

CHAPTER 39

(SB 135)

AN ACT relating to the postsecondary education performance fund and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 164.092 is amended to read as follows:

- (1) For purposes of this section:
- (a) "Category I and Category II square feet" means square footage that falls under space categories as defined by the Postsecondary Education Facilities Inventory and Classification Manual published by the United States Department of Education;
 - (b) "Comprehensive university" has the same meaning as in KRS 164.001;
 - (c) "Council" means the Council on Postsecondary Education;
 - (d) "Equilibrium" means a condition in which every institution has an appropriately proportionate level of resources as determined by the performance funding model established in this section given each institution's level of productivity in achieving student success outcomes, course completion outcomes, and other components included in the model;
 - (e) "Formula base amount" means an institution's *enacted* general fund appropriation amount~~[from the previous fiscal year] minus[net of]~~ debt service on bonds *and*~~[,]~~ appropriations for mandated programs~~[as determined by the council, and any adjustments reflecting the previous fiscal year's performance distribution];~~
 - (f) "Hold-harmless provision" means a provision included in the funding formulas as described in subsection (9) of this section that prevents a reduction of a designated portion of funding for an institution through operation of the funding formula;
 - (g) "Institution" means a college in the Kentucky Community and Technical College System or a public university;
 - (h) "KCTCS" means the Kentucky Community and Technical College System;
 - (i) "KCTCS institution allocable resources" means the formula base amount net of any equity adjustment as described in subsection (7)(b) of this section, any amount protected by a hold-harmless provision, and any applicable increase or decrease in general fund appropriations;
 - (j) *"Mandated program" means a research or public service activity that is not integral to the instructional mission of the institution and is identified by the General Assembly in the biennial budget;*
 - (k) *"Performance fund" means the postsecondary education performance fund established in subsection (13) of this section.*
 - (l) "Research universities" means the University of Kentucky and the University of Louisville;
 - ~~(m)~~ "Stop-loss provision" means a provision included in the funding formulas as described in subsection (9) of this section to limit reduction of an institution's funding amount to a predetermined percentage, notwithstanding the amounts calculated by operation of the formula; and
 - ~~(n)~~ "University allocable resources" means the formula base amount net of any small school adjustment as described in subsection (5)(c) of this section, any amount protected by a hold-harmless provision, and any applicable increase or decrease in general fund appropriations.
- (2) The General Assembly hereby finds that improving opportunity for the Commonwealth's citizens and building a stronger economy can be achieved by its public college and university system focusing its efforts and resources on the goals of:
- (a) Increasing the retention and progression of students toward timely credential or degree completion;
 - (b) Increasing the number and types of credentials and degrees earned by all types of students;

- (c) Increasing the number of credentials and degrees that garner higher salaries upon graduation, such as science, technology, engineering, math, and health, and in areas of industry demand;
 - (d) Closing achievement gaps by increasing the number of credentials and degrees earned by low-income students, underprepared students, and underrepresented minority students; and
 - (e) Facilitating credit hour accumulation and transfer of students from KCTCS to four (4) year postsecondary institutions.
- (3) (a) The General Assembly hereby declares these goals can best be accomplished by implementing a comprehensive funding model for the allocation of state general fund appropriations for postsecondary institution operations that aligns the Commonwealth's investments in postsecondary education with the Commonwealth's postsecondary education policy goals and objectives.
- (b) *The General Assembly further recognizes that priority for state general fund appropriations for postsecondary institutions should be given to each institution's funding floor over appropriations to the performance fund. For purposes of this section, "funding floor" means an institution's fiscal year 2020-2021 general fund appropriation included in 2020 Ky. Acts ch. 92, plus any fiscal year 2020-2021 distribution from the performance fund, and minus fiscal year 2020-2021 debt service on bonds and appropriations for mandated programs.*
- (4) This section establishes a comprehensive funding model for the public postsecondary education system to be implemented by the Council on Postsecondary Education. The funding model shall include a public university sector formula and a KCTCS sector formula.
- (5) The funding formula for the public university sector shall:
- (a) Recognize differences in missions and cost structures between research universities and comprehensive universities to ensure that neither are advantaged or disadvantaged during the first full year of implementation;
 - (b) Distribute one hundred percent (100%) of the university allocable resources for all universities in the sector, based on rational criteria, including student success, course completion, and operational support components, regardless of whether state funding for postsecondary institution operations increases, decreases, or remains stable;
 - (c) Include an adjustment to minimize impact on smaller campuses as determined by the council; and
 - (d) Be constructed to achieve equilibrium, at which point the funding formula rewards rates of improvement above the sector average rate.
- (6) Funding for the public university sector shall be distributed as follows:
- (a) Thirty-five percent (35%) of total university allocable resources shall be distributed based on each university's share of total student success outcomes produced, including but not limited to:
 - 1. Bachelor's degree production;
 - 2. Bachelor's degrees awarded per one hundred (100) undergraduate full-time equivalent students;
 - 3. Numbers of students progressing beyond thirty (30), sixty (60), and ninety (90) credit hour thresholds;
 - 4. Science, technology, engineering, math, and health bachelor's degree production; and
 - 5. Bachelor's degrees earned by low-income students and underrepresented minority students;
 - (b) Thirty-five percent (35%) of total university allocable resources shall be distributed based on each university's share of sector total student credit hours earned, excluding dual credit enrollment, weighted to account for cost differences by academic discipline and course level, such as lower and upper division baccalaureate, master's, doctoral research, and doctoral professional; and
 - (c) Thirty percent (30%) of total university allocable resources shall be distributed in support of vital campus operations as follows:
 - 1. Ten percent (10%) shall be distributed based on each university's share of Category I and Category II square feet, net of research, nonclass laboratory, and open laboratory space, to support maintenance and operation of campus facilities and may include a space utilization factor

