new residents entering the community may intensify these issues.

Another option would be conducting door-to-door or over-the-phone interviews to determine what matters most to residents. Knowing the concerns of residents early can help to mitigate issues before welcoming a new business to the community.

The Community Tool Box (<https://ctb.ku.edu/en/table-of-contents/assessment>) is a service of the Center for Community Health and Development at the University of Kansas. The Community Tool Box has several resources available regarding how to engage communities in needs assessments and how to use that data to shape policy.

Determining community priorities at the onset of the economic development expansion process can help identify which companies may be the best fit. This can help companies understand a community's goals and needs, and allows residents to have a voice in the process. Community leadership has an opportunity to collaborate with residents and other stakeholders to prioritize the needs and desires of all, set goals based on those needs, and make decisions that best benefit the community.

Case Study: The Panasonic Mega-project

These concepts were applied by communities and stakeholders in northeast Kansas in anticipation of the Panasonic mega-project. For

Panasonic, having a skilled workforce was one important decision-making factor in where to locate a new facility. Panasonic also considered the tax and business incentives provided by the Attracting Powerful Economic Expansion (APEX) program.

For more information on APEX, see the 2023 Briefing Book article “Job Creation Programs” on page 7.

Johnson County Community College and Kansas City Kansas Community College both contributed to the workforce training section of the proposal and identified how they and K-12 education can support the training of employees and general workforce training needs for the company.

Panasonic estimates hiring 500 employees every quarter, and the non-credit component of the community colleges in the surrounding area can assist in meeting that goal.

The community colleges outlined a five step approach for supporting the project:

1. Providing pre-hiring support through focusing on community outreach, building a working relationship with Panasonic Energy of North America (PENA), and creating a consortium of stakeholders;

2. Conducting a training needs assessment based on PENA benchmark standards and training, which also includes developing a training matrix and conducting a labor market assessment;

3. Designing and delivering customized training by identifying various paths to employment, developing new curriculum and modifying current curriculum, and leveraging what is already available;

4. Measuring outcomes through developing an evaluation and assessment strategy, monitoring key performance indicators, and developing plans for continuous improvement; and

5. Providing ongoing training and support with a continuous improvement loop for potential and current Panasonic employees.

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COMMERCE, LABOR, AND ECONOMIC DEVELOPMENT

Workers' Compensation and Mental Health Benefit Limits

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History of Workers' Compensation

Workers' compensation systems in the United States have existed since the early 20th century with Wisconsin's being the first in 1911 and Mississippi's being the most recent in 1948. Unlike other worker safety nets such as unemployment insurance or disability benefits, workers' compensation systems are not federally mandated.

Workers' compensation systems were historically created to address physical injuries to employees by requiring all employers to be either self-insured or purchase an insurance policy to cover the medical expenses and lost wages of an employee injured on the job. When an employee was injured on the job, the employer or their insurance would provide for the employee's medical care as well as provide additional compensation based upon the amount of time at work missed, the severity of the injury, and the permanency of the injury.

An increased understanding of mental injuries such as post traumatic stress disorder (PTSD) and other mental health injuries, especially among first responders, has led to many states amending their workers' compensation systems to also allow for employees to receive benefits for workplace injuries that result only in a mental injury.

State Overview

In Kansas, an employee injured on the job is entitled to medical treatment that is "reasonably necessary" to cure or treat the effects of their injury. The employee may also be entitled to weekly benefit checks for 66.67 percent of the employee's average weekly wage for a period of time based upon the type of injury received and the permanence of said injury. Kansas is one of nine states that either does not cover mental-only workplace injuries or does not have clear state law on whether mental workplace injuries would be covered.

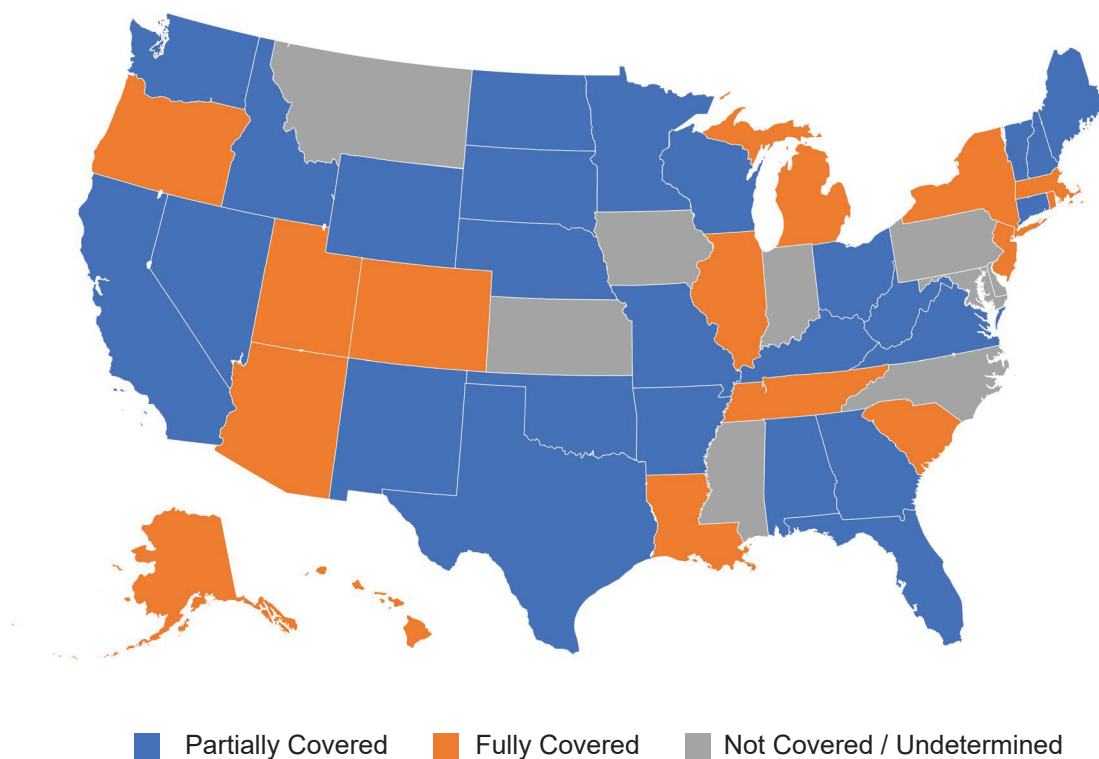
As noted in the following chart, 41 states currently provide for workers' compensation coverage for mental-only injuries in some capacity. Of those states, 26 only cover mental workplace injuries for first responders or mental workplace injuries accompanied by a physical injury.

The remaining 15 states have systems that will cover mental-only workplace injuries with various requirements, such as the injury being from an extraordinary event at work and having evidence from a mental health professional supporting the claim.

Previous Bills in Kansas

SB 491 (2022) was introduced by the Senate Committee on Judiciary at the request of the Kansas Association of Chiefs of Police, Kansas

State Coverage of Workers' Compensation for Mental-only Injuries



Sheriffs Association, and Kansas Peace Officers Association. The bill would have allowed first responders to receive workers' compensation benefits for PTSD.

The bill defined a "first responder" as a firefighter, law enforcement officer, or emergency medical service provider.

The bill received a hearing on February 21, 2022, in the Senate Committee on Commerce. Proponent testimony focused primarily on the risks of first responders to suffer mental-only injuries such as PTSD and the impact that has on the employees and their work.

The issue of whether to include 911 operators in the definition of "first responder" was also brought up by a conferee and discussed by the committee.

Opponent testimony focused primarily on the potential costs to employers as well as

the changes it would make to established practices and understanding of the workers' compensation system.

The committee took no further action on the bill, and the bill died in committee.

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Workforce Development Programs

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The Kansas Department of Commerce provides a variety of workforce development programs.

KANSASWORKS

KANSASWORKS is the state's public workforce assistance system, and it is designed to:

- Help Kansans searching for job opportunities;
- Help Kansans improve job skills; and
- Help employers attract, recruit, and retain employees.

Workforce Centers

There are 26 workforce centers located throughout the state and 2 mobile workforce centers. Workforce centers provide services to both job seekers and employers. The centers assist job seekers by helping create resumes and conduct job searches, providing assistance with interviewing and evaluating job offers, and providing workshops to improve job skills.

Services for employers include recruiting, screening and referring applicants, providing

a location to host job fairs, and highlighting opportunities available at the employer's business.

Mobile workforce centers provide services in regions of the state that lack a permanent workforce center or face unusually high demand for workforce center assistance due to mass layoffs, business closures, natural disasters, or demographic shifts. Services offered are similar to those at permanent workforce center locations and feature computer labs and internet access.

On-the-job Training

The KANSASWORKS On-the-job Training (OJT) program aims to support local businesses that need to train and retrain skilled workers. The OJT program provides a pathway for job seekers to earn wages while learning new job skills and begin new careers. The OJT program also provides employers funds to offset up to 50.0 percent of training costs.

My Reemployment Plan

The Legislature passed Senate Sub. for Sub. for HB 2196 (2021), which implemented the My Reemployment Plan (MRP) program. Claimants who receive three weeks of unemployment payments become part of MRP. These claimants must create or upload their resume and create a job search plan in KANSASWORKS within 14 days of receiving notice of MRP eligibility. Claimants who don't fulfill the two requirements and who are not exempt from MRP will be denied unemployment benefits until such requirements are completed.

Registered Apprenticeship

The Office of Registered Apprenticeship (Office) within the Department of Commerce is designed to support apprenticeships across multiple

industries that will benefit employers and job seekers by incorporating on-the-job learning, technical instruction, mentorship, and long-term employment opportunities. As of September 1, 2022, Kansas has 212 recognized apprenticeship programs with around 3,500 apprentices.

The 2022 Legislature added \$500,000 from the Economic Development Initiatives Fund for the Registered Apprenticeship Program for FY 2023.

Workforce Development and Education

Kansas Promise Scholarship

HB 2064 (2021) established the Kansas Promise Scholarship Act, which provides scholarships for Kansas residents to attend Kansas community colleges and Kansas technical colleges to study:

- Information technology and security;
- Physical and mental health care;
- Early childhood education and development;
- Advanced manufacturing and building trades; or
- Courses designated by the institution as Promise eligible and in the areas of agriculture; food and natural resources; education and training; law, public safety, corrections, and security; or distribution and logistics.

The amount of a student's scholarship for each semester is the aggregate of the amount of tuition and related fees or costs of the institution minus the aggregate amount of all other aid awarded to the student. The scholarship may be used for up to a total of 68 credit hours or \$20,000, whichever occurs first, per student lifetime.

Other Tuition Assistance Programs

State funding is also used for the Accelerating Opportunity: Kansas (AO-K) program and Career and Technical Education (CTE).

The AO-K program delivers career and technical education simultaneously with adult basic skills instruction. Students participating in the AO-K program complete short-term certificate programs aligned with labor market needs, leading to industry-endorsed credentials and job opportunities.

The CTE program pays the tuition of high school students taking approved technical courses offered by Kansas technical and community colleges.

WERX at Wichita State University

Get to WERX is a three-year program at Wichita State University (WSU). Students have the opportunity for full-time, paid employment with the National Institute for Aviation Research (NIAR) WERX program while completing WSU Tech's Aviation Maintenance Technology program and earning credits towards a Bachelor of Applied Sciences in Organizational Leadership and Learning at WSU. Students who complete the program and maintain employment with NIAR WERX are eligible for tuition reimbursement. There is an employment commitment of five years.

Workforce Aligned with Industry Demand (AID)

The Kansas Department of Commerce and Kansas Board of Regents developed Workforce AID to address skills gaps currently challenging companies across the state. Through the Workforce AID program, employers are able to define what skills and credentials their employees need to be successful. Then, training providers, like community colleges, create curriculum designed to deliver those necessary skills and credentials.

KLRD

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EDUCATION

Capital Improvements Funding in Higher Education

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The Kansas Board of Regents (Board) policy definition of “deferred maintenance” is annual maintenance and necessary renewal of facilities systems and components that have been postponed, delayed, or deferred, to a future budget cycle or until funds are available.

The 2020 Report on State University Building Inventory, Space Utilization, and Facilities Condition published by the Board notes that the estimated renewal costs to address deferred maintenance for mission-critical buildings is approximately \$1.2 billion. The Board defines “mission critical” as those buildings that are predominately used for the academic and research mission of the state universities and the infrastructure that directly supports these buildings.

Educational Building Fund

The Educational Building Fund (EBF) was established in 1941 primarily for the construction of new buildings at state universities. The EBF receives revenue from a mill levy on all tangible property in the state that is subject to *ad valorem* taxation.

Currently, the fund is primarily used for deferred maintenance projects at state universities. The Board calculates EBF appropriations using an adjusted square footage formula that considers the gross square footage, building age, and complexity of the physical plant.

For FY 2023, the Board transferred \$41.0 million from the EBF to state universities. Allocations to the state universities can be found in the table below.

Kansas State University	\$	12,259,000
University of Kansas		11,016,700
University of Kansas Medical Center		4,612,500
Wichita State University		4,501,800
Fort Hays State University		3,107,800
Pittsburg State University		3,025,800
Emporia State University		2,476,400
Total	\$	41,000,000

Kansas Board of Regents Policy

The Board approved a new policy in June 2021 for university building maintenance. Beginning in FY 2023, and each year thereafter, each university must calculate a maintenance assessment as a percentage of the professionally estimated replacement cost of mission critical buildings according to an assessment schedule, culminating in a sustainable 2.0 percent of current replacement value as approved by the Board on an annual basis.

Utilizing each university’s Deferred Maintenance Projects Fund, expenditures must be itemized using a standard template for the Board’s review annually.

Each state university must identify and expend campus funds (excluding EBF allocations) annually for the purpose of addressing annual maintenance according to a prioritized assessment plan reviewed by the Board.

Funding for the maintenance assessment may include contributions from university, state, federal, and philanthropic sources.

It is the stated intent of the Board to use the 2.0 percent of current replacement value funds to annually maintain the buildings in proper working order and focus the use of the Educational Building Funds on strategic projects to reduce the backlog of deferred maintenance. The Board voted to allow the universities a six-year escalator to ultimately arrive at the 2.0 percent current replacement value.

2022 Legislative Action

House Sub. for Sub. for SB 267 (2022) appropriated \$35.0 million from the State General Fund (SGF) to the Board for the state universities facilities capital renewal initiative in FY 2023.

Specifically, expenditures must be made for non-recurring commitments for the purpose of increasing annual investment in deferred maintenance to eliminate the backlog and adequately maintain state education institution campuses.

Additionally, all projects using these funds require a \$1-to-\$1 match from either the state education institution or private moneys.

The Board approved the allocation of the funds according to the adjusted square footage formula used by the Board since 2007 to allocate EBF dollars, reflected below:

Kansas State University	\$	10,465,000
University of Kansas		9,404,500
University of Kansas Medical Center		3,937,500
Wichita State University		3,843,000
Fort Hays State University		2,653,000
Pittsburg State University		2,583,000

Emporia State University		2,114,000
Total	\$	35,000,000

House Sub. for Sub. for SB 267 also appropriated \$10.0 million SGF for the demolition of buildings. These funds may only be used for the demolition or razing of buildings on postsecondary educational institutions and must be expended by the end of FY 2025. Of the \$10.0 million, \$750,000 is allocated for Washburn University.

At the time of publication of this article, the Board has approved \$9.0 million of projects from the fund. The division of approved funds by state universities can be found in the table below.

Kansas State University	\$	3,602,000
University of Kansas		1,613,000
Pittsburg State University		1,500,000
Emporia State University		1,000,000
University of Kansas Medical Center		750,000
Wichita State University		500,000
Total	\$	8,965,000

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EDUCATION

Education Savings Accounts

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States adopt three main types of policies to expand private school choice: school voucher programs, scholarship tax credit programs, and education savings accounts (ESAs).

ESA programs involve the deposit of public funds into government-administered accounts. Eligible students and their parents can use the funds for a variety of purposes, including private school tuition, tutoring, and dual or concurrent enrollment credits.

Recent Legislation

In the 2021 and 2022 Sessions, the Legislature considered the Student Empowerment Act, which would have allowed for the creation of accounts, administered by the State Treasurer, to be used by certain students for qualified educational expenses.

Provisions establishing the Act were included in 2021 Sub. for HB 2119, 2022 HB 2550, and 2022 Sub. for HB 2615. None of the bills were enacted.

State Programs

Eight states (Arizona, Florida, Indiana, Mississippi, New Hampshire, North Carolina, Tennessee, and West Virginia) have enacted ESA programs.

The programs in Indiana, North Carolina, and West Virginia began in 2022; however, there is currently an injunction in place preventing the program in West Virginia from operating.

Program Eligibility

Generally, states limit participation in ESA programs to students with Individualized Education Plans (IEPs); household income under a certain amount or percentage of the Federal Poverty Level; or both. As of September 2022, Arizona expanded their program to provide universal student eligibility.

Program Funding

States cap the amount of funding students receive.

Some states make the funding cap **a certain percentage of the total state education funding** (state base aid). Arizona and Indiana set the cap at 90 percent of state education funding. Florida and West Virginia set the cap at 100 percent of state education funding. Tennessee sets the cap at 100 percent of state education funding and categorical grants for students with special needs.

Other states provide a set amount for the funding cap based on **a per student amount**. Mississippi sets a cap for each school year, and it may vary based on funds available. For the 2022-2023 school year, the cap is \$6,779 per student.

A few states also set a cap on **the total annual state cost** for the program. Indiana sets the total amount based on allocations; the cap for the 2022-2023 school year is \$10.0 million. Mississippi sets the total amount at \$3.0 million.

Program Administration

Administration of ESA programs varies by state.

Programs in Arizona, Mississippi, and Tennessee are administered by each state's department of education. Florida's program is overseen by the state's department of education, but is administered by two scholarship funding organizations.

Programs in Indiana and West Virginia are administered by the State Treasurer.

Programs in New Hampshire and North Carolina are administered by other entities. New Hampshire's program is administered by the Children's Scholarship Fund New Hampshire and North Carolina's program is administered by the North Carolina State Education Assistance Authority.

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EDUCATION

Special Education Funding

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Federal law, through the Individuals with Disabilities Education Act (IDEA) ensures a free appropriate education to children with disabilities. Kansas law also sets guidelines for special education.

Individual Education Program (IEP)

IEPs are written statements for each student with an exceptionality. The IEP describes a child's educational program and is developed, reviewed, and revised in accordance with special education laws and regulations. IEPs are developed through a team, which includes parents, school professionals, the student (when appropriate), and personnel from other agencies, as appropriate. The IEP should also set goals for the child toward becoming a member of their community and the workforce and set measurable annual goals that are specific and well-defined.

Prior to a student being evaluated for special education and related services, all interventions must have already been exhausted in the regular classroom environment. After all interventions have been tried in the regular classroom, the student may be recommended to receive special education and related services.

The special education service process can be understood through a two-prong approach: The first prong determines whether the child is eligible for services, and the second prong determines whether the child has a need for services.

Special Education State Aid

Current law provides for Special Education State Aid in the form of reimbursement for the excess costs associated with providing special education services. Excess costs include, but are not limited to, Medicaid replacement state aid, catastrophic aid, transportation aid, and special education teacher aid.

KSA 72-3422 sets the reimbursement rate for Special Education State Aid (also known as categorical aid) at 92.0 percent of total state excess costs, but provides for prorating state aid if the appropriation for Special Education State Aid does not equal 92.0 percent of excess costs. In any year when the appropriation for Special Education State Aid is not sufficient to cover 92.0 percent of statewide excess costs, state aid is distributed at a prorated amount for special education teacher aid.

Federal aid for special education remains relatively static and is provided directly to school districts and through the Kansas State Department of Education (KSDE). Federal aid requires a maintenance of effort by the State, meaning that expenditures for special education in the current fiscal year must be at least as much as expenditures for special education in the prior year.

Special Education and Related Services Weighting (KSA 72-5157)

As enacted, the Kansas School Equity and Enhancement Act (KSEEA) includes a special education weighting. The weighting is calculated

by dividing the amount of Special Education State Aid a district receives by the Base Aid for Student Excellence (BASE) for the current school year. The resulting quotient is the special education weighting and is added to a school district's weighted full-time equivalent (FTE) enrollment. However, this weighting does not increase the amount of State Foundation Aid a school district is entitled to. As the amount of Special Education State Aid a district receives is defined as Local Foundation Aid, the value of the weighting is deducted when computing a district's State Foundation Aid entitlement. The purpose of this weighting is to increase the amount of school district Total Foundation Aid for the purposes of calculating their Local Option Budget.

IDEA Funding

The federal IDEA requires states to provide special education services to children with disabilities between the ages of 3 and 21. This includes children with developmental delays, hearing or visual impairments, emotional disturbances, or autism. IDEA requires each special education student to receive an IEP. In Kansas, the Special Education or Exceptional Children Act (SEECA) (KSA 72-3403 through 72-3441) is generally the same as the federal law but imposes additional special education requirements on school districts.

These include:

- Identifying and providing services to gifted students;
- Using interventions in the regular education classroom before referring a student to special education; and
- Providing special education services to children who reside in the district but attend a private school.

KSDE provides training and technical assistance to school districts for the provision of special education services.

COVID-19 IDEA Funding

The federal American Rescue Plan Act (ARPA) included appropriations for IDEA, including \$2.6 billion for IDEA Part B Grants to States and \$200.0 million for IDEA Part B Preschool Grants. Kansas has received \$25.3 million and \$2.2 million, respectively. IDEA Part B funding helps State Educational Agencies (SEAs), and eligible Local Educational Agencies (LEAs), in offering special education services to children with disabilities.

