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To: House Committee on Higher Education Budget

From: Shirley Morrow, Principal Fiscal Analyst

Re: Deferred Maintenance; History of the Educational Building Fund; and Statutes for Construction at State Institutions

This document provides the history of the Educational Building Fund in Kansas; a review of Kansas statutes for construction and maintenance at state institutions; and an overview of deferred maintenance programs through the last 25 years. How to fund the annual maintenance at a rate that there is a reduction of or no backlog of deferred maintenance projects at the state institutions is a question that has been discussed throughout the years.

History of the Educational Building Fund

The Educational Building Fund (EBF) was created during the 1941 Legislative Session (Chapter 388 of the 1941 Session Laws; 1941 SB 78) and codified as KSA 76-6b01 and 76-6b02. It added a one-quarter mill on all property in the state, which is subject to *ad valorem* taxation under Kansas tax laws. The first annual tax levy made under the provisions of this law were made in 1942. The EBF appropriations were for the erection, equipment, and repair of the buildings at the state universities. The Board was required to submit to the Legislature a report showing the building needs of the institutions, including recommendations regarding the construction, reconstruction, and equipment of buildings at the institutions during the ensuing biennium and provisions and appropriations for those purposes.

Through the years, the Legislature made changes to the law. In 1949 (Chapter 458 of the Session Laws; 1949 SB 346), the mill levy was increased to three-quarters mill, which was to begin in 1950. The 1955 Legislature (Chapter 382 of the Session Laws; 1955 SB 134) changed the mill levy amount for the EBF to one mill and also authorized the EBF funds to be used for the School for the Blind and School for the Deaf. The law created the State School Dormitory Fund (Dormitory Fund), and the one mill levy was portioned out with three-quarters mill to the EBF and one-quarter mill to the Dormitory Fund. The Dormitory Fund was to be used for payment of part of the costs of the construction and equipment of school dormitories at the institutions. The Board was to apportion the moneys in the Dormitory Fund among the state universities based on the regular full-time enrollment. The dormitories were to provide housing for 50.0 percent of the total regular full-time enrolled students.

The 1961 Legislature (Chapter 430 of the Session Laws; 1961 HB 253), changed the mill levy to one and three-quarters mill for only that one year. Of the total, one and a half mill went to the EBF, with one-seventh of the remaining quarter to be transferred to the Dormitory

Fund and the remainder to the State General Fund (SGF). The 1965 Legislature (Chapter 484 of the Session Laws; 1965 SB 101) changed the distribution of the one mill to three-quarters mill to the EBF and one-quarter mill to the Dormitory Fund.

The 1974 Legislature (Chapter 414 of the Session Laws; 1974 HB 1611) changed the one mill to be levied upon all tangible property and changed the EBF to benefit the institutions of higher education instead of state educational institutions. The language also removed the schools for the Blind and Deaf from the EBF and created a half mill for the State Institutions Building Fund (SIBF).

The 1983 Legislature (Chapter 305 of the Session Laws; 1983 SB 444) changed the mill levy for 1983 to only one and one-tenth for the EBF and reduced the SIBF amount to four-tenths mill.

The 2003 Legislature (Chapter 146 of the Session Laws; 2003 HB 2397) reduced the mill for 2003 to only six-tenths for the EBF and three-tenths for the SIBF. This was due to a property tax accelerator that year.

History of the Disbursement of the EBF

When the EBF appropriations began in 1942, the money was distributed to each institution for specific construction projects. The first appropriations of the EBF totaled approximately $133,500 from the one-quarter mill levy. In 1958, the Board began getting a few hundred thousand dollars for architectural, design, and project review expenditures each year in addition to the institutions receiving appropriations for individual projects. During the 1980s, the Board, along with the institutions, began receiving millions of dollars each year, which they dispersed to the institutions for maintenance projects.

By the late 1990s, the Board was receiving the entire appropriation each year to be dispersed to the institutions. Exceptions to this were in 2014, when the Legislature appropriated $1.0 million each to the University of Kansas for the Health Building and Kansas State University for the Architecture Building; and in 2017 when the Legislature appropriated $3.7 million for debt service for the Seaton Hall restoration project at Kansas State University.

During the 2017 Session, the EBF was changed to a no-limit fund in the Board's budget for FY 2018 and FY 2019, and it has remained a no-limit fund in the appropriations bill ever since.

The annual income from the one mill levy currently is approximately $40.0 million. There is also approximately $3.8 million from motor vehicle tax as part of the EBF annual revenue.

In addition to the use of the EBF for capital improvement projects, throughout the 1970s, '80s, and '90s, there were other sources of funding for such projects, including the SGF and federal revenue sharing funds.