as determined by the council in collaboration with the working group established in subsection (11) of this section;

2. Ten percent (10%) shall be distributed based on each university's share of total instruction and student services spending, net of maintenance and operation, to support campus administrative functions; and
 3. Ten percent (10%) shall be distributed based on each university's share of total full-time equivalent student enrollment to support academic support services such as libraries and academic computing.
- (7) The funding formula for the KCTCS sector:
- (a) Shall distribute one hundred percent (100%) of KCTCS institution allocable resources for all KCTCS colleges based on rational criteria, including student success, course completion, and operational support components, regardless of whether state funding for postsecondary institution operations increases, decreases, or remains stable;
 - (b) May include an adjustment to account for declining enrollment in some regions of the Commonwealth as determined by the council; and
 - (c) Shall be constructed to achieve equilibrium, at which point the funding formula rewards rates of improvement above the sector average rate.
- (8) Funding for the KCTCS sector shall be distributed as follows:
- (a) Thirty-five percent (35%) of total KCTCS institution allocable resources shall be distributed based on each college's share of total student success outcomes produced, including but not limited to:
 1. Certificate, diploma, and associate degree production;
 2. Numbers of students progressing beyond fifteen (15), thirty (30), and forty-five (45) credit hour thresholds;
 3. Science, technology, engineering, math, and health credentials production;
 4. Production of high-wage, high-demand, industry credentials as determined using occupational outlook data and employment statistics wage data provided by the Department of Workforce Investment in the Education and Workforce Development Cabinet;
 5. Production of industry credentials designated as targeted industries by the Education and Workforce Development Cabinet;
 6. Credentials earned by low-income students, underprepared students, and underrepresented minority students; and
 7. Transfers to four (4) year institutions;
 - (b) Thirty-five percent (35%) of total KCTCS institution allocable resources shall be distributed based on each college's share of total student credit hours earned, weighted to account for cost differences by academic discipline; and
 - (c) Thirty percent (30%) of total KCTCS institution allocable resources shall be distributed in support of vital campus operations as follows:
 1. Ten percent (10%) shall be distributed based on each college's share of Category I and Category II square feet, net of research, nonclass laboratory, and open laboratory space, to support maintenance and operation of campus facilities and may include a space utilization factor as determined by the council in collaboration with the postsecondary education working group established in subsection (11) of this section;
 2. Ten percent (10%) shall be distributed based on each college's share of total instruction and student services spending, net of maintenance and operation, to support campus administrative functions; and
 3. Ten percent (10%) shall be distributed based on each college's share of total full-time equivalent student enrollment to support academic support services such as libraries and academic computing.