SEAs may reserve a portion of the Grants to States funding for state-level activities consistent with existing federal law, under § 611 and § 618 of ARPA. The portion that can be reserved under § 611(e) is based on the rate of inflation, so states cannot reserve more funding than the amount that would be reserved under the normal IDEA Part B funding. However, the portion that can be reserved for administration and other state-level services in § 619(d) is based on the rate of inflation or the increase of the state's allocation, so the additional funding under ARPA may allow for the SEA to reserve additional funding for state-level needs. LEAs must have established eligibility under § 613 and must use the funding only to pay for excess costs for special education and related services under IDEA Part B.

IDEA includes a maintenance of effort requirement for both states and LEAs. Kansas and the unified school districts (USDs) cannot reduce the funding for special education services for children with disabilities below the funding for the prior fiscal year. States may seek a waiver from this requirement on a year-by-year basis for exceptional or uncontrollable circumstances. This funding is available until September 30, 2023.

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EDUCATION

Working After Retirement— The Rules of Engagement

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Recent Trends in Retirement

The U.S. Census Bureau recently released its 2021 Survey of Income and Program Participation (SIPP), which collected data on labor force status for respondents in 2020. The data indicated the COVID-19 pandemic's impacts included significant disruption of labor markets but only a modest impact on people's retirement timing.

The Census Bureau added new questions to its 2021 SIPP to ascertain how the pandemic affected survey respondents. Respondents ages 55 and older indicated "modest changes" to their retirement (or expected) timing. Among those respondents employed in January 2020, the impact on retirement timing differed by age. Adults ages 62-65 reported the most changes, with 4.6 percent indicating they had retired early or planned to retire early, and 2.9 percent indicating they had delayed or planned to delay retirement.

The Retirement Experience – Kansas Education

The Commissioner of Education advised a House committee in February 2022 of the "tremendous" impact of the pandemic on the number of licensed teachers, substitutes, certified staff, principals, and superintendents.

From 2020 to 2021, the Kansas State Department of Education (KSDE) noted a 63.0 percent increase in the number of teacher vacancies, with the greatest number seen among special education and elementary teachers. It is anticipated the greatest shortage of qualified staff will occur in school year 2022-2023.

In January 2022, the State Board of Education took emergency action to allow certain individuals to work with a Temporary Emergency Authorized License (TEAL) until June 1, 2022.

Working After Retirement – Public Employees

Members of KPERS (the Kansas Public Employees Retirement System) who opt to return to work for a KPERS employer after retirement are subject to the following statutory rules:

- **Waiting Period (before being rehired).** 180 days for members retiring before age 62 and 60 days for members retiring at age 62 or later.
- **No Prearrangement.** Before a member's retirement and during the waiting period (60 or 180 days), retirees and employers cannot communicate in any way about a return to work. (*Note:* The Internal Revenue Service requires a *bona fide* retirement before a member begins to receive retirement benefits. This equates to a formal termination from covered employment and a lack of agreement to return to work.)

- **Employer Contributions.** If a retiree returns to work in a covered position, the employer (state/school or local) makes contributions to KPERS to help fund the Retirement System. Employers must pay the statutory contribution rate for the first \$25,000 of the retiree's salary and a 30.0 percent contribution rate on earnings over \$25,000.

Note: Covered positions are not seasonal or temporary; individuals would be employed for 630 or more hours of work per year for school employers or 1,000 or more hours of work per year for non-school employers.

2022 Legislation – Reducing the Waiting Period and Certain Working After Retirement Restrictions

The House Committee on Insurance and Pensions held hearings on two working-after-retirement bills during the 2022 Session – HB 2593 (would have established a 60-day blanket waiting period for all retirees hired by a school district, ending June 30, 2024) and HB 2639 (would have established a blanket 30-day period for all retirees hired by a KPERS employer, ending June 30, 2023).

Following a combined hearing on both bills, the House Committee advanced HB 2639, as amended. The amended bill did not contain

temporary adjustments to the waiting period and instead addressed the threshold associated with the employers payment of the 30.0 percent contribution (from \$25,000 to \$27,500) and also permitted the rate to be suspended for one year for any retiree who has been retired for at least one year. For these retirees, the employer would be required to contribute the statutory rate on all compensation (the provision would have expired on June 30, 2023). No further action was taken on the bill.

Next Steps

The Legislature has periodically reviewed working-after-retirement provisions during both the legislative session and the interim (such as in the Joint Committee on Pensions, Investments and Benefits). Changes to these rules would require introduction and enactment of legislation to specify exceptions to the waiting period(s) or employer contributions.

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ELECTIONS AND ETHICS

Kansas Open Records Act and Fees for Service

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Purpose

The Kansas Open Records Act (KORA) states it is the public policy of Kansas that all “public records shall be open for inspection by any person unless otherwise provided” (KSA 45-216).

Who is Covered by KORA?

KORA applies to all entities deemed to be “public agencies” (KSA 45-217), which includes the following organizations:

- The State;
- Any political or taxing subdivision of the State or any office, agency, or instrumentality thereof; and
- Any other entity receiving or expending, and supported in whole or in part by, the public funds appropriated by the State or by public funds of any political and taxing subdivisions of the State.

Additionally, KSA 45-240 requires all nonprofit entities, with the exception of health care

providers, receiving public funds in excess of \$350 per year to adhere to elements of open records requirements.

What Does KORA Require?

KORA allows for the inspection of all public records (KSA 45-218), as defined by law, by “any person” and that “suitable facilities shall be made available for each public agency for this purpose.” All public agencies are required to act upon an open records request no later than the third business day after the receipt of the request. If access to the requested records cannot be granted immediately, then the agency is required to provide a detailed explanation as to why the records are delayed and when the agency anticipates making them available to the requester.

Fees

Given that the provision of open records carries a financial cost to public agencies, KORA allows for public agencies to “charge and require advance payment of a fee for providing access to or furnishing copies of public records” (KSA 45-218).

KSA 45-219 elaborates further on the charging of fees by noting that “for inspection or for copies of a public records . . . each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records.” The following guidance is then provided regarding the calculation of fees:

- Fees shall not exceed the actual cost of furnishing copies, including the cost of staff time;
- For digitally held records, fees shall include only the cost of any computer services, including staff time;

- Fees within the Legislative Branch shall be established in accordance with KSA 46-1207a;
- Fees within the Judicial Branch shall be established by the Supreme Court; and
- Fees within the Executive Branch shall be established by the heads of state agencies.

Opponent testimony stated that, by limiting fees, agencies would be unable to recover the costs incurred to respond to requests.

Proponent, opponent, and neutral conferees proposed a variety of amendments to the bill, and the Senate Committee passed out an amended version of the bill on March 2, 2022. The bill died on General Orders in the Senate.

2022 SB 386

SB 386 (2022) was introduced by the Senate Committee on Ways and Means. The bill would have amended KORA regarding the determination and calculation of fees for open records requests. The bill received a hearing in the Senate Committee on Transparency and Ethics on February 14, 2022. During the hearing, proponent testimony stated that KORA currently allows for public agencies to charge excessive fees that are prohibitive to the purpose of KORA.

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ELECTIONS AND ETHICS

Mail Ballot Return Deadlines

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According to the National Conference of State Legislatures (NCSL), all states offer some option for voting outside of a polling place through absentee, advance, or mail ballots (terminology varies by state). The deadline for receipt of these ballots by election officials varies by state, from the day before an election, a specified time on the day of an election (such as before the close of the polls), or at some point in the days or weeks following an election.

In Kansas, KSA 25-1132 requires mail ballots to be received by the county election office no later than the hour of the closing of the polls on the date of the election. However, such ballots received after the closing of the polls that are postmarked (or indicated by USPS to have been mailed) before the close of the polls will be considered as received before the close of the polls. In HB 2158, the 2017 Legislature established the deadline for the receipt of mail ballots by the county election office as the last delivery of mail by USPS on the third day following the day of the election.

Recent Kansas Legislation

During the 2022 Session, the Kansas Legislature considered altering the deadline for the receipt of mail ballots or the transmittal of such ballots to voters.

Senate Sub. for HB 2056 would have required mail ballots to be received by county election officials by 7:00 p.m. on the day of the election. The conference committee report was adopted by the Senate but did not receive a vote in the House.

SB 35 would have removed the option for the Secretary of State to extend the time of receipt for mail ballots after the third day following an election. The bill died in committee.

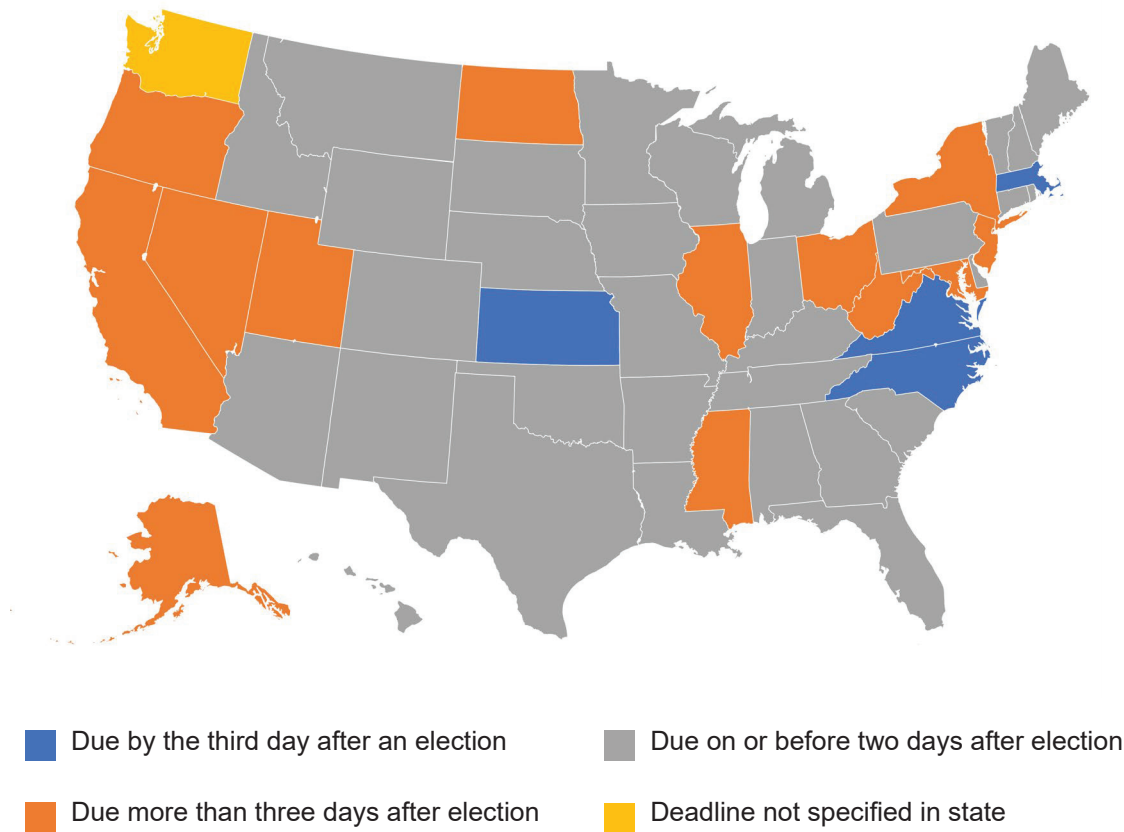
SB 166 would have authorized county election officers to transmit mail ballots to voters up to 40 days prior to an election. The bill died in committee.

Legislation in Other States

Three states have the same deadline as Kansas for the receipt of mail ballots (by the third day after an election).

Fourteen states have deadlines longer than Kansas, allowing for receipt of mail ballots more than three days after an election. These deadlines range from by 5:00 p.m. on the fourth day following an election (Nevada) to within 14 days of an election (Illinois). Three states require mail ballots to be received before the canvass (North Dakota, Utah, and West Virginia). States that allow ballots to be returned after the day of the election generally require the ballots to be postmarked on or before the day of the election.

Mail Ballot Requirements by State



In total, 32 states have deadlines shorter than Kansas, requiring mail ballots to be received on or before the day of the election or within 2 days following an election.

Washington state does not specify a deadline. Ballots received after an election with postmarks before the day of the election are counted.

Please see the map, above, outlining state deadlines in comparison to Kansas.

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ELECTIONS AND ETHICS

State Campaign Finance Disclosures

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Campaign finance disclosure laws vary by state, but most states have two general requirements for candidates for office, political committees, and other entities that primarily work to elect or defeat candidate. They must:

- Register with the state; and
- File periodic reports about their contributions, expenditures, and donors.

One purpose of disclosure laws is to provide transparency during the elections process by publishing the sources of a candidate's election fund. The U.S. Supreme Court, in *Buckley v. Valeo* (1976), held disclosure laws also serve to:

- Help voters evaluate candidates by providing information about funding sources;
- Help deter *quid pro quo* corruption and the appearance of it; and
- Provide information necessary to detect violations of the law.

Kansas Campaign Finance Disclosure Requirements

KSA 25-4148 requires candidates for state office or statewide office to file reports with the Office of the Secretary of State. Candidates for local office must file with the office of the county election officer. Candidates for state office may file paper copies of their reports or file electronically. Candidates for statewide office are required to file their reports electronically.

KSA 25-4148 also requires that reports must state the cash on hand on the first day of the reporting period, the aggregate amount of contributions, names and addresses of contributors, and the total of expenditures.

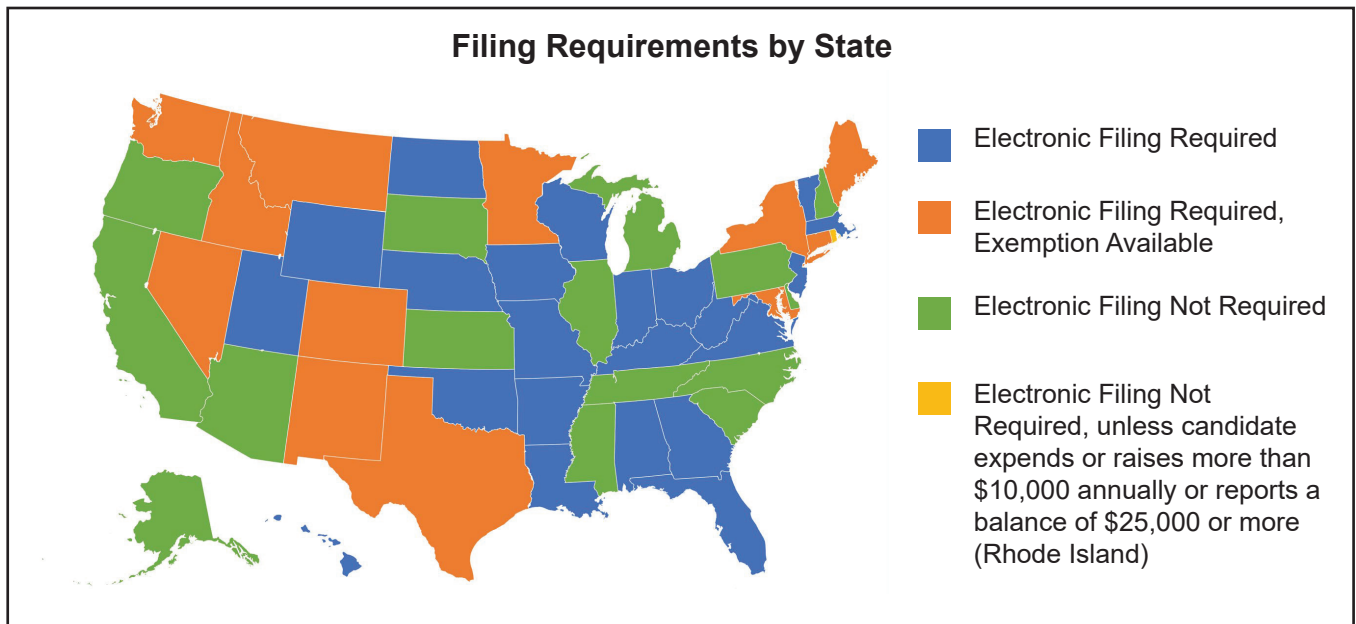
All reports must be filed on or before each of the following days:

- The eighth day before a primary election;
- The eighth day before a general election;
- January 10 of the year after an election year; and
- January 10 for any calendar year when no election is held.

Campaign Finance Disclosure Requirements in Other States

Thirty-four states and the District of Columbia require candidates for office to file campaign reports electronically. Sixteen states, including Kansas, do not require electronic filing, but offer electronic filing as an alternative to paper filing.

Of the 34 states that require electronic filing, 12 states offer waivers or an exemption for cause.



Most states require candidates for office to disclose their contributions and expenditures. Some states require additional disclosures, such as debts, loans, fundraising sales, in-kind donations, and transfers.

Deadlines for filing campaign finance reports vary across states. Some states require monthly reports (e.g. Florida), quarterly reports (e.g. Illinois, Missouri, and Oklahoma), or annual reports (e.g. Indiana, Michigan, and Minnesota). A few states, like Georgia and North Dakota, also require donations that exceed a specified amount to be reported within 24 or 48 hours.

Recent Kansas Legislation

Three bills from the 2021 and 2022 Legislative Sessions would have amended the Campaign Finance Act to require candidates for state offices to file reports electronically with the Office of the Secretary of State:

- 2021 HB 2053;
- 2022 HB 2579; and
- 2022 SB 429.

The bills would have included an exemption for cause from the electronic filing requirement, which could have been granted by the Executive Director of the Kansas Governmental Ethics Commission.

HB 2579 and SB 429 also would have amended the filing deadline for reports due in January from January 10 to the Tuesday following the second Monday in January.

Proponent testimony included the Executive Director of the Kansas Governmental Ethics Commission and a representative from the Office of the Secretary of State. Proponents stated that requiring electronic filing of campaign finance reports would reduce errors and increase agency efficiency because reports could be analyzed automatically.

HB 2053 was stricken from the Calendar by Rule 1507 on March 5, 2021. HB 2579 and SB 429 died on Senate General Orders on May 23, 2022.

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FEDERAL AND STATE AFFAIRS

Delta-8 THC

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Delta-8 tetrahydrocannabinol (delta-8) is a psychoactive synthetic cannabinoid found in the *Cannabis sativa* plant and shares similar molecular structures to delta-9 tetrahydrocannabinol—commonly known as THC.

Concentrated amounts of delta-8 are usually made from hemp-derived cannabidiol—commonly known as CBD. The main difference between delta-8 and delta-9 is the amount of each present in the dry weight of the *Cannabis sativa* plant.

Both substances also have slight differences in their chemical structure. In terms of treatment and usage,¹ delta-8 is used similarly to delta-9, with effects including pain reduction, sleep support, increased relaxation, and improved appetite.

¹ FDA “5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC” <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>

Federal Policy and History

In 2014, President Obama established the Hemp Pilot Program through the Farm Bill, which allowed state agriculture departments and research institutions to grow and study hemp. In addition, the 2014 Farm Bill defined the legal THC threshold in industrial hemp to be 0.3 percent or less on a dry weight basis.

On December 20, 2018, President Trump signed the 2018 Farm Bill into law, removing hemp and all byproducts of cannabis with less than 0.3 percent THC from the definition of marijuana in the Controlled Substances Act, and removed hemp and hemp seeds from the Drug Enforcement Administration’s (DEA) schedule of controlled substances. The Food and Drug Administration have not evaluated or approved the usage of Delta-8.

Delta-8 THC Extraction

Delta-8 must be extracted in a lab. To make delta-8 THC, cannabidiolic acid (CBDA) first must be extracted from legal hemp, typically using hemp flowers or the entire plant. Next, during the decarboxylation process, the hemp material is heated, which converts CBDA to CBD, increasing the potency of the extracted material. Once the material is “decarbed,” one or multiple methods can be used to remove the CBD from the dried plant material.

Extraction Methods

There are several ways to extract cannabinoids from the cannabis plant, including:

- Solvent-based extractions, in which ethanol is used to “wash,” break down, and extract the hemp material;

- Solvent-less extraction, which requires special equipment but does not require any solvent, making this a “cleaner” method; and
- Oil extractions, a type of solvent-based extraction that uses an oil base to slowly heat the material and separate THC and CBD material. The heated, decarboxylated cannabinoids bind with the fat molecules in the oil, resulting in an oil infused with cannabinoids.

State Regulation of Delta-8

Since delta-8 products have recently entered the market, many states have not yet passed laws regulating such products.

Definition of Marijuana or THC

The following states specifically include the delta-8 cannabinoid in its definition of marijuana or THC, which allows products to be further regulated in accordance with state law:

- Connecticut;
- Florida;
- Michigan;
- Mississippi;
- Nevada;
- New York;
- Oklahoma; and
- Texas.

Processing

Other states specifically prohibit the processing of industrial hemp to concentrate the delta-8 cannabinoid:

- California;
- Colorado;
- New York; and
- North Dakota.

Possession

Both North Dakota and Oregon prohibit the possession of delta-8 products.

Delta-8 in Kansas

Attorney General Opinion 2021-4² addresses the topic of whether products containing delta-8 THC are legal to sell in Kansas and whether a statutory limit exists for the amount of delta-8 THC in products.