Deferred Maintenance in Higher Education

The Board prepared a report in 1994 indicating that the six universities needed $288.3 million for capital improvements that included the federal Americans with Disabilities Act

compliance, State Fire Code requirements, improving classrooms, major remodeling of existing buildings, and new construction. The 1996 Legislature authorized the issuance of $156.5 million of bonds. Due to favorable interest rates and refinancing, a total of $178.6 million was available for the projects. The initiative was referred to as the "Crumbling Classroom Initiative." Because the amount financed was less than what was needed for the projects, the Board reduced the amount that would be spent for rehabilitation and repair of university buildings. Since the majority of the EBF was being used to pay the bonds for these projects, the balance of the EBF moneys were insufficient to keep up with the routine day-to-day maintenance projects. The bond payments were made through FY 2012.

In 2004, the Board prepared a new study for the Legislature stating that the State's universities would need an additional $584.0 million to cover the deferred maintenance costs. The study assessed the condition of 537 academic and administrative buildings as well as utilities and infrastructure components on the university campuses. Prepared in July of 2005 was a performance audit titled: *Regents Institutions: Reviewing Proposals for Increased Maintenance Funding at the State's Colleges and Universities* by the Legislative Division of Post Audit. The conclusion of the audit found that the use of the EBF to pay for the "Crumbling Classroom Initiative" resulted in the increase of deferred maintenance projects over time.

In 2007, Sub. for Senate Sub. for HB 2237 was passed, which created the State Educational Institution Long-Term Infrastructure Maintenance Program. Beginning in FY 2008, the State would make annual transfers to the Board to fund deferred maintenance projects at the state universities. The transfers would total $90.0 million, including $47.0 million from the SGF. In addition, the universities were to transfer the retained interest from tuition, restricted fees, and sponsored research overhead to the State University Building Maintenance Fund. Each university does maintain a deferred maintenance support fund, which receives the interest income from the three other funds. The bill also authorized new tax credits for 2008-2012 for contributions earmarked for deferred maintenance at universities and certain projects at community colleges. The tax credit was to sunset after tax year 2012. Due to the recession that occurred in the United States, this program was never funded.

The bill also provided up to $100.0 million in bonding for community colleges, technical colleges, and Washburn University. The bonds were to be let as 8-year bonds with a cap of $15.0 million per institution over a 5 year period. Bond payments were to begin after July 1, 2008. The principal and interest were paid with SGF moneys, with the institutions reimbursing the State for the principal payments each year. Those bonds were fully paid by the Board in FY 2017.

Another requirement of the bill was that the Board would not request SGF moneys for maintenance and operation of any newly built buildings, which were funded with private dollars for at least 51.0 percent of the project (KSA 76-790). The institutions were to maintain a capital improvement account for future maintenance. Each institution currently has a deferred maintenance support fund.

Another change in capital improvement expenditures happened in 2012 with the addition of a sentence in the university bonding authority language in appropriation bills. The added proviso language reads, "And provided further, that [university name] shall make provisions for the maintenance of the [name of project]." The universities were to create a maintenance fund for the project for future upkeep of the building being bonded.

Statutes that Pertain to University Buildings and Maintenance

A review was completed of dozens of statutes dealing with the construction and maintenance of university buildings. There are many statutes specific to the sale of university land and buildings. There are also many statutes associated with the creation of the Long-term Infrastructure Maintenance Program in 2007 (KSA 76-7,101), which was never funded for the universities. Many statutes also relate to the Joint Committee on State Building Construction review of projects.

During the 1947 Legislative Session (Chapter 435 of the 1947 Session Laws; 1947 HB 289), and codified at KSA 76-6a15 and 76-6a21, these laws regulate university auxiliary buildings such as dormitories, dinning halls, and student unions. The law states the Board: "(2) shall covenant to fix, maintain, and collect such fees and charge for the use of such building, including a fee to be charged each enrolled student to whom the building is available for use for which the revenue bonds are issued, or to each student enrolled for regular academic classes on the campus where such building is located, as will produce revenues sufficient to pay the reasonable cost of operating and maintaining such buildings."

KSA 76-147 allows the Board to acquire land for building or utility construction, however there is no required notification to the Legislature in taking this action nor is there a statute regarding the acquisition of buildings. The Board policy does state that state universities may acquire real property necessary to properly maintain and carry on a state university or the business thereof. The state university must submit a description of all properties they desire to purchase, or otherwise acquire, to the Board for approval. Such description must include a legal description of the property, anticipated use, and the estimated cost of purchase and any cost relating to the razing or renovating and maintaining such property.

KSA 75-3516 states that each agency maintains all deeds to real estate held, and the Director of Accounts and Reports shall maintain inventory records of all state-owned property.

Board of Regents Policy on Building Maintenance

The Board approved a new policy in June of 2021 for university building maintenance. Beginning in FY 2023, and each year thereafter, each university shall 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 shall be itemized using a standard template for the Board's review annually.

Each state university shall 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 EBF 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.

The 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.