- (9) (a) The funding formula for both sectors shall include:
1. A hold-harmless provision for fiscal year 2018-2019 preventing a reduction in an institution's funding amount based solely on the formula calculation, and allowing a hold-harmless amount determined by the formula in fiscal year 2018-2019 to be deducted from an institution's formula base amount in whole or in part in fiscal years 2019-2020 and 2020-2021, as determined by the council;
 2. *A hold-harmless provision for fiscal year 2021-2022, and every fiscal year thereafter, preventing a reduction in an institution's funding amount based solely on the formula calculation;*
 3. A stop-loss provision for fiscal year 2019-2020 limiting the reduction in funding to any institution to one percent (1%) of that institution's formula base amount;~~and~~
 - 4.~~3.~~ A stop-loss provision for fiscal year 2020-2021 limiting the reduction in funding to any institution to two percent (2%) of that institution's formula base amount; **and**
 5. *A stop-loss provision for fiscal year 2021-2022, and every fiscal year thereafter, limiting the reduction in funding to any institution to zero percent (0%) of that institution's formula base amount.*
- ~~(b) For fiscal year 2021-2022 and thereafter, hold harmless and stop loss provisions shall not be included in the funding formulas except by enactment of the General Assembly.~~
- ~~(e)~~ Paragraph (a) of this subsection shall not be construed to limit the level of a budget reduction that may be enacted by the General Assembly or implemented by the Governor.
- (10) (a) By *May 1 each year*~~April 1, 2017, and each April 1 thereafter~~, the council shall certify to the Office of the State Budget Director the amount to be distributed to each of the public universities and KCTCS as determined by the comprehensive funding model created in this section, not to exceed the available balance in the~~postsecondary education~~ performance fund~~created in subsection (13) of this section~~.
- (b) The Office of the State Budget Director shall distribute the appropriations in the~~postsecondary education~~ performance fund for that fiscal year to the institutions in the amounts the council has certified. The adjusted appropriations to each institution shall be allotted as provided in KRS 48.600, 48.605, 48.610, 48.620, and 48.630.
- (c) *1. The certified amounts distributed from the performance fund to the institutions are nonrecurring funds that shall not be included in the institutions' base budget amounts submitted in their biennial budget requests.*
- 2. The certified amounts distributed from the performance fund in the previous fiscal year shall be included in the performance fund's base budget amount submitted by the council in the biennial budget request.*
- (d) For fiscal year 2017-2018, the Office of the State Budget Director shall distribute to the public postsecondary education institutions, except for Kentucky State University, those funds appropriated to the~~postsecondary education~~ performance fund by the General Assembly in 2016 Ky. Acts ch. 149, Part I, K., 12., in accordance with the comprehensive funding model created in this section.
- (11) (a) The Council on Postsecondary Education is hereby directed to establish a postsecondary education working group composed of the following:
1. The president of the council;
 2. The president or designee of each public postsecondary institution, including the president of KCTCS;
 3. The Governor or designee;
 4. The Speaker of the House or designee; and
 5. The President of the Senate or designee.
- (b) Beginning in fiscal year 2020-2021 and every three (3) fiscal years thereafter, the postsecondary education working group shall convene to determine if the comprehensive funding model is functioning as expected, identify any unintended consequences of the model, and recommend any adjustments to

the model. *The council may call the working group to convene prior to the start of the required fiscal year to allow sufficient time for the group to complete its work.*

- (c) The results of the review and recommendations of the working group shall be reported by the council to the Governor, the Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Education *by December 1 of each fiscal year the working group convenes.*
- (12) The council shall promulgate administrative regulations under KRS Chapter 13A to implement the provisions of this section.
- (13) (a) The postsecondary education performance fund is hereby established as an appropriation unit to support improvement in the operations of the public postsecondary institutions and achievement of the Commonwealth's education policy goals and workforce development priorities. General fund moneys may be appropriated by the General Assembly to this fund for distribution to the public postsecondary institutions in amounts determined through the comprehensive funding model created in this section.
- (b) Any balance in the ~~postsecondary education~~ performance fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year and be continuously appropriated for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this action.

→Section 2. Whereas the provisions of this bill impact the process of determining base amounts, distributions, and other elements related to the postsecondary education performance fund, which have implications related to the fiscal year 2021-2022 budget that begins July 1, 2021, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 18, 2021.