The opinion concluded that delta-8 THC is considered a Schedule I controlled substance in Kansas and is unlawful to possess, consume, or sell unless it is derived from industrial hemp and contained in a lawful hemp product containing not more than 0.3 percent total THC.

The opinion specified that cigarettes, cigars, teas, and substances for use in vaping devices are not lawful hemp products.

The opinion further concluded that delta-8 THC derived from any source other than industrial hemp is a Schedule I controlled substance and unlawful to possess or sell in Kansas.

See the 2023 Briefing Book article “Medical Marijuana” on page 31 for more information on the study and regulation of cannabis products.

² Attorney General Opinion 2021-4, https://ag.ks.gov/docs/default-source/ag-opinions/2021/2021-004.pdf?sfvrsn=791ea41a_6

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Medical Marijuana

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In recent years, several bills were introduced to legalize medical or recreational marijuana use in Kansas. Legislation that would have legalized medical marijuana in Kansas received a floor vote for the first time in 2021, as House Sub. for SB 158 passed out of the Kansas House 79-42.

Medical Use. Laws in the 37 states, and the District of Columbia, that provide for comprehensive medical marijuana and cannabis programs meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains or products; and allowance for either smoking or vaporization of marijuana products, plant material, or extract.



Another 11 states allow the use of low-THC, high-cannabidiol (CBD) products for specific medical conditions, or provide a legal defense for their possession. The following seven states have recently enacted comprehensive medical marijuana laws after previously legalizing low-THC products: Alabama, Florida, Mississippi, Missouri, Oklahoma, Utah, and Virginia.

Recreational Use. As of December 2022, the following 21 states have legalized the recreational use of marijuana: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Mexico, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington, and the District of Columbia.

Connecticut, Illinois, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Virginia legalized recreational use of marijuana through the legislative process, while the remaining states used a ballot initiative. In South Dakota, a successful ballot initiative to legalize recreational use of marijuana was ruled unconstitutional by a Circuit Judge; the South Dakota Supreme Court upheld this decision on November 24, 2021, by a vote of 4-1.

Recent Kansas Legislation

In 2021, H. Sub. for SB 158 would have enacted a medical marijuana regulatory system.

In 2022, the Senate Committee on Federal and State Affairs held hearings on SB 560, which

similarly would have enacted a medical marijuana regulatory system.

2022 Special Committee on Medical Marijuana

The Special Committee on Medical Marijuana met on four days during the Interim to receive testimony from state agencies, law enforcement, local government, the business community, and private citizens and to receive answers to research questions. The Special Committee is also directed to make recommendations to the 2023 Kansas Legislature for comprehensive medical marijuana legislation.

The Special Committee made a recommendation that when the Legislature consider medical marijuana legislation, that it especially consider the information and perspectives provided on topics related to laboratory testing, taxes, licensing, methods of administration, and physicians, among other topics.

The full report of the Special Committee will be available at: <http://www.kslegresearch.org/KLRD-web/Committees/Committees-Spc-2022-Medical-Marijuana.html>.

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FEDERAL AND STATE AFFAIRS

Medication Abortion

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Medication abortion, also referred to as medical abortion or the abortion pill, is a pregnancy termination method that involves the use of two medications. The U.S. Food and Drug Administration (FDA) first approved medication abortion in 2000. In 2016, the FDA approved a new evidence-based regimen and drug label, which guides current clinical practice.

The 2016 FDA-approved medication abortion regimen includes two medications: mifepristone and misoprostol.

Mifepristone blocks progesterone, an essential hormone for the development of a pregnancy, and prevents an existing pregnancy from progressing.

Misoprostol is taken 24 to 48 hours after mifepristone and works to empty the uterus by causing cramping and bleeding, similar to an early miscarriage. Within two weeks, a follow-up visit is conducted to confirm the pregnancy was terminated. This medication abortion regimen is approved for use during the first 10 weeks of a pregnancy.

Medication Abortion in Kansas

Under current Kansas law, medication abortion is permitted. KSA 65-6724 prohibits abortion after 22 weeks of pregnancy, with an exception for medical emergencies. State law has requirements for accessing abortion procedures, including medication abortions (KSA 65-6709). Before performing an abortion procedure, physicians are required to:

- Have the informed consent of the person receiving the abortion procedure. If such person is a minor, the written consent of that person's parents is also required;
- Wait 24 hours from the time the patient provides such consent before performing the procedure;
- Inform the patient that they have the right to view an ultrasound image of the fetus at least 30 minutes prior to the abortion procedure, at no extra cost; and
- Inform the patient that they have the right to listen to the heartbeat of the fetus at least 30 minutes prior to the abortion procedure, at no extra cost.

If a medical emergency compels the performance of an abortion, the physician must inform the patient why the procedure is necessary to prevent their death or substantial and irreversible impairment.

Use of Telemedicine

KSA 65-4a10(b) prohibits medication abortion from being administered via telemedicine unless the patient and physician are physically present in the same room. On November 23, 2022, a Shawnee County District Judge granted a Wichita abortion clinic's request for a temporary injunction of this law.

States' Physician Requirements for Medication Abortion

Physician Required	Physician + Physical Presence Required ¹	Physician Not Required
Alaska	Alabama*	California
Florida	Arizona	Colorado
Georgia	Arkansas*	Connecticut
Idaho*	Indiana**	Delaware
Iowa	Kansas	Hawaii
Maryland	Kentucky*	Illinois
Michigan	Louisiana*	Maine
Minnesota	Mississippi*	Massachusetts
Montana	Missouri*	New Hampshire
Nevada	Nebraska	New Jersey
Ohio*	North Carolina	New Mexico
Pennsylvania	North Dakota*	New York
Utah*	Oklahoma*	Oregon
Wisconsin	South Carolina	Rhode Island
Wyoming*	South Dakota*	Vermont
	Tennessee*	Virginia
	Texas*	Washington
¹ Arizona, Arkansas, Louisiana, Missouri, Texas, and West Virginia explicitly ban the use of telemedicine for abortion.		
*Complete or Partial Abortion Ban		
**Medication abortion ban after 8 weeks		

Medication Abortion in Other States

Most states permit the use of medication abortion. In 15 states, abortion is prohibited except in cases of medical emergencies or to preserve the life and health of the mother.

Certain states that permit medication abortion have requirements for accessing abortion care, some of which are similar to Kansas requirements. Currently, 32 states authorize only physicians to prescribe abortion medication.

Of these states, 19 also require the prescribing physician be in the physical presence of the patient. In 17 states and the District of Columbia, an advance practice clinician can prescribe abortion medication.

The table above illustrates which states require abortion medications to be prescribed by a physician or require the physician be in the physical presence of the patient.

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FEDERAL AND STATE AFFAIRS

Sale and Delivery of To-Go Drinks and Direct Shipment of Alcohol

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Since 2020, 33 states and the District of Columbia (D.C.) have passed legislation related to alcohol delivery, to-go drinks, and direct shipment of alcohol.

Sale and Delivery of To-Go Drinks

Prior to March 2020, no state had explicit laws governing to-go orders or delivery of alcoholic drinks from bars, restaurants, and other retailers that are licensed to provide alcohol for on-premises consumption.

According to the National Restaurant Association, 39 states and D.C. loosened their cocktail to-go laws during the COVID-19 pandemic. As of October 2022, 19 states and D.C. have made permanent laws regarding to-go drinks, and 14 states have extended their provisions temporarily.

In Kansas, Executive Order 20-27, issued April 22, 2020, allowed for sale of to-go beer and alcoholic drinks from liquor retailers, class A and

B clubs, and drinking establishments until 11:00 p.m., as long as the drinks are in containers placed inside sealed, clear bags. HB 2137 (2021) made this permanent law. Delivery of to-go beer and alcoholic drinks is currently not allowed.

Currently, 35 states and D.C. allow for some form of local alcohol delivery directly to consumer homes, though what may be delivered and what types of licensees are allowed to deliver varies from state to state. For example, Minnesota does not allow for delivery from on-premises licensees, such as cocktails or beer from a restaurant, but consumers may have pre-packaged alcohol delivered from a retail store or other off-premises licensee. Alaska, Connecticut, Indiana, Mississippi, Pennsylvania, and Wyoming also restrict deliveries to unopened, pre-packaged alcohol, while Idaho and New Hampshire specifically restrict deliveries to wine and beer.

States also regulate who may deliver alcohol, with 11 states prohibiting delivery by third-party licensees such as DoorDash or Drizly.

Delivery from Retailers

Delivery from retailers, such as liquor or grocery stores, has also expanded since March 2020. Arkansas, Alabama, Georgia, Mississippi, Oklahoma, New Mexico, and West Virginia recently passed laws permitting alcohol to be delivered from retail stores. Iowa, Louisiana, and Wyoming expanded existing delivery laws to allow alcohol purchased from retail stores to be delivered by third-party services.

Direct Shipment of Alcohol by Manufacturers

According to the National Conference of State Legislatures (NCSL), the majority of states have statutory provisions that allow for out-of-state manufacturers to ship alcoholic beverages

Authorized for Direct Shipment	States
All spirits as specified	Florida, Hawaii, Kentucky, Nebraska, New Hampshire, Rhode Island, West Virginia, District of Columbia
Beer and wine as specified	Delaware, Massachusetts, Montana, North Dakota, Ohio, Oregon, Vermont, Virginia
Wine, cider, and mead	Connecticut, New Jersey
Wine and cider	New Mexico
Beer, wine, and cider	Oregon
Wine and mead	Arkansas
Wine only	Alabama, Alaska, Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah (wine subscriptions), Washington, Wisconsin, Wyoming

directly to consumers, with many states restricting direct shipments to wine. Most states require a specific direct shipping license or permit. The table above provides more detail.

For more information on the direct shipment of alcohol by manufacturers, visit the NCSL at <https://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>.

Alcohol Authorized for Direct Shipment by State

Currently, KSA 2021 Supp. 41-308a(a)(10) authorizes farm wineries to ship wine in-state if the winery obtains a special order shipping license pursuant to KSA 2021 Supp. 41-350. Microbreweries and microdistilleries are not permitted to ship product directly to in-state customers.

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FEDERAL AND STATE AFFAIRS

Tobacco 21

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On December 20, 2019, President Trump signed 2019 HR 1865, which contained provisions that raised the federal minimum age for tobacco product sales from 18 to 21. The bill amended the Federal Drug and Cosmetic Act with a new section that applies to all “covered tobacco products,” including cigarettes, smokeless tobacco, hookah tobacco, cigars, pipe tobacco, and electronic nicotine delivery systems (ENDS).

The new law prohibits the sale of such products to adolescents under the age of 21, thus restricting access of adolescents to tobacco products. This policy is known as Tobacco 21.

Federal Policy

In October 2009, the U.S. Food and Drug Administration (FDA) prohibited “characterizing flavors,” like fruit flavors, contained in cigarettes, under the authority granted by the Family Smoking Prevention and Tobacco Control Act (Act).

In May 2016, the FDA published a final rule that deemed ENDS products to be a “tobacco product” subject to the Act. The new tobacco provisions of 2019 HR 1865 amend prior

regulation pertaining to the manufacturing and advertising of tobacco, package warnings, and the Synar Agreement.

The Synar Agreement requires states to be in compliance with the federal tobacco minimum purchase age law as a condition of each state’s receipt of Substance Abuse Prevention and Treatment Block (SAPTB) grant funding.

States are required to: (1) Annually conduct random inspections to ensure that retailers do not sell tobacco to individuals under age 21; (2) Annually report such findings to the federal government; and (3) Comply with reporting and enforcement requirements within the three-year grace period before funds are withheld.

With this change, the federal government sought to prioritize enforcement against youth access to not only traditional tobacco products, but also ENDS products that appeal to children, such as certain flavored tobacco products.

Kansas Tobacco Laws

Kansas law has not increased the tobacco use, sale, consumption age from 18 to 21. However, many local municipalities, like Allen County, Douglas County, Finney County, Johnson County, Labette County, Leavenworth County and Wyandotte County, had adopted Tobacco 21 ordinances prior to federal measures.

Unlawful Acts

KSA 79-3321 describes the following as unlawful:

- The sale, furnishing or distribution of tobacco and consumable materials like cigarettes, electronic cigarettes to persons under 18 years of age;

- The purchase or attempt to purchase these products by a person under 18 years of age; and
- The sale of tobacco and consumable materials through a vending machine in an establishment open to minors is unlawful.

Kansas Indoor Clean Air Act

KSA 21-6109 through KSA 21-6116 prohibit the use of tobacco products in public places except in gaming floors of Lottery and Racetrack gaming facilities.

Likewise, the use of tobacco products in school buildings is also prohibited under KSA 72-6285.

Penalties

Penalties for selling or furnishing tobacco and consumable materials to a person under 18 years of age are:

- As a class B misdemeanor, punishable by a minimum fine of \$200, KSA 79-3322(c)(1); and
- An additional \$1,000 penalty due to the Department of Revenue, KSA 79-3391(a).

Recent Kansas Legislation

HB 2563 (2020) was introduced by the House Committee on Federal and State Affairs. This bill would have increased the minimum age to purchase or possess cigarettes and tobacco products from 18 to 21, and would have prohibited cigarette vending machines and flavored vaping products in Kansas.

Additionally, the definition of “smoking” would have been amended to include the use of e-cigarettes. Selling, furnishing, and distribution of tobacco to an individual under age 21 would have been classified a class B misdemeanor.

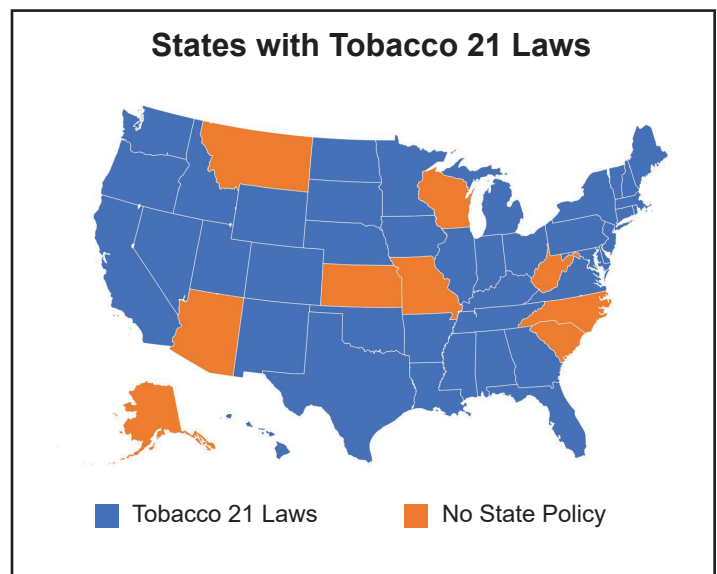
The bill passed out of the House Committee, but was not considered by the full House of Representatives.

HB 2340 (2021) was introduced by the House Committee on Federal and State Affairs. This bill would have amended the Kansas Cigarette and Tobacco Products Act, the Kansas Indoor Clean Air Act, law concerning student health, and criminal statutes related to the use and possession of cigarettes, electronic cigarettes, consumable material, and tobacco products by any person under the age of 21.

The bill passed out of the House Committee, but died in Senate Committee at the end of the 2021-2022 biennium.

Other States’ Tobacco 21 Laws

In total, 41 states have passed legislation to raise the minimum age to purchase tobacco products to 21 years old.



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FINANCIAL INSTITUTIONS AND INSURANCE

Health Insurance Mandates in Kansas

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This article examines required insurance benefits in Kansas law, the “test track” requirements for the Legislature’s consideration of proposed mandates, and any anticipated reporting from the State Employee Health Plan (SEHP).

What is a mandate? Statutes added in Kansas insurance law require certain health care providers be paid for services rendered (provider mandates) or be paid for certain types of prescribed coverage or benefits (benefit mandates). For example, Kansas has a benefit mandate for osteoporosis:

- a) Any individual or group health insurance policy. . . which [is] delivered, issued for delivery, amended or renewed on or after July 1, 2001, shall include coverage for services related to diagnosis, treatment and management of osteoporosis when such services are provided by a person licensed to practice medicine and surgery in this state, for individuals with a condition or medical history for which bone mass measurement is medically necessary for such individual.

Such policy, provision, contract, plan or agreement may apply to such services the same deductibles, coinsurance, and other limitations as apply to other covered services (KSA 40-2,166a).

Which health insurance plans are affected when a new mandate becomes law? Generally, the new law would apply to individual health insurance policies and group health insurance policies issued. The legislation would likely also specify policies issued by Health Maintenance Organizations (HMOs), municipal-group funded pools, and the SEHP.

Which health plans and policies would not be required to incorporate new mandate requirements in their policies?

- Self-insured health plans, including Association Health Plans (Employee Retirement Income Security Act of 1974 [ERISA] plans). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor (states cannot regulate these self-insured plans);
- Supplemental benefit policies (e.g., dental care and vision plans); and
- Short-term limited duration plans.

How do proposed new mandates become law? The following chart illustrates the statutory process and associated timing for the Legislature’s consideration of a proposal during the 2023 Session.

Kansas Health Insurance Mandates

Prescribed Path – Kansas Law*

1 Requirements on proponents (KSA 40-2248, KSA 40-2249)	Prior to legislative consideration, proponents must complete a social and financial impact report.	2023 (if law is passed)
2 Study in the SEHP** (KSA 40-2249a)	Before being implemented statewide, the coverage mandate must be studied for at least one year in the SEHP.	Study completed in Plan Year 2024.
3 Report to the Legislature (KSA 40-2249a)	The SEHP study report is submitted to the Legislature.	By March 1, 2025
	The Legislature could allow the coverage mandate to apply statewide by not taking action.	Effective after March 1, 2025
	Or, the Legislature could pass a new law to continue the SEHP study only or make the mandate effective statewide beginning at a later date.	As early as July 1, 2025

* Prior law has excepted one or more of the prescribed steps (e.g., 2010 S Sub. for HB 2160 required the Kansas State Employees Health Care Commission to provide coverage for certain autism spectrum disorder services and required all individual and group insurance policies that provide coverage for prescription drugs to cover orally administered anticancer medications).

**The SEHP is a health care benefits plan administered by the Health Care Commission. Final Plan Year 2021 enrollment included 45,516 contracts (80,324 total covered lives).

Are any proposed mandates currently subject to the “test track”? During the 2021-2022 biennium, legislation requiring coverage of certain benefits or specified conditions was introduced: breast cancer examinations (SB 48 and HB 2241, specifically exempted from test track requirements); contraceptives (HB 2343); and mental illness and substance use disorders (SB 82 and HB 2073 – expansion of an existing mandate). Two bills proposed coverage only in the SEHP: HB 2110 (treatment of PANS/PANDAS — autoimmune conditions that affect children) and HB 2129 (tobacco cessation benefits).

The 2022 Legislature passed HB 2110. Coverage for PANS/ PANDAS will commence in Plan Year 2023, and the report to the Legislature’s Presiding Officers must be provided on or before March 1, 2024.

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HEALTH AND SOCIAL SERVICES

COVID-19 Vaccine Mandates

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Federal Mandates

In September 2021, President Biden released his “Path Out of the Pandemic COVID-19 Action Plan,” which set forth plans to increase COVID-19 vaccination rates for certain groups. An overview of these actions, and subsequent state responses, follows.

Private Employer Mandate

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) mandating private employers with 100 or more employees to develop, implement, and enforce a mandatory COVID-19 vaccination policy, unless they adopt a policy requiring employees to choose to either be vaccinated or undergo regular COVID-19 testing and wear a face covering at work.

In January 2022, the U.S. Supreme Court held that the broad approach by OSHA to regulate all private employers with 100 or more employees was impermissible as the ETS took on “the character of a general public health measure, rather than an occupational safety or health standard.”

[*Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 211 L. Ed. 2d 448, 142 S. Ct. 661, 665.] With this ruling, the Court said OSHA could not enforce the ETS while litigation challenging the standard is ongoing and, subsequently, OSHA withdrew the ETS on January 25, 2022.

Following this decision, large businesses nationwide could not be required to mandate vaccines for employees, but states and individual businesses could enforce their own vaccine requirements, as outlined below.

State Response

During the 2021 Kansas Special Session, legislation was passed on November 22, 2021, providing that if employers do require vaccinations, medical and religious exemptions must be provided and allowing an employee to file a complaint with the Secretary of Labor alleging that an employer failed to offer an exemption, improperly denied an exemption request, or took another punitive action against the employee related to a requested exemption.

As of November 2022, no state has mandated vaccinations for private employers, and 14 states have limitations on employer mandates, such as requiring exemptions and other accommodations. Montana has prohibited all private employers in the state from mandating vaccinations. Twelve states have required vaccinations for state employees, and 15 states have prohibited such mandates for state employees.

Federal Contractor Mandate

On September 9, 2021, President Biden issued Executive Order 14042, mandating COVID-19 vaccinations for all employees working for federal contractors and subcontractors.

In December 2021, the U.S. District Court for the Southern District of Georgia ruled President Biden had likely exceeded his authority in issuing the executive order, and ordered a nationwide injunction on the federal contractor mandate. On August 28, 2022, the U.S. Court of Appeals for the 11th Circuit ruled that the nationwide injunction on the vaccine mandate was overbroad and narrowed the scope of it to apply to the plaintiffs in the case (seven states, including Kansas).

Other courts have issued separate injunctions for several states that block the enforcement of the mandate while litigation continues, and the Biden administration has stated it will not enforce the mandate until further notice.

CMS Mandate

On November 4, 2021, the Centers for Medicare and Medicaid Services (CMS) issued an emergency rule requiring staff of health care facilities that receive CMS funding to be vaccinated for COVID-19.

In January 2022, the U.S. Supreme Court upheld the mandate, stating CMS has the authority to impose requirements on those facilities as a condition of their Medicaid and Medicare participation, and because facilities in the programs have long been required to follow certain rules, including those about infection prevention and control. In October 2022, the Supreme Court declined to hear a petition appealing this decision, filed by a group of ten states (including Kansas).

State Response

On March 29, 2022, Governor Kelly announced Kansas state regulators would not enforce the health care worker mandate, resulting in a \$350,000 cut in CMS funding. In response, Attorney General Schmidt asked the U.S. Supreme Court to review the legality of the mandate on May 12, 2022.

On November 17, 2022, a coalition of 22 states filed a petition under the federal Administrative

Procedures Act requesting CMS to repeal its rule implementing the mandate and related guidance.

Department of Defense (DoD) Mandate

Secretary of Defense Lloyd Austin announced in August 2021 that all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, must receive the COVID-19 vaccination. Each branch followed its own deadline for vaccination compliance, the last of which was June 2022, for National Guard members.

DoD has stated that National Guard members who do not show proof of vaccination and do not qualify for an authorized exemption will not be paid by the federal government when they are activated on federal status, including monthly drill weekends and the two-week annual training period. National Guard leadership has stated it foresees a drop in enlistment of 9,000 members nationwide in federal fiscal year 2023 if current vaccination policy continues.

Other Armed Forces branches have begun separating members for noncompliance with the mandate, but National Guard leaders have not begun formally separating any members as of November 2022.

State Response

Governors in seven states have formally asked Secretary Austin to not enforce the mandate for Guard members, and Alaska, Oklahoma, and Texas have filed lawsuits on behalf of their National Guard members. A number of individual servicemembers have also joined lawsuits based on the DoD's refusal to grant requested religious exemptions.

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HEALTH AND SOCIAL SERVICES

Fentanyl Testing Strips

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Fentanyl

According to the U.S. Drug Enforcement Administration (DEA), pharmaceutical fentanyl is a synthetic opioid medication developed for pain management and approved by the U.S. Food and Drug Administration (FDA) for pain relief and anesthetic uses. First developed in 1959, it is approximately 100 times more potent than morphine and 50 times more potent than heroin.

From 2011 through 2018, fatal overdoses associated with abuse of clandestinely produced and illegally distributed fentanyl and fentanyl analogues increased markedly. According to the National Forensic Laboratory Information System, reports on fentanyl (both pharmaceutical and clandestinely produced) increased from 5,400 in 2014 to over 56,000 in 2017, as reported by federal, state, and local forensic laboratories in the United States.

In April 2022, the DEA sent a letter to federal, state, and local law enforcement officials warning of a nationwide spike in fentanyl-related mass-overdose events.

Between October 2020 and October 2021, more than 105,000 Americans died of drug overdoses, and more than 66.0 percent of those deaths were related to fentanyl and other synthetic opioids.

Fentanyl Testing Strips

Fentanyl testing strips (FTS) are a form of inexpensive drug testing technology originally developed for urine tests, but which have been shown to be effective at detecting the presence of fentanyl in drug samples.

To use FTS, testers dissolve a small amount of the drug to be tested in water and dip the test strip into the liquid for 15 seconds. The test strip registers results within 5 minutes; typically, one line indicates fentanyl is present and two lines indicate a negative result. FTS are inexpensive, typically costing about \$1 each.

FTS Research and Federal Action

A 2018 study conducted by researchers at Brown University, Boston Medical Center, and Johns Hopkins University in collaboration with law enforcement agencies found that FTS were accurate at detecting fentanyl in samples of street drugs and were unlikely to produce false negative results.

A 2017 study conducted by the Drug Overdose Prevention and Education Project in San Francisco concluded that FTS are a useful tool for harm reduction while also raising some considerations: FTS are not an effective tool for systematically documenting the presence of fentanyl in the drug supply, they can produce false positive results, and they do not provide any information about the percentages of fentanyl in drugs or detect the presence of any other drugs.

In April 2021, the federal Centers for Disease Control and Prevention (CDC) and Substance Abuse and Mental Health Services Administration (SAMHSA) announced that federal funding could be used to purchase rapid FTS in an effort to curb drug overdose deaths. The change applies to all federal grant programs, as long as the purchase of FTS is consistent with the purpose of the program.

Legality and Decriminalization of FTS

As of October 2022, FTS are legal in 26 states and the District of Columbia. In Georgia, 2022 HB 1175, which exempts testing equipment used to determine whether a controlled substance has been adulterated by a synthetic opioid from the definition of “drug related object,” was signed into law in May 2022 and will take effect in July 2023.

In addition to Georgia, several states have passed legislation in recent years affecting the legality of FTS:

- Since 2018, 12 states have amended their statutory definition of “drug paraphernalia” or “drug related object” to exempt some or all types of drug testing equipment. These states include Colorado, Louisiana, Minnesota, Nevada, Tennessee, and Wisconsin;
- Four states – Nebraska, New York, South Carolina, and Wyoming – either never had a provision regarding testing equipment in statute or amended it prior to 2018;
- Nine states, including Alabama, Georgia, Louisiana, Minnesota, Tennessee, and Wisconsin, limit allowed testing equipment to only that which can detect fentanyl, fentanyl analogues, or other synthetic opioids;
- Seven states, including Illinois, Oklahoma, and North Carolina, as well as the District of Columbia, include testing equipment in their statutory definition of “drug paraphernalia” but do not have a criminal penalty for using or possessing such equipment, at least for some individuals, such as those who work for syringe service programs; and

- In 12 states where FTS are illegal, Good Samaritan fatal overdose prevention laws provide legal immunity from criminal penalty in certain situations.

Kansas Legislative Action on FTS

During the 2021-2022 biennium, FTS were addressed by amendments:

- HB 2277 (2021) would have amended the definition of “possession” and “drug paraphernalia” in the Kansas Criminal Code (Code). The House Committee of the Whole amended the bill to exempt FTS from the definition of “drug paraphernalia.” The bill died in the Senate Committee on Judiciary; and
- HB 2262 (2021), regarding the Uniform Controlled Substances Act, was taken up by a 2022 Conference Committee, who agreed to amend the bill to exclude FTS from the definition of “drug paraphernalia” in the Code, remove the contents of 2022 HB 2540, and add the amended contents of HB 2262. The Conference Committee Report for HB 2540 was not adopted by the Senate, and a second Conference Committee was appointed, which agreed to remove the provision regarding FTS.

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HEALTH AND SOCIAL SERVICES

KanCare: Waivers and MCO Contracts

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The Kansas Medicaid program, KanCare, is a jointly funded state and federal government program that provides health coverage to qualifying individuals. States can choose how to administer their own Medicaid program within federal guidelines, creating programs that vary from state to state. To allow this flexibility, the federal government offers waivers that allow states to waive certain provisions of the Medicaid statutes related to program design. Kansas is currently approved for two waivers: a section 1115 waiver for KanCare and a section 1915(c) waiver for home and community-based services.

KanCare: Section 1115 Waiver

In 2013, Kansas shifted from a state-operated program to KanCare, in which managed care organizations (MCOs) provide services. As part of creating KanCare, Kansas successfully applied for a Section 1115 demonstration waiver and has operated under a 1115 waiver since 2013, renewing it once in January of 2019. Generally, Section 1115 demonstrations are approved for an initial five-year period and can be extended for up to an additional three

to five years, depending on the populations served. States commonly request and receive additional five-year extension approvals.

The current 1115 waiver is set to expire in December 2023, at which time Kansas must obtain a new source of authority to continue implementation of its managed care delivery system. The following are authorities being considered for the continuation of KanCare:

1115 Waiver Renewal. While Kansas has the option to pursue a renewal of the 1115 waiver, this type of waiver requires budget neutrality, or a limit on the amount of federal dollars that can be spent. This cap on federal spending may limit the state's ability to address certain initiatives such as reducing the waitlists for Home and Community Based Waivers and increasing provider reimbursement rates.

1915(b) Waiver. This type of waiver is initially granted for a two-year period and allows states to provide services through a managed care plan. While this waiver does not have a budget neutrality cap, states must demonstrate that their managed care system is cost effective. This waiver allows states to require that all state plan populations enroll in managed care, including dual eligibles (individuals who receive both Medicare and Medicaid benefits) and children with special health care needs.

State Plan Amendment. States can also permanently implement a managed care delivery system by getting a state plan amendment approved by the Centers for Medicare and Medicaid Services (CMS). State Plan amendments do not need to be renewed but do place some limits on the populations a state can require to enroll in managed care. For example, State Plan amendments do not allow states to

require dual eligibles and children with special healthcare needs to enroll in a managed care program.

All three of these authorities allow states to be exempt from certain requirements of Medicaid. For example, they each allow states to implement managed care in only some areas of the state and allow states to require people to receive their Medicaid services from a managed care plan. Regardless of the type of authority, however, states are required to comply with other federal guidelines around managed care, including reasonable access to providers and the right to change managed care plans.

KanCare Managed Care Contracts

Kansas contracts with three managed care organizations – Aetna, Sunflower Health Plan, and United Healthcare – to provide Medicaid services under KanCare. These contracts outline

the relationship between the State and the MCOs and establish the state’s expectations and priorities. The current contracts between each of the MCOs and the State began in January 2019 and will expire on December 31, 2023.

Although the MCO contracts are set to expire at the same time as the current 1115 waiver, the MCO contracts are not tied to the federal authority the State uses to operate KanCare. If the timing necessitated it, Kansas could shift to a new waiver or federal authority without needing to amend the MCO contracts.

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**Differences Between
the 1115 Waiver and MCO Contracts**

1115 Waiver	MCO Contracts
Governs the state’s relationship with the federal government	Governs the MCO’s relationship with the State
Focused on the state’s authority to draw down federal funds, required reports, and other issues	Focused on the day-to-day relationships between the MCOs, providers and beneficiaries
Does not directly affect providers and beneficiaries	Directly affects providers and beneficiaries

HEALTH AND SOCIAL SERVICES

Mental Health Beds in Kansas for Adults

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Psychiatric Hospital Treatment

In Kansas, the highest level of care for adults experiencing severe mental illness is provided in psychiatric hospitals. The Kansas Department for Aging and Disability Services (KDADS) oversees state-run psychiatric hospitals and licenses private psychiatric hospitals.

Pursuant to the 1990 Mental Health Reform Act, the first step for admission to a state hospital is to be screened by a community mental health center. The Care and Treatment Act for Mentally Ill Persons provides guidance for admission to the state hospitals.

Generally, those admitted to state hospitals are individuals who exhibit severe symptoms that cannot be safely and effectively treated in the community.

Osawatomie State Hospital (OSH) Campus

Founded in 1866, OSH provides inpatient psychiatric care to individuals in the eastern third of the state. In 2015, the Centers for Medicare and Medicaid Services (CMS) decertified OSH due to staffing shortages and other issues.

In 2017, CMS recertified Adair Acute Care (AAC), an independent facility on the OSH campus that met CMS certification requirements.

Between OSH and AAC, the OSH campus has 174 combined state licensed and CMS-certified beds. The OSH campus is currently undergoing a renovation to add 12 CMS-certified beds.

Larned State Hospital (LSH)

Founded in 1914, LSH serves individuals who have been voluntarily or involuntarily committed, as well as individuals charged with felony crimes and sexually violent predators. The Psychiatric Services Program (PSP) serves the voluntarily and civilly committed population. The PSP operates 90 beds.

Proposed State Hospital in Sedgwick County

An appropriation of \$15.0 million to construct a hospital in Sedgwick County is included in 2022 House Sub. for SB 267. The State Finance Council has the authority to release the funds based on a recommendation of the 2022 Special Committee on Mental Health Beds, tasked with studying the topic.

The plan presented to the Special Committee is to construct a 50-bed facility in Sedgwick County, with 25 beds for voluntary admissions and 25 beds for forensic competency evaluations.

Private Psychiatric Hospitals (PPHs)

PPHs include freestanding hospitals and psychiatric units in community hospitals. PPHs allow individuals to receive care in their community. There are 330 PPH beds across the state.

SIA Program

Private psychiatric hospitals can participate in the SIA program. SIA hospitals provide state hospital level of care to individuals who would otherwise require treatment at OSH or LSH. Six private psychiatric hospitals are enrolled in the SIA program to provide inpatient psychiatric services to adults.

Short-term, Community Treatment

The role of crisis stabilization centers (CSCs) and crisis intervention centers (CICs) is to provide preventative treatment in the community to prevent future admission to a state hospital.

Crisis Stabilization Centers (CSCs)

CSCs provide urgent care in the community to **voluntary patients** for up to 72 hours. There are 95 CSC beds across the state.

Crisis Intervention Centers (CICs)

CICs provide urgent care in the community for up to 72 hours to **involuntary patients** pursuant to the Crisis Intervention Act. CICs are not active yet. KDADS has submitted proposed regulations to the Office of the Attorney General for review. Upon approval of the regulations, 62 CIC beds will be available across the state.

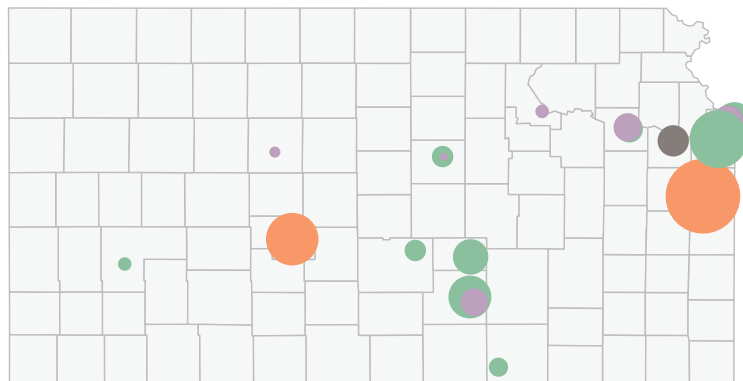
The map and chart below illustrate adult mental health bed capacity across the state.

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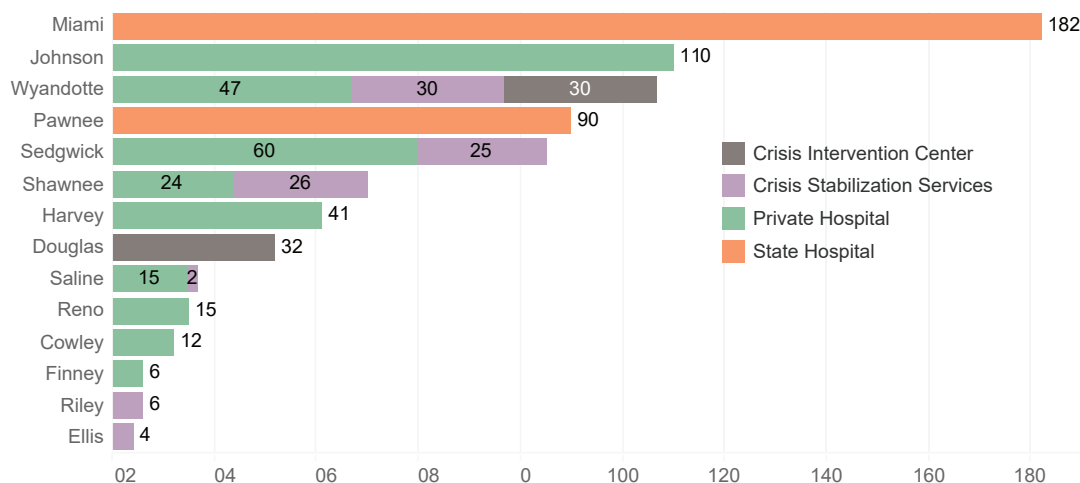
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Adult Mental Health Beds in Kansas



Number of Beds by County and Facility Type



HEALTH AND SOCIAL SERVICES

Mental Health Beds in Kansas for Youth

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The first place for a youth to receive mental health treatment in Kansas is in a community mental health center. If the child needs more intensive care than can be provided safely and effectively in the community, the child may be treated in one of the following placements.

Children's Inpatient Acute Beds

Kansas does not operate any state-run inpatient psychiatric facilities for youth with mental illness. Instead, inpatient acute psychiatric care is provided by private hospitals.

There are 212 children's inpatient acute beds across the state. Beginning in calendar year 2023, 14 new beds will become available in Hays pursuant to a contract between the Kansas Department for Aging and Disability Services and KVC Hospitals.

State Institutional Alternative (SIA) Beds

Private psychiatric hospitals providing inpatient acute psychiatric services can enroll in the SIA program. SIA providers receive patients based on daily capacity. KVC Kansas City, KVC Wichita, and Via Christi are currently enrolled in the SIA

program. Once the KVC facility in Hays opens in calendar year 2023, it will join the SIA program.

Psychiatric Residential Treatment Facilities (PRTFs)

PRTFs provide out-of-home residential psychiatric treatment to youth whose needs cannot be effectively and safely met in a community setting.

Prior to receiving services in a PRTF, all community-based services must have been exhausted. Community-based services include Home and Community Based Services under waivers, such as the Serious Emotional Disturbance waiver and the Intellectual and Developmental Disability waiver.

A PRTF is not a permanent or long-term placement. Instead, it is a treatment facility providing all psychiatric services needed by the child. The programs provide active treatment in a structured therapeutic environment.

Admission to a PRTF begins by requesting PRTF services from the child's Medicaid managed care organization (MCO). The child is then assessed for medical necessity. The MCO must render its decision within 14 days, and the child's guardian can appeal if the request for PRTF services is rejected. The child is then placed on a waitlist for a PRTF if medical necessity is met.

There are currently 9 PRTFs across the state operating a total of 424 PRTF beds.

Qualified Residential Treatment Programs (QRTPs)

QRTPs provide residential treatment under the federal Family First Prevention Services Act.

QRTPs treat children with serious emotional or behavioral disorders or disturbances. QRTP services are provided to foster children only. The goal is to provide services at QRTPs to allow foster children to successfully transition back to family care. QRTPs are tasked with:

- Facilitating family participation in the child’s treatment, to the extent involvement is appropriate and in the child’s best interest;
- Facilitating outreach to family members, documenting how outreach is made, and maintaining contact information for known family and fictive kin of the child;
- Documenting how family members are integrated in treatment, including post-discharge, and how sibling connections are maintained;

- Providing discharge planning and family-based aftercare support for at least 6 months post-discharge; and
- Having 24/7 access to care from registered or licensed nursing staff and other licensed clinical staff.

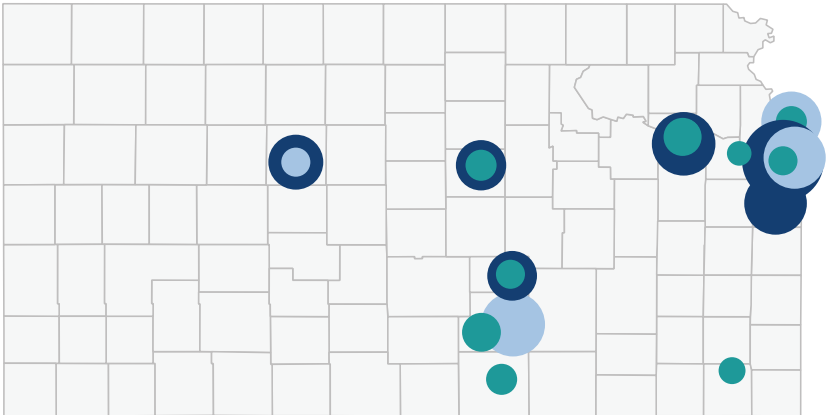
There are currently 147 QRTP beds across the state. The map and chart below illustrate current mental health beds for youth across the state.

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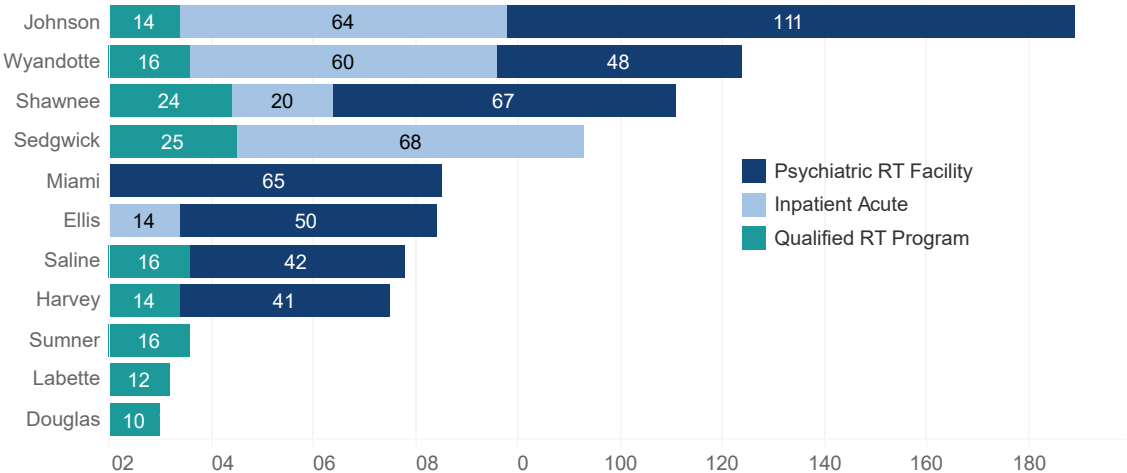
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Youth Mental Health Beds in Kansas



Number of Beds by County and Facility Type



* RT = "Residential Treatment"

HEALTH AND SOCIAL SERVICES

Monkeypox (Mpox)

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Description, Reporting, and Case Numbers

Mpox, formerly known as monkeypox, is a viral disease, specifically an orthopoxvirus,¹ and is in the smallpox virus family.

The symptoms of mpox are primarily flu-like (such as fever, headache, muscle aches and backaches, chills, and exhaustion).

In addition, a rash may occur before or after the flu-like symptoms. The rash may be painful, itch, or look like pimples or blisters. An infected person is contagious until the rash fully heals, no scabs remain, and there is a new layer of skin.²

1 Kansas Department of Agriculture (KDA). Spring 2022. Monkeypox Outbreak in the U.S. Kansas Animal Health News. p.6. https://agriculture.ks.gov/docs/default-source/dah-newsletters/kdah-summer-2022-newsletter.pdf?sfvrsn=39b09ac1_0

2 Kansas Department of Health and Environment. Monkeypox (Mpox) Symptoms. <https://www.kdhe.ks.gov/1923/Monkeypox-Mpox>

Mpox symptoms in people are required to be reported³ to the Kansas Department of Health and Environment (KHDE) by mandated reporters, including both symptoms that are present before laboratory testing and the laboratory testing results. As of December 21, 2022, there were 44 cases of mpox in Kansas.⁴

Treatment and Vaccine

KDHE reports there are no treatments specifically available for mpox, but a treatment protocol is available based on antiviral drugs and vaccines originally developed to prevent smallpox.⁵

The U.S. Food and Drug Administration approved an emergency use vaccine, JYNNEOS, on August 9, 2022.⁶ Vaccine purchase and distribution is a federal function overseen by the Administration for Strategic Preparedness and Response in the U.S. Department of Health and Human Services.

The total allocated vials nationwide of the JYNNEOS vaccine as of December 16, 2022,⁷ was 1,091,650, of which 857,493 had been requested by states.

3 Kansas Department of Health and Environment. *How to Report Monkeypox/Orthopoxvirus Cases and Testing in Kansas*. <https://www.kdhe.ks.gov/1948/How-to-Report-MonkeypoxOrthopoxvirus-Cas>

4 *Supra note 2*

5 *Supra note 2*

6 U.S. Food and Drug Administration. Emergency Use Authorization. <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#monkeypox>

7 U.S. Department of Health and Human Services Administration for Strategic Preparedness and Response. JYNNEOS Vaccine Distribution by Jurisdiction. <https://aspr.hhs.gov/SNS/Pages/JYNNEOS-Distribution.aspx>

Kansas is allocated 2,156 vials and has requested and received 2,156 vials.

Current availability of the vaccine in Kansas may be found on the KDHE website.

Federal Public Health Emergency

A nationwide public health emergency was declared by the U.S. Secretary of Health and Human Services on August 4, 2022,⁸ for an outbreak of mpox cases. On December 6, 2022, HHS announced that a renewal of the emergency is not anticipated. If it is not extended, the mpox public health emergency will end January 31, 2023.⁹ If a public health emergency is declared in Kansas, the state response would follow the Kansas Emergency Management Act, codified at KSA 48-920 *et seq.*

Zoonotic Virus

Mpox is a zoonotic virus, meaning it can spread between people and animals.⁹ On August

8 U.S. Department of Health and Human Services Administration for Strategic Preparedness and Response. Determination that a Public Health Emergency Exists. <https://aspr.hhs.gov/legal/PHE/Pages/monkeypox-4Aug22.aspx>

9 Healthcaredive. *HHS to lift mpox emergency declaration as cases drop*. <https://www.healthcaredive.com/news/monkeypox-mpox-public-health-emergency/638047/>

10 KDA. Monkeypox Outbreak in the U.S.

19, 2022, the American Veterinary Medical Association¹⁰ reported that in June 2022, researchers in France, confirmed the first known transmission of mpox to have occurred between humans and a dog.

If there is transmission to the animal population, owners of domestic animals have a duty to report diseases to the Animal Health Commissioner per KSA 47-622. The Animal Health Commissioner determines the response needed to protect the health of domestic animals as set forth in KSA 47-610 *et seq.*

11 American Veterinary Medical Association. August 19, 2022. Human-to-dog Monkeypox Transmission Case Reported. <https://www.avma.org/news/human-dog-monkeypox-transmission-case-reported>

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JUDICIARY, CORRECTIONS, AND JUVENILE JUSTICE

Child Welfare System Oversight in Kansas

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A number of efforts have been undertaken in the last decade to provide oversight for the child welfare system in Kansas. A brief history of such efforts and recent developments follows.

Legislative Committees, Task Forces, and Working Groups

Special Committee on Foster Care Adequacy.

The Legislative Coordinating Council (LCC) created this special committee in 2015 (and again in 2016) to study Department for Children and Families (DCF) oversight of foster care contractors; whether a working group would aid in addressing foster care concerns; and the selection, qualification, and responsibilities of foster parents.

The 2015 Special Committee recommended evidence-based, peer-reviewed research on

family structure be given high priority when considering best interests and making foster care placement decisions.

Additionally, it recommended introduction of legislation that would create a joint committee to oversee foster care.

Child Welfare System Task Force. The 2017 Legislature passed House Sub. for SB 126, which directed the Secretary for Children and Families to establish a Child Welfare System Task Force to study the child welfare system in Kansas. The Task Force was composed of various entities and stakeholders, and it convened working groups to study the following topics: general administration by DCF; protective services; family preservation; reintegration; foster care; and permanency placement. The Task Force's final report was submitted to the 2019 Legislature, which included 23 recommendations: http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2018CommitteeReports/child_welfare_sys_tf-cr.pdf.

Crossover Youth Working Groups. The 2019 Omnibus Appropriations bill, House Sub. for SB 25 (Section 87), included provisos requiring DCF to establish working groups in 2019 and 2020 to study the impact of 2016 SB 367.

SB 367 included a prohibition on the placement of youth in a juvenile detention center in certain circumstances and removed juvenile detention facilities as a placement option under the Child in Need of Care (CINC) Code unless the child is also alleged to be a juvenile offender and the placement is authorized under the Juvenile Code. The working groups' reports can be found at <https://www.dcf.ks.gov/Agency/Pages/CrossoverYouth.aspx>.

Special Committee on Foster Care Oversight.

In 2020, the LCC created this committee to receive input from families, social workers, and other stakeholders on progress and shortfalls in the State's child welfare system, including quality of care for children in foster care, access to health and mental health services, trends in contributing factors, program outcomes from the federal Family First Prevention Services Act, and barriers to sharing information across the system, and to make recommendations to the Legislature to improve the State's child welfare system.

Among its recommendations, the Special Committee recommended the Legislature establish a joint statutory committee for child welfare oversight and also establish an independent oversight agency that would provide advocacy services for persons involved in the child welfare system.

Joint Committee on Child Welfare System Oversight. The 2021 Legislature established the Joint Committee on Child Welfare System Oversight with the passage of HB 2158. The Joint Committee is authorized to make recommendations and introduce legislation it deems necessary in performing its functions related to the review of the child welfare system, and is required to meet at least once each quarter.

Legislative Audits

The Legislative Division of Post Audit has performed six audits related to the foster care system since July 2012.

Topics reviewed in these audits include: the health and safety of children in foster care; foster care case plan tasks and permanency outcomes; consistency across foster care service providers; the treatment of LGBTQ foster and adoptive parents; and decisions to remove children from their homes.

To access the full reports of each audit, search "foster care" at <https://www.kslpa.org/>.

Kansas Division of the Child Advocate

Governor Kelly issued Executive Order 21-28 to establish the Division of the Child Advocate within the Office of Public Advocates in October 2021. The Office of Public Advocates is housed within the Department of Administration, but the Division of the Child Advocate functions as an independent state agency. The powers and duties of the Division of the Child Advocate include the following:

- Addressing complaints made by or on behalf of a child in the custody of the Secretary for Children and Families, or alleged to be a CINC, that relate to state agencies or other service providers;
- Establishing a procedure for receiving, processing, responding to, and resolving such complaints;
- Submitting findings and recommendations for changes to DCF;
- Accessing confidential records maintained by DCF; and
- Maintaining confidentiality.

HB 2345, introduced in the 2021 Legislative Session, would have established the Office of the Child Advocate for Children's Protection and Services within the Legislative Branch. SB 301, also introduced in the 2021 Legislative Session, would have established the Office of the Child Advocate within the Office of the Attorney General. Neither bill advanced to the Governor.

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JUDICIARY, CORRECTIONS, AND JUVENILE JUSTICE

Community Supervision

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In Kansas, three entities comprise the community supervision structure: Court Services, Community Corrections, and Parole Services.

Parole Services supervises offenders released from Kansas correctional facilities on parole, post-release supervision, or conditional release. This article will focus on the functions of Court Services and Community Corrections and how they compare to each other.

Court Services

One of the duties delegated to the Office of Judicial Administration (OJA) by the Kansas Supreme Court includes trial court support. Court Services Officers (CSOs), often referred to as probation officers, supervise a large population of lower-risk offenders in Kansas.

The purpose of Court Services is to carry out the orders of the district court in a timely, professional, and ethical manner, consistent

with community interests. The roles and duties of Court Services and its personnel are governed by state law, administrative rule, and local court policy. According to the Kansas Association of Court Services Officers, the CSOs' primary role of service is accountability to the court and the court process.

The duties of CSOs vary. In general, CSOs supervise the probation of adult and juvenile offenders, work with children in need of care, research and write pre-sentence investigation reports, and perform other duties as directed by the district court.

	Court Services	Community Corrections
Governing Branch	Judicial	Executive
Associated Agency	OJA	KDOC
County - State	State	County
Crime Level	Low-risk Felony Probation; Misdemeanor Probation	Moderate and High Risk
		Felony Probation

Community Corrections

Community Corrections seeks to supervise and assist high-risk people convicted of felony offenses to address substance abuse and mental illness. Community Corrections focuses on public safety, helping people make changes to reduce criminal behavior, and reducing admissions to prison facilities. Community Corrections is a state and local partnership in which county departments are funded by the State through grants from the Kansas Department of Corrections (KDOC).

Community Corrections is composed of county employees working under the direction of local boards of county commissioners who supervise higher-risk adults and youth assigned by the court for intensive supervision probation.

Dual Supervision Legislation

An issue that has arisen with the current supervision structure in Kansas is how to resolve conflicts that may occur when an offender is ordered to be supervised by multiple entities due to multiple convictions.

In response to a recommendation made by the Kansas Criminal Justice Reform Commission in December 2021, the 2022 Legislature passed SB 408, which provides guidance for the consolidation of supervision into one supervision entity or agency for an offender under the supervision of two or more supervision entities or agencies.

The bill amended the statute governing transfer of supervision of persons on parole, on probation, assigned to a Community Corrections program, or under a suspended sentence to allow the district court where the defendant is currently being supervised to use the guidelines to determine whether it is appropriate to transfer jurisdiction of the defendant to a different district court or retain the jurisdiction.

Funding

In 2022, the Judicial Branch reported to the Legislative Budget Committee that the 2021 Legislature provided it with funding to hire 70 additional CSOs. Those positions were filled, and

the retention rate for those positions, and CSOs in general, was reported as high.

The Judicial Branch has stated that it is better situated to meet the statutorily mandated duties CSOs must perform, in addition to new criminal justice reform duties, locally originating duties, and other services CSOs provide that are designed to reduce recidivism and increase public safety.

Subsequently, KDOC stated that Community Corrections was unable to compete with the higher wages that Court Services could provide to CSOs, which would negatively impact retention of Community Corrections officers, and, ultimately, offender recidivism.

The Legislature added \$2.6 million from the State General Fund (SGF) in FY 2022 and \$8.4 million SGF for FY 2023 for the purpose of salary increases among Community Corrections agencies, as reflected in SB 267.

See the 2023 Briefing Book article “Board of Indigents’ Defense Services and Judicial Branch Budget Increases” on page 61 for more information.

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JUDICIARY, CORRECTIONS, AND JUVENILE JUSTICE

Correctional Facilities Pay Plan

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Staffing at Correctional Facilities

Retaining existing staff and trying to hire new staff is a national challenge at correctional facilities, including the Kansas Department of Corrections (KDOC).

In fall 2021, the Secretary of Corrections (Secretary) testified before the Joint Committee on Corrections and Juvenile Justice Oversight regarding critical staffing shortages throughout the Correctional System. The shortage included 405 vacancies among correctional officers at adult facilities, a vacancy rate of 23.0 percent at the juvenile facility, and increased overtime of 66.0 percent above FY 2021. The Committee recommended the Secretary request COVID-19 federal relief funds from the SPARK Taskforce for new-hire referral and retention bonuses. Further, the Committee recommended the agency submit a plan to the 2022 Legislature to address wages, nightly differentials, and premium pay.

The SPARK Taskforce recommended a total of \$30.3 million from the federal American Rescue Plan Act Fund to support a 24/7 pay

initiative, which was subsequently approved by the State Finance Council. The initiative was to support correctional facilities (\$18.3 million) as well as state hospitals and veterans' homes. It provided temporary base pay increases for hourly and salaried staff, pay differentials for hourly personnel, and one-time premium pay allocations of up to \$3,500 for salaried staff.

For the Correctional System, the initiative provides all current correctional officers with more than three months of experience pay increases ranging from 2.5 to 11.0 percent. New correctional officers start at the rate of \$18.26 per hour and receive 2.5 percent increases at 3 and 9 months after hire and another 5.0 percent increase at 12 months after hire, for a total increase of 10.0 percent within one year of employment. New counselors and parole officers receive a starting pay increase from \$18.26 to \$22.16 per hour.

The initiative provides the following differentials, which compound for eligible positions:

- Differential 1: \$1.50 per hour for all employees assigned to a correctional facility;
- Differential 2: \$2.00 per hour for all KDOC uniformed security staff, counselors, and unit team staff at all correctional facilities;
- Differential 3: \$4.50 per hour for medical providers. This differential would apply to one KDOC employee position, as the majority of medical provider positions in KDOC are contracted; and
- Differential 4: \$2.50 for employees assigned to facilities with a 25.0 percent vacancy rate.

The pay plan was continued into FY 2023 with an additional \$33.9 million from the State General Fund approved by the Legislature.

Impact of 24/7 Facility Pay Plan

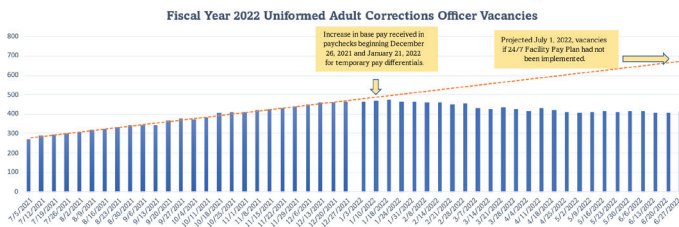


Table 1, courtesy Kansas Department of Corrections.

Table 2: Vacancies as of January 18, 2021

Facility	Uniformed	Non-Uniformed	Total Vacant
Ellsworth	56	9	65
El Dorado	125	11	136
Hutchinson	59	9	68
Lansing	97	13	110
Larned	33	5	38
Norton	51	13	64
Topeka	40	14	54
Winfield	14	8	22
Adult Total	475	82	557
KJCC*	66	14	80
Parole	14	3.5	17.5

Table 3: Vacancies as of August 15, 2022

Facility	Uniformed	Non-Uniformed	Total Vacant
Ellsworth	47	7	54
El Dorado	110	8	118
Hutchinson	57	19	76
Lansing	91	11	102
Larned	28	4	32
Norton	54	9	63
Topeka	8	13	21
Winfield	11	8	19
Adult Total	406	79	485
KJCC	59	16	75
Parole	16	2.5	18.5

Impact of the Pay Plan

Table 1 shows the FY 2022 Uniformed Adult Corrections Officer vacancies from July 5, 2021, through June 27, 2022. The blue bars represent the total vacancies, and the red dotted line shows the projected increase that would have happened if the pay plan had not been implemented in January of 2022.

Tables 2 and 3 compare total vacancies from before the pay plan was implemented on January 18, 2022, and August 15, 2022 after the pay plan was in effect for approximately six months. After six months of the pay plan being in effect, the vacancies are down 72 positions or 13.0 percent.

Recruiting Efforts

KDOC has taken various steps to increase recruiting and improve the hiring process. The application process has been streamlined, and the agency can send conditional job offers within days of application. The employment brochures and web page have been updated. The agency has also increased employee appreciation activities. Additionally, in FY 2021 and FY 2022, there was an increase in expenditures for advertising and recruiting.

The agency reports that the next steps in the effort to increase retention and recruitment include increasing awareness of the issues with stakeholders, identifying additional resources and tactics for retention and recruitment, and evaluating options for budget requests, including market rate adjustments to compensation.

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JUDICIARY, CORRECTIONS, AND JUVENILE JUSTICE

Juvenile Fines and Fees

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In Kansas, juveniles can be assessed multiple types of fines and fees associated with their involvement in the juvenile justice system.

These fines and fees include case filing fees, offender registration fees, attorney representation fees, and expungement filing fees.

In addition, other costs that can be assessed by the court include restitution, fees for alcohol and drug testing, supervision fees, and fees for alcohol and mental health treatment. Some of these fees are assessed to offset the amount that the government (municipal, county, and state) has expended already.

The Kansas Juvenile Justice Code's (KSA 38-2301 *et seq.*) primary goal is to:

- Promote public safety;
- Hold juvenile offenders accountable for their behavior; and
- Improve their ability to live more productively and responsibly in the community.

Definition of a juvenile: a person who is 10 or more years of age but less than 18 years of age; is alleged to be a juvenile offender; or has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

Per the Kansas Juvenile Justice Code,
(KSA 38-2302(n))

Fines and Fees

Types of Fines and Fees:

- Confinement, supervision, and treatment costs;
- Court appointed attorney fees;
- Court docket fees and costs;
- Drug and alcohol evaluation fees;
- Infectious disease testing;
- Expungement docket fees;
- Fines per offense;
- Probation and supervision fees; and
- Restitution.

Alternatives

Under the Kansas Juvenile Justice Code, youth can be held accountable via non-monetary alternatives including:

- Community service;
- Education programs;
- Intervention programs;
- Mediations; and
- Community-based programs.

Kansas Judicial Council

The Kansas Judicial Council studied the topic of juvenile fines and fees with regard to expungement eligibility. The 2020 Report of the Criminal Law Advisory Committee can be found at www.kansasjudicialcouncil.org/studies-and-reports.

Recent Legislative Activity

During the 2022 Session, the House Committee on Corrections and Juvenile Justice Oversight (House Committee) held an informational hearing on the elimination of juvenile fines and fees.

Kansas Judicial Branch Budget

At the House Committee hearing, the Office of Special Counsel for the Judicial Branch offered

neutral testimony with notice about the potential fiscal and operational impact, including concern about retroactive effect, should a bill be passed that would eliminate juvenile fines and fees.

Note: The Judicial Branch's budget has transitioned from being funded by docket fees to being funded by the State General Fund pursuant to 2022 HB 2541.

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STATE BUDGET

Board of Indigents' Defense Services and Judicial Branch Budget Increases

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The *Kansas Constitution* vests the judicial power of the State in one court of justice, which is divided into the Kansas Supreme Court, district courts, and other courts. The Kansas Supreme Court has general administrative authority over all the courts in the state.

The Judicial Branch's budget includes funding for the Kansas Supreme Court, the Court of Appeals, personnel and technology costs of the district courts, and a number of judicial and professional review boards and commissions. Most non-salary costs of the district courts are funded by the counties.

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).

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.

FY 2023 Salary Increases

Judicial Branch. The 2021 Legislature added \$1.9 million SGF for a 5.0 percent salary increase for judges and justices in FY 2022 and FY 2023. The 2022 Legislature passed a two-year salary plan to include an additional 5.0 percent salary increase for these positions.

Board of Indigents' Defense Services. The State Finance Council added \$638,178 from the State General Fund (SGF) for a 5.0 percent salary increase for most state employees for FY 2023. This adjustment excluded statewide elected officials, current beneficiaries of the 24/7 pay plan, with other specific limitations for employees who receive salary adjustments in other portions of the appropriations bill.

Retention and Recruitment

Judicial Branch. The 2021 Legislature appropriated \$4.3 million SGF to add 70 court services officer positions.

The core functions of court services officers includes supervising adult and juvenile probationers. The agency noted that the positions have been filled as per testimony given on September 20, 2022, to the Legislative Budget Committee.

The 2022 Legislature added \$5.7 million SGF and 62.0 FTE positions for new judge and staff positions for FY 2023. The majority of the new staff positions created were based on needs identified in external National Center for State Courts weighted workload studies and through internal review of district court workloads.

The new positions will be spread across judicial districts in the state, and include 14 district judges, 9 district magistrate judges, 13 court reporters, and 22 administrative assistants.

Additionally, \$256,761 SGF was appropriated to convert three existing district magistrate judge positions to district judge positions.

Board of Indigents' Defense Services. The 2021 Legislature added \$3.9 million SGF and 45.0 FTE positions to address staffing shortages and high caseloads for FY 2022. This includes the hiring of 26 additional public defenders and additional necessary support staff.

The 2022 Legislature added \$4.0 million SGF for salary increases for attorney and non-attorney staff for FY 2023. The agency created a series of internal pay scales for each position based on experience and comparable compensation for public prosecutors.

Judicial Branch Surcharge

HB 2541 (2022) took effect upon publication in the statute book and shifted the deposit of docket fees from court system accounts to the SGF. These funds historically paid for Judicial Branch operations and only those accounts that directly fund core judicial branch operations were shifted.

The 2022 Legislature added \$17.3 million SGF and deleted \$17.3 million from special revenue funds for FY 2023 to account for the provisions of HB 2541.

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STATE BUDGET

COVID-19 Federal Relief Funds – Discretionary

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The federal American Rescue Plan Act (ARPA) of 2021 allocates \$1.6 billion from the federal State Fiscal Recovery (SFR) Fund to the State of Kansas for discretionary purposes. ARPA provides the following allowable uses:

- Responding to the COVID-19 public health emergency or its negative economic impacts;
- Premium pay to essential workers;
- Replacing revenue lost due to the COVID-19 public health emergency; and
- Investments in water, sewer, or broadband infrastructure.

State Fiscal Recovery Funding in Kansas

Pursuant to 2021 HB 2007 and 2022 SB 267, expenditures from the federal SFR Fund must be recommended by the Strengthening People and Revitalizing Kansas (SPARK) Task Force and approved by the State Finance Council or appropriated by the Legislature.

A total of \$1.6 billion has been appropriated, or otherwise directed, for the following items:

Labor – \$509.6 million

- \$500.0 million for the Kansas Unemployment Insurance (UI) Trust Fund, partially contingent upon an audit of fraudulent claims and improper payments; and
- \$9.6 million for the UI payment system.

Economic Development – \$310.6 million

- \$150.0 million for Building a Stronger Economy (BASE) grants for economic infrastructure;
- \$60.0 million for workforce development in high-demand industries and local tourism grants;
- \$50.0 million for COVID-19 retail storefront property tax assistance; and
- \$50.6 million for economic development projects in counties with certain population sizes.

State Operations - \$235.3 million

- \$95.0 million for efficiency projects at state agencies involving modernization of facilities, technology, and security;
- \$92.5 million for the Docking State Office Building and Kansas Department of Health and Environment laboratory;
- \$30.3 million for the 24/7 Pay Plan at correctional facilities, state hospitals, and veterans' homes;
- \$15.3 million for the Office of Recovery; and
- \$2.2 million to the Kansas State School for the Blind (KSSB) to replace state funds for capital improvements.

Health – \$198.5 million

- \$66.0 million for grants to health care facilities for construction and program expansion;
- \$65.0 million for hospital worker retention and nursing facilities staffing;

- \$43.0 million for grants to child care facilities and integration of state early childhood data systems; and
- \$24.5 million for the 988 Crisis Hotline, Rural Hospital Innovation Grants, small municipal water and sewer infrastructure, and nutritional programs for seniors.

Universities – \$188.0 million

- \$75.0 million for university challenge grants, requiring a 3 (private) to 1 (state) match;
- \$100.0 million for projects primarily involving workforce training or economic development;
- \$10.0 million to Wichita State University for the Digital Transformation Program, requiring a 50.0 percent local match; and¹
- \$3.0 million for the Integrated Health Studies Center at Washburn University.

Education – \$59.4 million

- \$50.0 million for Learning Loss Recovery grants to households;
- \$4.4 million for a language assessment program at KSSB and a virtual math program at the Kansas State Department of Education;¹
- \$4.0 million for the Kansas Connect and Learn initiative, which provides schools with matching funds for federal broadband programs; and
- \$1.0 million for School Safety and Security grants.

Colleges – \$55.4 million

- \$45.4 million for grants to community and technical colleges for workforce development projects, requiring a 50.0 percent local match; and
- \$10.0 million for grants to private and independent colleges, requiring a 3 (private) to 1 (state) match.

Housing – \$55.0 million

- \$20.0 million for moderate-income housing in areas with populations below 60,000;
- \$25.0 million for housing grants to accommodate economic development in counties with a certain population sizes, requiring a 50.0 percent local match; and
- \$10.0 million for grants to develop housing for elderly and disabled individuals, requiring a 50.0 percent local match.

Connectivity - \$35.0 million

- \$35.0 million for grants supporting broadband expansion, requiring a local match based on population, and grants to low-income households for broadband services.

Public Safety – \$23.9 million

- \$9.0 million to the Kansas Highway Patrol to replace state funds for the purchase of an executive aircraft;¹
- \$8.7 million to the Department of Corrections to replace state funds for a data management system and the Pathways for Success technical education initiative; ¹
- \$5.0 million for grants to local public safety entities for interoperable communications equipment; and
- \$1.2 million to the State Fire Marshal for Firefighter Recruitment and Safety grants.¹

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¹ SFR Fund moneys for this purpose are contingent upon determination of funding availability and suitability.

STATE BUDGET

COVID-19 Federal Relief Funds – Update

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This article provides a general overview of COVID-19 federal relief funds.

Entities in Kansas are estimated to receive over \$34.2 billion in federal relief in response to the COVID-19 pandemic through legislation that includes the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2020, and the American Rescue Plan Act (ARPA) of 2021. This relief is provided through three means:

- Large discretionary funds provided to state and local governments;
- Non-discretionary emergency or supplemental funds provided to state agencies; and
- Funds provided by federal agencies directly to individuals and businesses, primarily as stimulus checks and loans.

Discretionary Funds

Coronavirus Relief Fund

The CARES Act allocated a total of \$1.3 billion from the federal Coronavirus Relief Fund (CRF) to state and local governments in Kansas to aid in response to the COVID-19 pandemic. Of this, \$1.0 billion was provided to state government and \$215.9 million was provided directly to Johnson and Sedgwick counties.

Federal guidance stipulated that CRF moneys be used only for expenditures related to the pandemic, could not be used to fill revenue shortfalls, and must be expended by December 31, 2021.

In May 2020, the Governor established the Strengthening People and Revitalizing Kansas (SPARK) Task Force to make recommendations regarding the CRF, subject to approval by the State Finance Council. CRF moneys were allocated in three rounds:

- Round 1 distributed \$400.0 million as general aid to county governments;
- Round 2 distributed \$314.4 million to state agencies for broadband, small business grants, nursing home assistance, behavioral health grants, laboratory testing capacity, and early childhood education; and
- Round 3 allocated the balance of the fund primarily for a statewide COVID-19 testing strategy, child supervision, housing stability, unemployment insurance administration, and continuity of operations among various state agencies.

Additionally, the State Finance Council passed a resolution directing the transfer of any unspent

remaining funds to the Kansas Unemployment Insurance (UI) Trust Fund.

State and Local Fiscal Recovery Funds

ARPA allocated a total of \$2.6 billion from state and local Fiscal Recovery Funds to state and local governments in Kansas. In contrast to the CRF, ARPA allowed for revenue replacement and appropriated funds directly to state, county and city governments. For Kansas, these appropriations included:

- \$1.6 billion directly to state government;
- \$565.9 million directly to 105 county governments;
- \$260.3 million directly to 10 metropolitan cities; and
- \$167.4 million indirectly to 581 Non-Entitlement Units (NEUs), which are generally cities with a population below 50,000.

Fiscal Recovery Funds may not be used for pension funds, debt services, or to offset tax cuts enacted after January 6, 2022. Funds must be expended by December 31, 2026.

Non-discretionary Funds

State agencies received \$3.9 billion in emergency or supplemental federal relief for defined purposes, as of September 2022. The largest of these included:

- \$1.5 billion to the Kansas Department of Education, including \$1.3 billion from the

federal Elementary and Secondary School Emergency Relief (ESSER) Fund;

- \$692.7 million to the Department for Children and Families;
- \$554.4 million to the Kansas Department of Health and Environment;
- \$326.0 million to the Regents universities.

Direct Relief to Individuals and Businesses

An estimated \$23.8 billion was provided to individuals and businesses in Kansas, which primarily included:

- \$7.3 billion in stimulus checks;
- \$7.4 billion in low-interest forgivable loans through the Paycheck Protection program;
- \$2.2 billion in federal unemployment benefits;
- \$1.6 billion in payments to agricultural producers; and
- \$1.4 billion to health care providers.

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STATE BUDGET

Docking State Office Building Renovation

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This article details recent developments regarding the Docking State Office Building (Docking Building), located at 915 SW Harrison Street in Topeka. It was built in 1954 to provide office and meeting space for state employees. Underneath the structure is an energy center that services buildings in the Capitol Complex. Beginning in 2004, the Department of Administration began vacating the building, and it currently stands mostly empty.

For additional historical information, please see the 2022 KLRD Briefing Book article titled “Status of the Docking State Office Building” linked in the footnote.¹

Project Funding

On December 17, 2021, the State Finance Council approved the transfer of \$60.0 million of ARPA fund moneys pursuant to 2021 SB 159. The 2022 Legislature then approved \$60.0 million from the State General Fund (SGF) for the

renovation of the Docking Building. Total funding for the renovation is \$120.0 million. House Sub. for Sub. for SB 267 (2022 appropriations bill) provided for the lapse of SGF moneys should additional federal funds become available.

Project Design

According to the Department of Administration, as presented at the October 28, 2022, Legislative Budget Committee meeting, the new design of the building will salvage and display the most historic features of the original building and reuse a variety of existing materials. The goal is for the design to be open, with a significant view of the Capitol. The building will provide new spaces, indoor and outdoor, while maintaining the existing functions that include the central utility plant, campus facility maintenance operations, and the central warehouse. Among these new functions are:

- Public lobby and exhibit spaces;
- Conference and training center;
- State agency office space;
- Health clinic or other state service agencies;
- Shared meeting rooms;
- Wellness and personal health support rooms;
- Fitness center and classroom;
- Cafe, market, or healthy food venue; and
- Interactive state exhibit area.

Project Roadmap

The following schedule was provided by the Department of Administration to the Legislative Budget Committee following its meeting on August 25, 2022. The project schedule was created by the architecture firm Clark Huesemann.

¹ 2022 KLRD Briefing Book, <https://klrd.org/publications/briefing-book-2022/status-of-the-docking-state-office-building/>

Organization

January 18 - 31, 2022

- Discuss project scope;
- Coordination with State Historic Preservation Office; and
- Process organization.

Concept Design

February 1 - April 30, 2022

- Review of building systems options;
- Develop initial floor plans;
- Develop exterior form studies; and
- Prepare construction cost opinion.

Design and Bridging Documents

May 1 - August 31, 2022

- Prepare owner's requirements;
- Finalize building floor plans;
- Finalize building exterior design;
- Confirm regulatory requirements; and
- Prepare materials for Design-Build Request for Qualifications (RFQ).

RFQ Phase 1

June 1 - August 31, 2022

- Solicit qualifications statements from Design-Build teams; and
- State Building Advisory Commission to shortlist Design-Build teams.

RFQ Phase 2/3

September 1 - October 31, 2022

- Solicit technical proposals from shortlisted Design-Build teams; and
- Review technical proposals and interview Design-Build teams; and
- Select Design-Build team.

Construction Documentation Finalization

November 1, 2022 - March 31, 2023

- Design-Build team to prepare final construction documents.

Review and Approvals

April 1 - May 31, 2023

- Owner to review and approve final documents.

Demolition

January 1, 2023 - February 28, 2024

Construction

March 1, 2024 - May 31, 2025

Petition for Judicial Review

On May 17, 2022, pursuant to KSA 77-601, *et seq.* and KSA 75-2724, Plains Modern, Inc. brought action in the District Court of Shawnee County, Kansas, to obtain judicial review of the final decision regarding the demolition of the Docking Building.

According to the Department of Administration, the demolition schedule is unaffected by the judicial review, and demolition is scheduled to begin on January 1, 2023. ***Current status of this review is pending.***

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STATE BUDGET

Kansas Budget Stabilization Fund

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Various laws and statutory sections are designed to provide certain safeguards with respect to state budgeting and management of expenditures and to prevent deficit financing. The most recent measure taken by the Legislature is the creation of the Budget Stabilization Fund.

The Fund is intended to receive revenues when receipts exceed expectations and conserve them for periods of economic recession.

Budget Stabilization Fund

The 2016 Legislature in HB 2739 established the Budget Stabilization Fund. The Legislative Budget Committee was statutorily charged in KSA 75-6706 with developing and recommending a method to fund the Budget Stabilization Fund based on a review of risk-based practices used by other states, relative annual variance from revenue and expenditure estimates, and the circumstances upon which the funds may be expended.

In FY 2020, 50.0 percent of the amount that State General Fund (SGF) receipts exceeded the

consensus revenue estimates were transferred from the SGF to the Budget Stabilization Fund, totaling \$81.9 million.

Various other provisions including the transfer of 10.0 percent of the unencumbered ending balance and transfers to the Kansas Public Employees Retirement System were briefly enacted into law but suspended prior to application.

The Governor recommended that the balance of the Budget Stabilization Fund be transferred into the SGF due to anticipated shortfall in revenue due to the COVID-19 pandemic. Despite the fact that the shortfalls were not realized, the funds were transferred to the SGF via act of appropriation in FY 2022. The Governor also recommended suspending transfers from the SGF to the Budget Stabilization Fund for FY 2021.

The balance of the Budget Stabilization Fund at the beginning of FY 2022 was zero. The Legislature transferred \$500.0 million from the SGF to the Budget Stabilization Fund in House Sub. for Sub. for SB 267, and an additional \$250.0 million in HB 2510, for a total of \$750.0 million in legislatively directed revenue transfers in FY 2022.

In addition to these transfers, actual SGF receipts in FY 2022 exceeded consensus revenue estimate projections by \$438.1 million. These excess receipts resulted in a transfer of \$219.1 million (half the total excess) at the end of FY 2022.

Transfers from the SGF to the Budget Stabilization Fund for FY 2022 total \$969.1 million. Additionally, the Budget Stabilization Fund retains the interest based on the average

daily balance rate as certified by the Pooled Money Investment Board, and is growing at a rate of approximately \$1.0 million per month. The balance in the fund at the beginning of September 2022 was \$971.7 million.

The Budget Stabilization Fund can be expended solely by an act of appropriation by the Legislature or the State Finance Council as an act of legislative delegation. The Budget Stabilization Fund shall not be considered as part of the ending balance of the SGF for compliance with allotments. The Budget Stabilization Fund is otherwise considered part of the SGF ending balance.

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STATE BUDGET

Kansas Department of Health and Environment Laboratory Construction

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2021 Legislative Session Action

Section 61 of enacted 2021 SB 159 directs the Kansas Department of Health and Environment (KDHE) to issue a request for proposal (RFP) in FY 2022 to construct or renovate a building and equip a KDHE laboratory located within an eight-mile radius of the Capitol Complex in Topeka. The bill directs the Joint Committee on State Building Construction (Committee) to review these proposals and make recommendations to the State Finance Council concerning the laboratory.

Section 61 of 2021 SB 159 also authorizes the issuance of bonds for capital improvement projects, not to exceed \$65.0 million for the KDHE laboratory.

2021 Committee Activity

At meeting of the Committee in September 2021, representatives of KDHE presented eight site proposals for a KDHE laboratory. Three of the proposed sites were state-owned properties and five sites were submitted by private entities during the RFP process.

State-owned Site Proposals

Three of the proposals were originally submitted to the Committee in January 2020 and proposed construction projects on three state-owned properties in Topeka with a total project cost of \$64.3 million estimated in March 2021. These sites were:

- Lot 4 in Downtown Topeka, near the Docking State Office Building;
- A site on the grounds of the Kansas Neurological Institute (KNI); and
- A site adjacent to the current KDHE laboratory at Forbes Field.

RFP Process Site Proposals

Pursuant to 2021 SB 159, the Department of Administration, in collaboration with KDHE, issued an RFP open from August 2, 2021, to August 31, 2021, seeking building sites within an 8-mile radius of the Capitol Complex capable of supporting a 100,000 gross-square-foot laboratory facility with suitable utilities services, vehicular access, and on-site parking. Land purchase and lease proposals were allowable, as well as options to renovate an existing building.

The Director of the KDHE laboratories presented the proposals and agency evaluations determining viability for each. The proposals submitted included the following commercial properties:

- The former Payless ShoeSource corporate headquarters at 3231 Southeast 6th Avenue. This location did not include lease payment amounts due to the proposer's pending acquisition of the property via commercial sale and would likely necessitate the sharing of space with other tenants;

- Mostly vacant lots near downtown Topeka at 11th Street and Quincy Street, which would entail annual lease payments of \$65,000 for the site and \$20,000 for parking;
- Vacant lots in east Topeka between 21st Street and Cyprus Drive west of Cedarwood Drive, which would entail an annual lease payment of \$25,000;
- Partially vacant lots at the Kanza Business and Technology Park at Kanza Drive and MacVicar Avenue, which would entail a land purchase of \$1.0 million; and
- A building in downtown Topeka at 220 Southeast 6th Street, which did not meet the minimum space requirements and entailed an annual lease payment of \$1.9 million.

The Director of the KDHE laboratories stated that commercial lease agreements would necessitate contract negotiations and land purchases would require legislative action. Further, use of these commercial properties would require engineering and soil composition assessments, which could delay the start of construction. Due to this, KDHE recommended consideration of the three state-owned properties.

On October 11, 2021, the Committee received testimony from the Department of Administration estimating that up to 50.0 percent of the total project cost could be eligible for moneys from the State Fiscal Recovery Fund provided through the federal American Rescue Plan Act (ARPA) of 2021.

2021 Committee Recommendation

On October 11, 2021, the Committee recommended construction of a KDHE laboratory at the state-owned KNI site.

On December 17, 2021, the State Finance Council approved a resolution that included construction of the KDHE laboratory at Lot 4 in Downtown Topeka, near the Docking State Office Building, rather than the KNI site. The Secretary of Administration noted the KNI site is under consideration for other state projects.

2022 Legislative Session Action

Authorized by the language in Section 61 of 2021 SB 159, the Division of the Budget transferred \$32.5 million in COVID-19 federal relief funds from the Office of the Governor to KDHE in FY 2022 for construction of the KDHE lab.

Section 143 of enacted 2022 House Sub. for Sub. for SB 267 appropriated \$32.5 million from the State General Fund (SGF) for the construction of the KDHE laboratory. The bill also requires that if any additional COVID-19 federal relief funds provided for discretionary purposes are available to be used to finance the construction of the laboratory, the Director of the Budget shall lapse that same amount of additional funds from the \$32.5 million SGF appropriated by the bill.

2022 Committee Updates

On September 7, 2022, a representative of the Department of Administration presented floor plans for the KDHE lab to the Committee. The building design includes three aboveground floors and a parking lot.

On October 28, 2022, the Legislative Budget Committee received testimony from the Department of Administration stating that construction of the lab is anticipated to begin in December 2022 or January 2023.

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STATE BUDGET

KPERS—Cost of Living Adjustments

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The majority of Kansas Public Employees Retirement System (KPERS) pension plans are defined benefit plans, which provide a fixed, pre-established benefit for members at retirement.

Economic Changes

The value of fixed benefits can decrease over time due to changes in the economy, like inflation. The longer a retiree or beneficiary lives in retirement, the greater the effect inflation will have on how much purchasing power those benefits have.

In 2002, the average annual retirement benefit was about \$10,000. The average annual inflation in the Consumer Price Index (CPI)—Urban over the 20 years since then is about 2.5 percent. The purchasing power of that \$10,000 benefit is about \$6,100 in 2022.

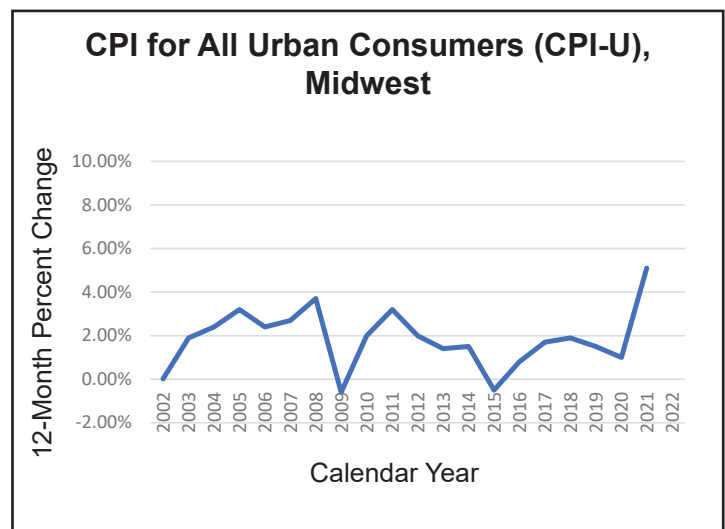
Cost-of-living Adjustments

Cost-of-living adjustments (COLAs) modify benefits to counteract the impact of economic changes like inflation. COLAs can be implemented either automatically or on an *ad hoc* basis.

Automatic adjustments occur on a regular, predetermined schedule and do not require additional action by the plan sponsor. These adjustments can be tied to an index, such as the CPI, or conditioned on investment performance or funding level.

In contrast, ***ad hoc* adjustments** do not occur on a regular basis and require approval of the plan sponsor or a delegating authority. In Kansas, that authority resides within the Legislature.

In June 2022, the National Association of State Retirement Administrators reviewed 100 public pension plans and found that 72 plans included an automatic COLA of some sort, while the remaining 28, including KPERS, had utilized *ad hoc* adjustments before.



COLAs in Kansas

KPERS plans have not included a COLA since the system was created, with three exceptions:

- **KPERS 2** included an automatic 2.0 percent COLA when it was created in 2007, but the authorizing statute was repealed in 2012.
- **KPERS 3** has a self-funded COLA of 1.0 or 2.0 percent, but that benefit is funded by the member through an actuarial reduction to the member's lifetime benefit.
- A **13th check** benefit was paid to members from 1980 to 1987.

In total, the Legislature has approved both permanent and one-time *ad hoc* COLAs. The Legislature has not approved a COLA since 2008. As of the December 31, 2021, valuation, 11,261 members (10.0 percent of beneficiaries) met the criteria to receive at least one COLA since they retired. The remaining 90.0 percent have never received a COLA.

Cost and Funding of COLAs

The projected costs of implementing a COLA depends on the characteristics of the adjustment—automatic or *ad hoc*, one-time payment or permanent adjustment, base or compound adjustment, and so on.

When a COLA is approved, costs are funded through current employee or employer contributions. COLAs can be funded through a one-time payment equal to the change in the unfunded actuarial liability (UAL), or the cost can be amortized over a number of years.

During the 2022 Session, several bills to implement a COLA were introduced to both the House and Senate. Those bills would have implemented a COLA in a variety of ways:

Automatic COLAs

One actuarial analysis estimated that a 2.0 percent automatic, compounding COLA would

increase liabilities by 16.0 percent. Applied to KPERS, this would cost \$5.5 billion to implement.

For example, 2022 HB 2583 and SB 401 would have implemented an automatic COLA for all retirees starting June 30, 2022. COLA increases would be tied to the CPI, ranging from no COLA, if the CPI increase was lower than 0.04 percent, to a 5.0 percent COLA, if the CPI increase was 3.5 percent or greater.

The projected cost for the bill was a \$4.9 billion increase in the UAL. If funded over a 20-year period, the projected average annual cost would have been about \$500.0 million.

Ad Hoc COLAs

According to the KPERS consulting actuary, the projected cost of a single ad hoc permanent adjustment of 3.0 percent based on the December 2021 valuation would total \$545.9 million.

For example, 2022 HB 2584 and SB 402 would have provided a single, permanent adjustment for retirees before July 1, 2017. The adjustment would have been tiered from 1.0 to 5.0 percent, depending on how long the member had been retired. The projected increase in the UAL was \$317.4 million. If funded over a 15-year period, the average annual cost would have been approximately \$36.0 million.

13th Check

HB 2742 (2022) would have issued a one-time 13th check payment to retirees on or before July 1, 2022. The projected cost was \$142.4 million.

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TAXATION

Federal Tax Conformity

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Of the 50 states and the District of Columbia, 42 apply a broad-based income tax. For the convenience of taxpayers and the state, as well as ease of legal application, many states incorporate substantial portions of the federal Internal Revenue Code (IRC) into their own state income taxes.

This incorporation, often referred to as tax conformity, may take several forms, such as the starting point for determining the tax base, utilizing federal provisions for deductions from income, or applying all or a portion of federal tax credits to state tax liability. Additionally, states may generally adopt federal conformity and then have specific modifications to that general provision.

Starting Point Conformity

Most states with an income tax use a reference to the IRC as the starting point for determining state income tax. The two primary options are either federal adjusted gross income (AGI) or federal taxable income. AGI incorporates the federal adjustments to gross income, such as educator expenses, student loan interest,

alimony payments, and contributions to a retirement account. Taxable income incorporates those provisions as well as the federal standard or itemized deductions and personal exemption amounts.

Additionally, states may adopt “rolling conformity” to these provisions, which results in the state automatically using the current federal provision or adopting the federal provision as of a date certain, which results in the state disregarding changes to federal tax law made after the specified date.

Kansas uses rolling conformity of federal AGI as the starting point for determining the amount of income that will be subject to Kansas income tax.

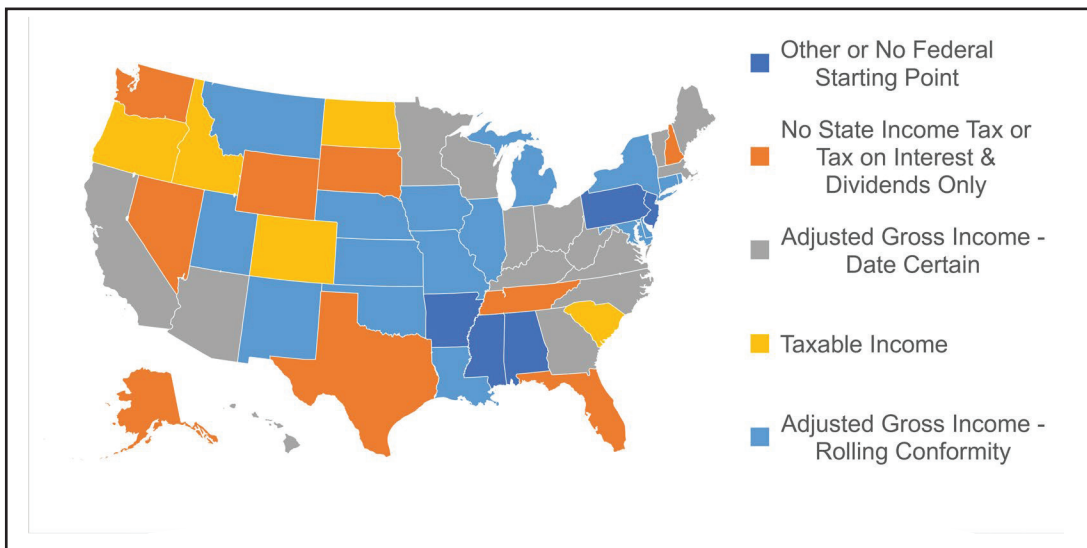
Deductions

For states that use federal taxable income as their starting point, the issue of deductions has largely already been addressed at the federal level. For states that use AGI as a starting point, the state may further consider whether to adopt conformity of some or all of the federal itemized and standard deductions.

Deductions reduce AGI to a lower amount to be used as taxable income. Taxpayers are generally required to choose between itemizing deductions based on specifically allowable expenses or taking a standard deduction, which allows the taxpayer to deduct a specific amount regardless of the amount of actual deductible expenses the taxpayer may have incurred.

Kansas allows taxpayers to either itemize or take a standard deduction. While the Kansas itemized deductions partially conform to the federal deductions, the provisions are not identical. Additionally, the Kansas standard deduction

Federal Tax Conformity by State



amounts differ from the federal amounts. Prior to 2021, Kansas taxpayers were only permitted to claim itemized deductions on their state tax returns if they itemized deductions on their federal returns.

Tax Credits

Many states partially adopt certain federal tax credits for purposes of state income taxes by virtue of conformity.

Kansas is one of 32 states that allows taxpayers to claim a portion of the federal earned income tax credit on their state returns. Kansas allows taxpayers to claim 17 percent of the federal amount.

Additionally, Kansas allows taxpayers to claim 25 percent of the federal child and dependent care credit on their state tax returns.

Modifications to Conformity

While Kansas does adopt general rolling conformity to federal AGI, the State uses provisions referred to as addition and subtraction modifications to limit some federal adjustments to gross income and provide additional adjustments that are specific to Kansas. These modifications largely relate to certain categories of retirement and Social Security income, interest income on government debt, and contributions to savings accounts for education and disabled individuals.

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TAXATION

Income Taxation of Social Security Benefits

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Federal Income Tax Treatment of Social Security Benefits

Up to 50 percent of Social Security benefits are subject to the federal income tax if a taxpayer's combined income, including 50 percent of Social Security benefits, exceeded a statutory threshold. The taxable amount is the lesser of 50 percent of benefits or 50 percent of the amount by which the combined income exceeded the statutory threshold.

A secondary threshold can result in as much as 85 percent of Social Security benefits being taxable. The Social Security Administration reports that approximately 40 percent of people receiving Social Security benefits must pay income tax on their benefits.

Kansas Income Tax Treatment of Social Security Benefits

Kansas uses federal adjusted gross income (AGI) as the starting point for the Kansas income taxation. Accordingly, income subject to federal tax is generally subject to the Kansas income tax. However, the Kansas Legislature created a

modification to federal AGI for Kansas income tax purposes to exclude Social Security benefits from Kansas income tax after a certain threshold.

The Kansas exclusion of certain Social Security benefit income from Kansas income tax applies uniformly to taxpayers regardless of the taxpayer's filing status. The chart on the next page illustrates the current threshold at which Social Security benefits become taxable in Kansas.

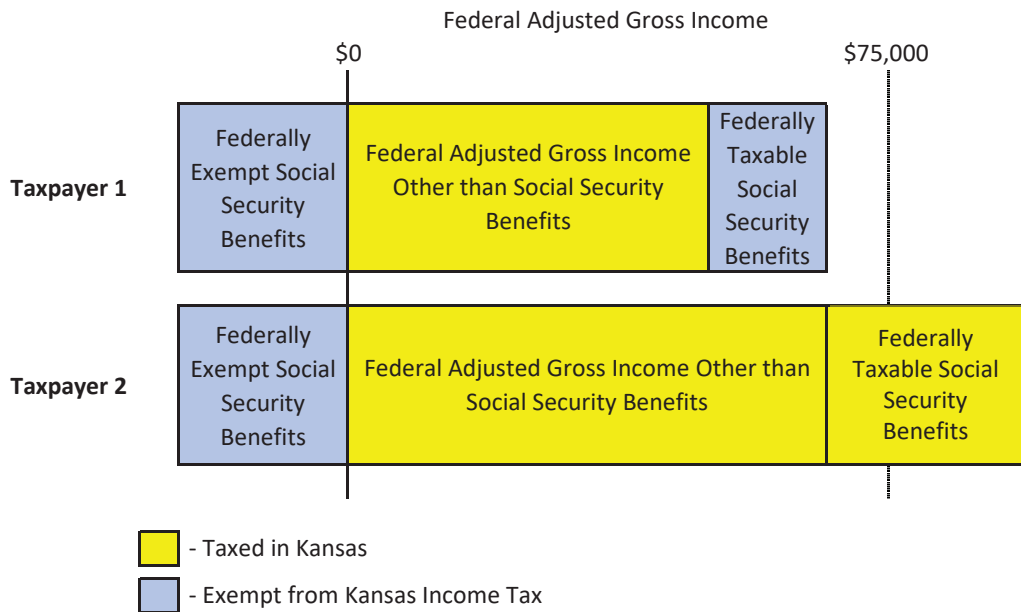
Income Tax Treatment in Other States

Currently, 37 states have no income tax or do not include Social Security benefits in their calculation for taxable income.¹ The remaining 12 states approach Social Security benefits in various ways.

- Colorado allows taxpayers to subtract a portion of Social Security income if they are 55 or older. Taxpayers aged 65 and older pay no income tax on Social Security benefits.
- Minnesota provides subtraction for taxpayers with income below \$81,180 filing single, or \$103,930 for those filing jointly.
- Missouri allows full exemption if the taxpayer is 62 years of age or older and has income less than \$85,000 filing single, or less than \$100,000 for those filing jointly.
- Montana does not have age or income stipulations. The state does encourage taxpayers to complete a worksheet to determine their state taxable amount.
- Nebraska allows taxpayers below an indexed income level to deduct all federally taxable Social Security benefits. Income above that level must follow federal guidelines.

¹ <https://taxfoundation.org/states-that-tax-social-security-benefits-2021/>

Kansas Individual Income Taxation of Social Security Benefits



- North Dakota allows taxpayers to deduct benefits if their AGI is less than \$50,000 filing single, or less than \$100,000 for those filing jointly.
- West Virginia exempts benefits for taxpayers whose income does not exceed \$50,000 filing single, or \$100,000 for those filing jointly.

Senate Committee on Assessment and Taxation and House Committee on Taxation advanced legislation that would have increased the threshold up to \$85,000 for tax year 2023 and increase the threshold by \$5,000 for all tax years thereafter.

Recent Kansas Legislative Considerations

The 2021 and 2022 Kansas Legislatures have considered legislation that would further or entirely exempt Social Security income; however, no such legislation has been enacted into law.

In 2021, the Senate Committee of the Whole twice advanced legislation that would have exempted all Social Security benefits from Kansas income tax.

In 2022, the Conference Committee for the

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TAXATION

Streamlined Sales and Use Tax

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The Streamlined Sales and Use Tax Agreement (SSUTA) is a multi-state cooperative agreement intended to simplify the administration of state sales tax systems and encourage remote sellers to collect and remit sales and use taxes. Since 2003, 24 states have enacted SSUTA-conforming laws. Kansas was the first state with effective conforming legislation.

Historical Context

The SSUTA was an outgrowth of the Streamlined Sales Tax Project, created in 1999 in response to questions over states' right to collect sales taxes from remote sellers (out-of state and/or internet retailers). With the growth of internet sales, states were seeking to combat revenue losses resulting from the shifting sales tax base and ensure equity between remote retailers and brick-and-mortar stores.

The U.S. Supreme Court ruled in *National Bellas Hess, Inc. v. Illinois* (1967) that collection of sales tax required a retailer to have physical contact with the state, and in *Quill Corp. v. North Dakota* (1992) that remote sellers, though liable for state

sales taxes, could not be required to collect taxes where they lack sufficient physical presence, as requiring compliance with multiple state sales tax systems imposes an undue burden on interstate commerce in violation of the Commerce Clause.

The SSUTA is an attempt in part to remove this burden by creating a streamlined and simplified tax system in which states and retailers could voluntarily participate.

Relevant Legislation and Recent Events

SB 472 (2002) and HB 2005 (2003) enacted provisions bringing Kansas into conformity with the SSUTA (KSA 79-3666 through 79-3682).

The *Bellas Hess* and *Quill* rulings were overturned in the 2018 *South Dakota v. Wayfair, Inc.* ruling that remote sellers can be required to collect sales tax if they have "sufficient economic nexus" in the state. South Dakota's participation in the SSUTA was one of the reasons given by the Court as evidence the South Dakota law did not violate the Commerce Clause.

Kansas began requiring registration of remote sellers in 2019. Prior to 2021, Kansas was one of three states without a provision requiring marketplace facilitators (entities facilitating internet sales through a physical or digital marketplace) to collect and remit sales tax; 2021 SB 50 required marketplace facilitators with more than \$100,000 of annual sales sourced into Kansas to collect and remit sales taxes.

Streamlined Conformity Requirements

To provide a simplified tax system, the SSUTA requires member states to agree to certain rules in the administration of their sales and use taxes. These requirements include, among other things, rules related to sourcing of taxable sales, uniform

definitions, and the retention of certain proceeds by certified service providers.

Destination Sourcing

The SSUTA generally requires member states to adopt statutes requiring destination sourcing for sales tax purposes. This requirement means that for taxable sales where the purchased product or service is not received by the purchaser at the business location of the seller, the tax will be applied and collected as if the sale occurs where the product or service is received by the purchaser.

Uniform Definitions

The SSUTA includes a library of definitions and generally requires that, if a member state uses a term appearing in the library of definitions within its sales and use tax statutes, it must use the definition of that term provided for by the SSUTA library of definitions. This provision does not require a state to use all terms in the library

of definitions, but does require uniformity in the definition of those terms if they are used.

Certified Service Providers

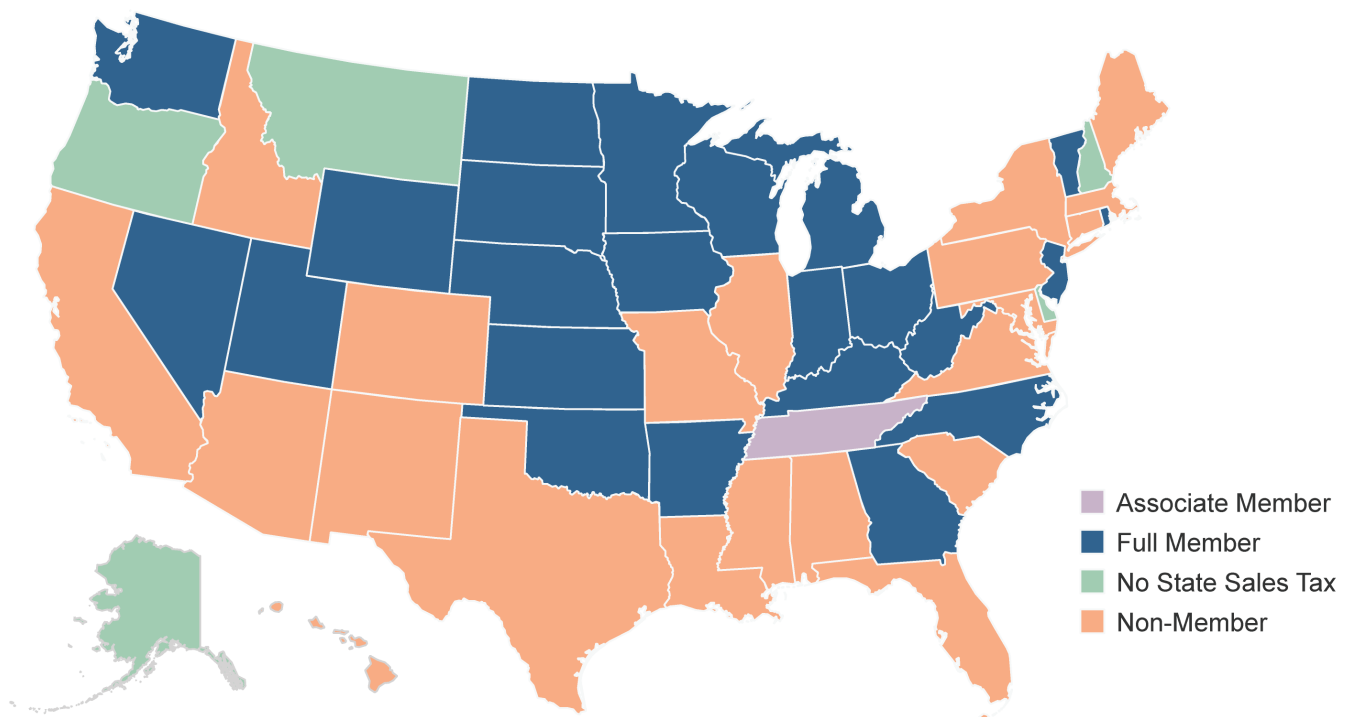
To reduce compliance burdens on remote sellers, the SSUTA provides for Certified Service Providers (CSPs) to perform sales and use tax functions on behalf of sellers. Member states are generally required to allow CSPs to retain 5 percent of the first \$500,000 of tax owed to the state and 2 percent of all additional tax owed to the state each year. In 2021, CSPs retained \$2.0 million of sales and use tax that otherwise would have been due to the state of Kansas.

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Streamlined Sales and Use Tax Agreement Member States



TRANSPORTATION

Autonomous Vehicle Regulation

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“Autonomous vehicle” is a term used to define a vehicle capable of operating without the intervention of a human driver and with the use of an automated driving system (ADS). A vehicle with an ADS is designed to perform the entire dynamic driving task without human intervention within the operating conditions for that specific ADS, known as its operational design domain.

The term “dynamic driving task” refers to operational and tactical functions required to operate a motor vehicle on a highway in traffic. If an ADS-equipped vehicle cannot perform the dynamic driving task properly, it must come to a state of minimal risk condition (a safe state to which an ADS brings a vehicle when a failure renders the system unable to perform the entire dynamic driving task).

Prior to SB 313, enacted in 2022, no statute authorized operation in Kansas for autonomous vehicles, and actions by and equipment for a human driver were required, implicitly prohibiting the use of a vehicle with an ADS for both individuals and businesses within Kansas.

Autonomous Vehicle Legislation in Kansas

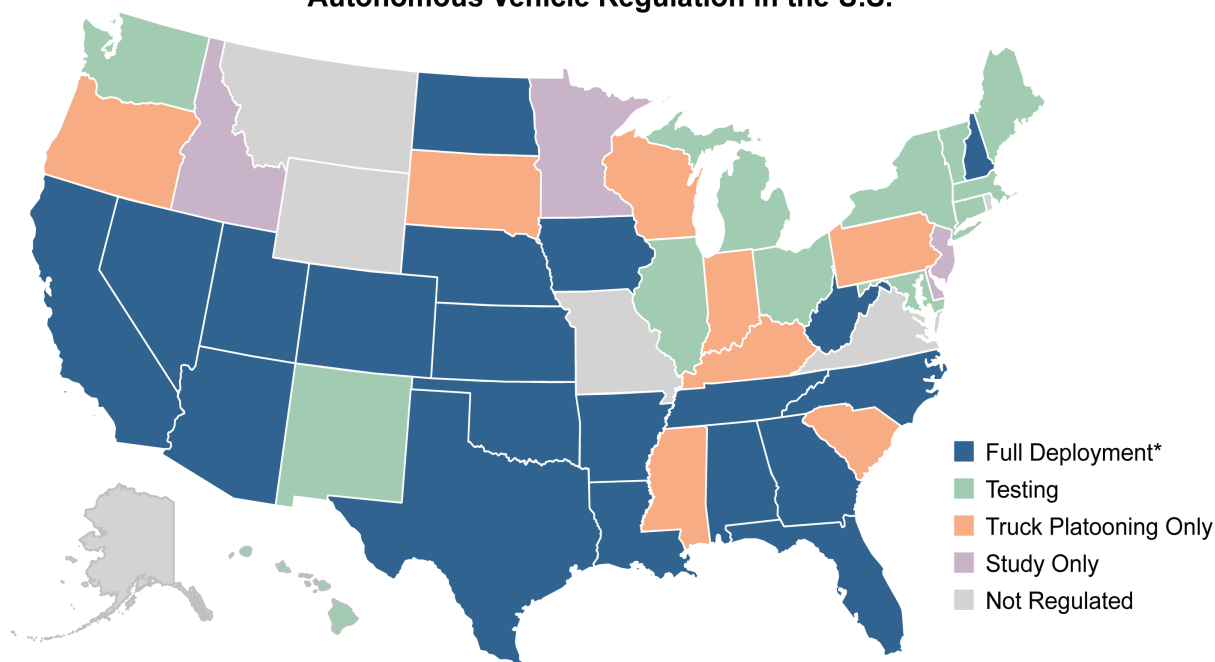
SB 313, a bill concerning autonomous motor vehicles, authorizes use of an ADS-equipped vehicle in autonomous mode if it meets certain criteria as defined by law. The owner of a driverless-capable vehicle who intends to use an ADS must submit a law enforcement interaction plan to the Kansas Highway Patrol (KHP), and the vehicle must be registered and titled as driverless-capable.

It is also lawful for ADS-equipped vehicles to perform the dynamic driving task while a conventional human driver is present as long as the human driver can respond to requests to intervene, has a driver’s license and insurance, operates the vehicle according to manufacturer’s requirements, and can regain control of the vehicle when prompted.

The new law authorizes on-demand driverless-capable vehicle networks, which are transportation network companies (TNCs), to use driverless-capable vehicles for transporting people or goods. These include transportation for hire as well as public transportation. The provisions of the Transportation Network Company Services Act, as well as the Uniform Act Regulating Traffic on Highways, apply to driverless-capable vehicles to the extent practicable, but provisions that by their nature apply only to a human driver do not apply.

The bill also establishes an Autonomous Vehicle Advisory Committee to report activities and recommendations for use and regulation of ADS-equipped vehicles by July 1 of every year, starting in 2023 and ending in 2027. Its membership includes legislators, designees of certain organizations including trade and municipal organizations, and representatives of law enforcement and certain state agencies.

Autonomous Vehicle Regulation in the U.S.



*Note: "Full Deployment" or "Testing" states may also explicitly authorize deployment or testing of truck platooning and/or transportation network company (TNC) operation. Testing authorization may or may not require a human operator to be present.

Legislation in Other States

All but six states (Alaska, Missouri, Montana, Rhode Island, Virginia, and Wyoming) and the District of Columbia have legislation or executive orders regarding autonomous vehicles. Of the states authorizing testing or full autonomous vehicle use, 9 authorize use of autonomous vehicle technology through either executive orders or rules and regulations authority, and 27 have statutory authorization; California, Hawaii, and Washington authorize such use through both statutory and executive authority.

Authorizations in six states permit only a study, define terms, or authorize funding relating to autonomous vehicles. Twenty-one states regulate what is known as truck platooning, in which a human truck driver leads two or more trucks that are linked via vehicle-to-vehicle communications and following the lead truck closely. These trailing vehicles must have a conventional driver in the truck to intervene as necessary and operate the vehicle where platooning is not authorized or prudent.

The map above identifies states that have

legislation or executive action that authorizes use of autonomous vehicles. This authorization can vary widely, from testing to full deployment without a human driver. Autonomous vehicle testing sometimes involves trials at private lots or at universities, but the majority of tests are conducted on public roads and highways with conventional drivers who can intervene as the vehicle operates.

A more complete description of state laws and executive actions regulating autonomous vehicles is available in the KLRD memorandum "State Regulation of Autonomous Vehicles." (http://www.kslegresearch.org/KLRD-web/Publications/Transportation/memo_shelley_marshall_autonomous_vehicles.pdf)

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TRANSPORTATION

Traffic Enforcement Using Cameras

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Cameras are statutorily authorized for use by municipalities in 36 states and the District of Columbia for enforcement of traffic laws, most commonly in enforcement related to speeding, full stops at red lights, and passing school buses that are stopped with the stop arm extended. State laws authorize municipalities or certain municipalities to use such cameras under certain circumstances. Toll agencies, including the Kansas Turnpike Authority, also use video enforcement for toll collection.

Kansas law is silent on the use of cameras to enforce any statutes included in the Uniform Act Regulating Traffic on Highways or similar city ordinances. Bills have been introduced, but not enacted, in Kansas in recent years to authorize cameras on school buses to identify any vehicle passing a school bus stopped with the stop arm extended and lights flashing: 2021-2022 HB 2154, 2019-2020 SB 472 and HB 2532, 2017-2018 HB 2040, and 2016 HB 2470.

Proponents generally state camera enforcement can help reduce behaviors that put lives and property at risk and act as a force multiplier for

law enforcement agencies. Opponents have stated enforcement without a law enforcement officer present is unmerited and enforcement from images could be used for surveillance or to raise revenues for the local government.

Costs of Crashes

The map on the following page shows the uses for which states authorize traffic enforcement cameras.

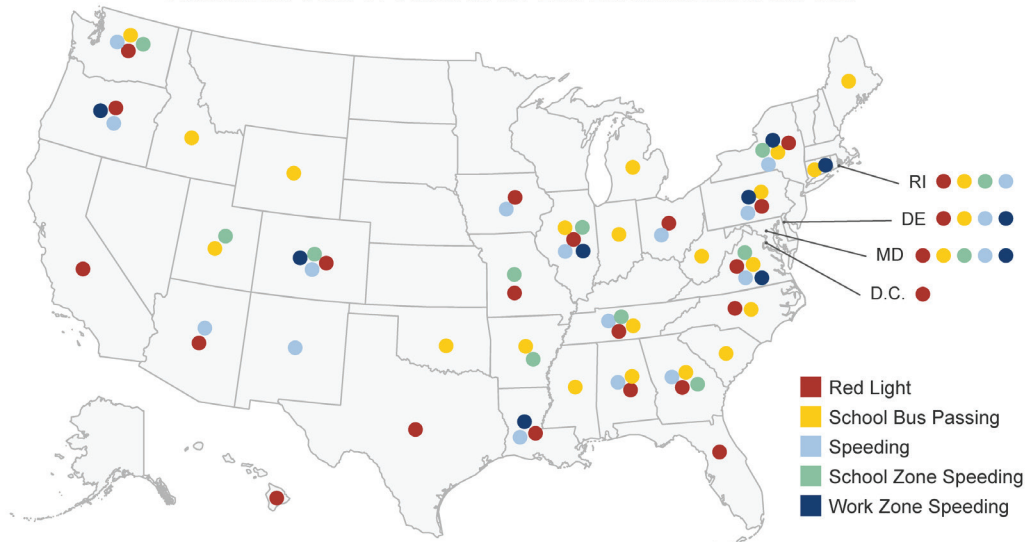
Information in the 2020 Kansas Traffic Crash Facts Annual Accidents Facts Book published by the Kansas Department of Transportation — which notes 52,469 total crashes, 426 fatalities, and 15,997 people injured in 2020 — includes the following about types of violations that traffic cameras are most frequently used to enforce in other states:

- Estimated costs of \$6.2 billion for 30,386 crashes involving driver infractions;
- 4,599 crashes that were speed related, 88 fatalities, 2,071 injured, with associated economic costs of \$1.6 billion; and
- 1,275 crashes in work zones, 2 fatalities, 409 injured, and associated costs of \$110 million.

Each crash can have more than one contributing factor, but driver inattention was most common (11,397 crashes). Other top driver contributing circumstances noted were right of way violations (No. 2, noted for 5,901 crashes), driving too fast for conditions (No. 3, 3,978 crashes), and running a red light (No. 12, 1,185 crashes).

School bus violations. The April 2022 Kansas One Day Stop Arm Violation Count found, for the 2,669 buses of 184 districts participating, 882 instances of a vehicle passing when the stop arm was extended.

Authorized Uses of Cameras for Law Enforcement in the U.S.



State Policy Choices

States crafting policy for use of such cameras have many policy choices, such as:

- Which entities can use camera enforcement;
- In what capacities contractors can be involved;
- Whether a traffic violation documented with use of a camera will be a criminal or a civil offense;
- Whether a law enforcement officer or another type of government employee must review images before notices of violation are sent;
- Whether information about camera-enforced violations can be used for insurance purposes or determining whether the driver's license should be restricted or suspended;
- Whether the images can be used for any purpose other than enforcement of the specific violation;
- What elements must be present in, or omitted from, the image (e.g., an image of the driver);
- The image retention period; and
- Whether and how information is made available to drivers about the presence of enforcement cameras.

Additional sources include:

- National Conference of State Legislatures (NCSL), "State School Bus Stop-Arm Camera Laws," (<https://www.ncsl.org/research/transportation/state-school-bus-stop-arm-camera-laws.aspx>)
- NCSL, "Traffic Safety Review: State Speed and Red-Light Camera Laws and Programs," (<https://www.ncsl.org/research/transportation/traffic-safety-review-state-speed-and-red-light-camera-laws-and-program.aspx>)
- Kansas State Department of Education, "School Bus Stop Arm Violation Surveys," Kansas 2022 results. (<https://www.ksde.org/Agency/Fiscal-and-Administrative-Services/School-Finance/School-Bus-Safety/School-Bus-Safety-Illegal-Passing-Information>)

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UTILITIES AND ENERGY

Electric Vehicle Charging Stations in Rural Kansas

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Electric Vehicle Adoption and Industry Growth

Globally, the automotive industry plans to invest \$330 billion in electrification by 2023 and offer up to 130 electrified vehicle models in the United States. Nationally, hybrid vehicle sales in 2021 comprised 5.4 percent of total sales, and Zero Emission Vehicles, such as plug-in hybrids, and fuel cells, represented 4.1 percent.

Historically, successful new technologies, like television, cellphones, and LED light bulbs, were slow to sell until they reached the 5.0 percent adoption rate, at which point adoption began to occur at a much higher rate as demand become unpredictable.

The increasing demand for electric vehicles could also lead to a demand for more charging stations to help power these vehicles and alleviate driver “range anxiety,” as they would be capable of driving further without fear of running out of power for the vehicle.

As of 2022, nearly 6,763 electric/hybrid vehicles are registered in Kansas. This is less than

1.0 percent of vehicles registered in the state. Kansas will play a role in the expansion of charging station infrastructure in order to facilitate interstate travel and commerce.

Charging Station Expansion and Funding

It is estimated that \$39.0 billion in investments are needed by 2030 for public charging infrastructure to meet the accompanying demand for electric vehicles in the United States.

As of 2022, the Edison Electric Institute (EEI), an association that represents all U.S. investor-owned electric companies, has invested nearly \$3.7 billion in programs and projects to accelerate the electronic vehicle (EV) charging station infrastructure implementation process. The EEI estimates nearly 140,000 EV fast-charging stations will be needed to accommodate the projected 26 million EVs that are expected to be on U.S. roads by 2030.

In December 2021, the U.S. Department of Transportation and the U.S. Department of Energy created a new department called the Joint Office of Energy and Transportation (Office), which will support and ensure production of electric vehicle charging networks nationwide.

In February 2022, the Office announced that \$5.0 billion will be made available for electric vehicle charging under the National Electric Vehicle Infrastructure (NEVI) Formula Program, which was established in the Infrastructure Investments and Jobs Act.

As of September 27, 2022, all 50 states including the District of Columbia and Puerto Rico have been approved to move forward with the construction of EV fast-charging stations covering approximately 75,000 miles of highway across the country.

The NEVI Formula funding can also be used for other projects that are directly related to charging of a vehicle, such as:

- Upgrade of existing and construction of new EV charging infrastructure;
- Operation and upkeep costs of EV charging stations;
- Installation of on-site electrical service equipment;
- Community and stakeholder engagement;
- Workforce development;
- EV charging station signage;
- Data sharing activities; and
- Mapping analysis.

Kansas EV Charging Programs and Funding

On September 16, 2022, the Kansas Department of Transportation's Charge Up Kansas NEVI

plan was approved and is set to receive \$39.5 million over the course of the next five years. This program will include direct current fast chargers as well as EV charging corridors.

In Kansas, the corridors included will reside along I-70, I-35, I-135, U.S. 400 and U.S. 81 from I-70 north to the Nebraska state line.

When completed, approximately 1,600 miles of Kansas interstates and highways will have fast charging stations available for public use.

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UTILITIES AND ENERGY

Tracking Broadband Availability in Kansas

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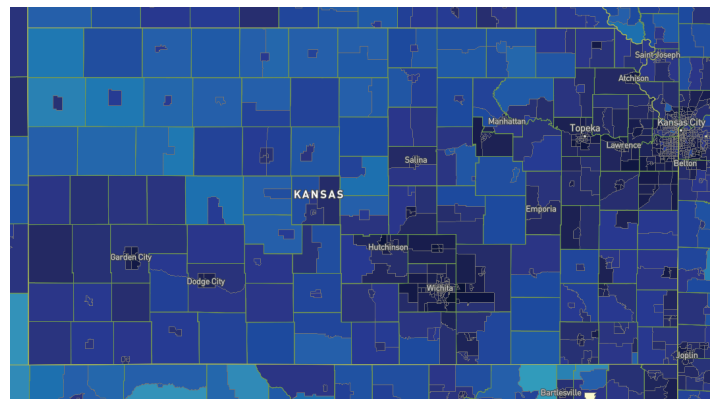
Education, precision agriculture, and health care are just a few of the possibilities broadband internet enables, and a lack of connectivity can impact the economic well-being of individuals across the country.

According to the Federal Communications Commission (FCC), in 2021, 23.36 percent of rural residents lacked fixed broadband with download speeds of 25 megabits per second (mbps) and upload speeds of 3 mbps (25/3) and fourth generation wireless networks (4g) with advertised median speeds of 10/3.

Further, the FCC has acknowledged that past maps are not as granular and accurate as policymakers would like. This means the published statistics on availability could be very different and could potentially impact funding for expansion of broadband.

Broadband Maps

The current broadband availability map¹ is created using FCC Form 477 data. This form is used to collect information on the deployment of broadband and telephone services from service providers at a census block level. If a single home in a census block is reported as being served, then the entire census block will appear as though it was served in some capacity.

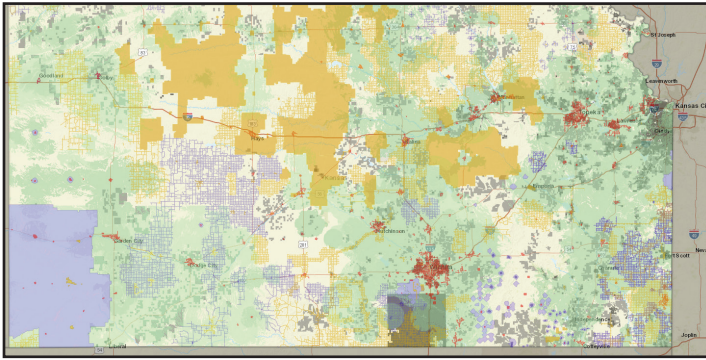


The map above shows the number of fixed residential broadband providers (including cable, fiber, fixed wireless, satellite, and ADSL) in a given area of the state. It indicates that over 99.0 percent of the state is served by 3 or more providers offering speeds of at least 25/3.

In 2018, Connected Nation, a nonprofit organization, engaged with the Information Network of Kansas to develop a statewide broadband map.² The data collected was more granular than FCC form 477 data, but had other issues, which include:

- 10 providers refused to participate;
- 6 providers were non-responsive; and
- 2 providers submitted granular data for only 1 of the services they offered.

The map is shown here:



At the time, Kansas had 88 broadband providers, and 70 submitted granular/location level data. In instances where a provider did not participate, form 477 data was used. The Connected Nation data shows 17.0 percent of Kansans do not have access to broadband internet with speeds of at least 25/3 when only relying on the provided granular data. If the supplemented Form 477 data is included, this number drops to 3.4 percent.

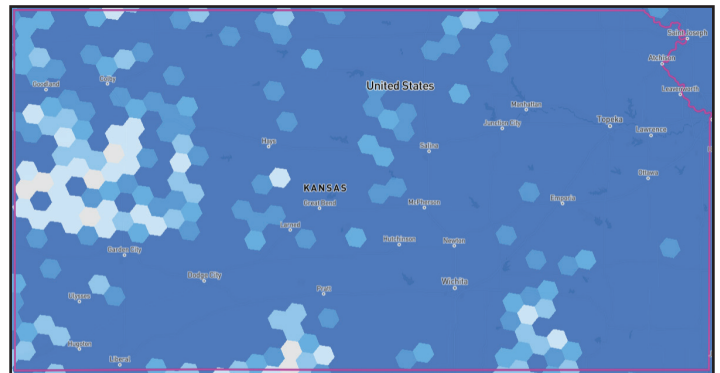
Changes to Federal Data Collection

In June 2022, the FCC began collecting information from broadband providers about the precise locations where their services are provided. The window to collect this more granular data closed on September 2, 2022.

On September 12, 2022, the FCC opened up a challenge period for states, tribal governments, and local governments to review the data collected. The FCC released pre-production drafts of the new National Broadband Map on November 18, 2022. The Map uses more granular, specific location-level information about broadband service.

The release of this pre-production map also starts the public challenge period. The FCC has encouraged the public to test and submit ISP speeds using the updated FCC Speed Test App.

The pre-production residential services map of Kansas indicates the state is 100.0 percent covered by providers with an advertised speed of at 25/3 or greater. If only examining providers using terrestrial technology (excludes satellite and cellular technology, but includes fixed wireless), the percentage of the state covered by 25/3 or greater is 98.8 percent (see map below). The Office of Broadband Development (Office), within the Kansas Department of Commerce has expressed concerns of the inadequacy of the pre-production map, and noted it overestimates available service.



What This Means for Broadband in Kansas

More accurate maps could help give a better idea where grant funding should be utilized to incentivize the build out broadband infrastructure. These incentives are relevant to businesses considering service in less dense areas, where it is challenging to recover the cost of establishing the service.

Endnotes

- 1 https://broadband477map.fcc.gov/#/area-summary?version=jun2021&type=nation&geoid=0&tech=acfo&sw&speed=25_3&vlat=38.57965314520155&vlon=-98.33040687027574&vzoom=6.544790309158462
- 2 <https://www.arcgis.com/apps/webappviewer/index.html?id=72ab65f4ac2c4207abd1e575fa148cb4>

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UTILITIES AND ENERGY

Wind Turbine Light Mitigating Technology

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In 2021, Kansas was ranked among the top five states in total wind energy generation, with the third-largest share of electricity generated from wind power, following closely behind Iowa and South Dakota. In early 2022, the state had nearly 8,250 megawatts of installed wind generating capacity.

Wind turbines have certain safety requirements in place to ensure they can be seen at night. One requirement is the installation of red lights on turbine blades, which present as circulating red dots in the horizon.

As the number of wind turbines increase, so do the number of red lights visible in the night sky. New technologies have arisen to mitigate potential lighting concerns, such as Aircraft Detection Lighting Systems (ADLS).

ADLS

Aircraft Detection Lighting Systems, sometimes referred to as Aviation Detection Lighting Systems, are radar-based systems that prevent wind turbine lights from turning on unless an

aircraft is approaching or descending toward a wind facility. With ADLS, the Federal Aviation Administration (FAA) requires lighting to be activated and flashing if an aircraft is at or below 1,000 feet above the tallest wind turbine and is approaching a 3-mile perimeter around the facility.

FAA Approval/Standards

The FAA has issued guidance to wind developers to ensure aviation and wildlife safety regarding turbine lighting and visibility in its Advisory Circular AC/7460-1M titled, "Obstruction Marking and Lighting" (https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.current/documentnumber/70_7460-1) dated effective November 16, 2020.

The Circular includes standards for turbine paint for all turbines and light color and strobe specifications for turbines at or greater than 500 feet above ground level. All vendors offering light mitigating technologies must be certified by the FAA, and every project requesting such technology must submit a request to the FAA, which evaluates each request on a turbine-by-turbine basis.

The FAA may deny the request based on factors such as proximity to military training areas, airports, or low-altitude flight routes.

As of October 2022, ADLS is the only FAA approved light mitigating technology available to wind projects.

Light Mitigating Technology in Other States

Multiple states have instituted light mitigation requirements for wind turbines in recent years, among them are Colorado and North Dakota.

Colorado

Colorado's SB 22-110, effective August 10, 2022, applies prospectively and requires new wind-powered energy generation facilities to install light mitigating technology if vertical construction of the first turbine in the facility began on or after April 1, 2022. The bill defined technology as FAA-approved sensor-based systems that are designed to detect approaching aircraft and that deactivate when it is safe to do so.

North Dakota

North Dakota's Public Service Commission established rules requiring turbines constructed after June 5, 2016, to have light mitigating technology. Enacted legislation soon followed in 2017 requiring every wind energy conversion facility that had been issued a certificate of site compatibility by the Commission before June 5, 2016, to be equipped with a functioning light mitigating technology system that complies with Commission rules by December 31, 2021.

Emerging Technologies

Though ADLS is the only FAA-approved light mitigating technology currently available, new

technologies may soon be used more widely. Companies have emerged offering alternative technology that dims FAA-approved obstruction lighting fixtures when the prevailing visibility conditions are favorable, returning the lights to full intensity when visibility conditions lessen or deteriorate.

It is unclear whether or when this type of technology will be approved by the FAA, and, if approval is received, whether FAA standards will need to be amended to accommodate for the addition.

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