

# **Postsecondary Education Operating Budget Recommendation 2015-17 Deficit Request**



**COMMISSION APPROVED**

OCTOBER 15, 2015





## **COMMISSIONERS**

Carol A. Zink, Chair (Lincoln)

W. Scott Wilson, Vice Chair (Papillion)

Colleen A. Adam (Hastings)

Dr. John Bernthal (Lincoln)

Dr. Deborah A. Frison (Omaha)

Dr. Ronald Hunter (Hay Springs)

Mary Lauritzen (West Point)

Dwayne Probyn (Papillion)

Eric Seacrest (North Platte)

Dr. Joyce D. Simmons (Valentine)

Lori Warner (South Sioux City)

Dr. Michael Baumgartner  
Executive Director

The commission's reports are available online at  
[www.ccpe.ne.gov](http://www.ccpe.ne.gov)

## Introduction

The Coordinating Commission for Postsecondary Education is directed by the Nebraska Constitution, Article VII, Section 14(3) to review and modify, if needed to promote compliance and consistency with the Comprehensive Statewide Plan and prevent unnecessary duplication, the budget requests of the governing boards prior to the budget requests being submitted to the Governor and Legislature. Neb. Rev. Stat. §85-1416(2)(c), further directs the Commission to:

“...analyze institutional budget priorities in light of the Comprehensive Statewide Plan, role and mission assignments, and the goal of prevention of unnecessary duplication. The commission shall submit to the Governor and Legislature by October 15 of each year recommendations for approval or modification of the budget requests together with a rationale for its recommendations. The analysis and recommendations by the commission shall focus on budget requests for new and expanded programs and services and major statewide funding issues or initiatives as identified in the Comprehensive Statewide Plan.”

The Commission’s role regarding public postsecondary institution budget review is to provide an independent, broad, policy-based review consistent with the above statute. The Commission does not provide a detailed analysis of line items in the operating budgets of the state’s 13 public colleges and universities.

Consistent with this charge, the Commission develops its recommendations based largely on information provided by the institutions. The Commission conducts its budget reviews with efficient allocation and use of state resources in mind, thus helping to ensure that our higher education system meets the needs of our state as reflected in the *Comprehensive Statewide Plan*.

The statutes direct the University and State Colleges to submit a summary of their budget requests to the Commission 30 days prior to submitting them to the Governor. The FY2015-17 deficit appropriation requests are due to the Commission by September 23<sup>rd</sup> with the full budget documents being due to the Governor by October 23<sup>rd</sup>. As outlined above, the Commission's recommendations are due to the Governor and Legislature by October 15<sup>th</sup>.

For the FY2015-17 deficit appropriation request, only the State College System submitted a request. As required by statute, the Commission addressed statewide funding issues, reviewed continuation requests, and focused on new and expanded programs in its budget review and recommendations.

## State College Sector

### Background on request

Since 1940, federal regulations implementing the white collar exemption from overtime pay have generally required each of three tests to be met for the exemption to apply: (1) The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”); (2) the amount of salary paid must meet a minimum specified amount (the “salary level test”); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”).

On March 13, 2014, President Obama signed a Presidential Memorandum directing the U.S. Department of Labor to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards. On June 30, 2015, the U.S. Department of Labor's Wage and Hour Division announced a Notice of Proposed Rulemaking (NPRM) to update the regulations defining which white collar workers are eligible to receive pay for hours worked over 40 in a workweek, with written comments on the proposed rule due by September 4, 2015. The Department last updated these regulations in 2004, when the current salary threshold for exemption was set at \$455 per week (\$23,660 per year). With this proposed rule, the Department seeks to update the salary level required for exemption to about \$970 per week (\$50,440 per year) in 2016 dollars to ensure that the FLSA's intended overtime protections are fully implemented and to simplify the identification of nonexempt employees, making the executive, administrative and professional employee exemption easier for employers and workers to understand and apply.

As of October 15, 2015, the regulations have not been finalized, but estimations are the rule will go into effect January 1, 2016.

**Deficit Appropriation Request**

	<u>2015-16</u> <u>Request</u>	<u>2016-17 Request</u> <u>over 2015-16</u> <u>Request</u>	<u>2016-17</u> <u>Cumulative</u> <u>Request</u>	<u>2015-17</u> <u>Biennium</u> <u>Request</u>
NSCS Request	\$295,062	\$295,062	\$590,124	\$885,186
Commission Recommendation	\$295,062	\$295,062	\$590,124	\$885,186

The Nebraska State College System (NSCS) did an in-depth analysis of each of the 114 state-funded employees whose current salary is between the current salary threshold for exemption of \$23,660 per year and the proposed salary threshold for exemption of \$50,440 per year. The estimated annual cost is shown in the tables below.

	<u># of</u> <u>employees</u>	<u>Cost</u> <u>(salary and benefits)</u>
Managed through current overtime policy with no additional cost	61	\$ 0
Within \$5,000 of new threshold and managed through adjustment to new threshold	18	\$ 55,446
Managed through current overtime policy with additional cost	9	\$ 59,412
Beyond \$5,000 of new threshold and managed through adjustment to new threshold	10	\$125,576
Managed through additional 6 FTEs	16	\$349,690
Estimated <u>annual</u> cost	114	\$590,124

**Estimated Annual Cost by Campus**

Chadron State College	\$198,349
Peru State College	\$174,471
Wayne State College	\$217,304
Total	<u>\$590,124</u>

It is important to note that many of these employees are not working a standard 5 day workweek. Given the nature of a college campus, many employees work on the weekend as well. While some employees may work 11 hours per day, it is more

likely that an employee would work 8 or 9 hours per day on 5 days and then another 10-15 hours over the weekend. Examples of positions affected by this rule include those who work in academic advising, counseling, information technology, and athletic training, as well as supervisors in areas such as custodial, maintenance, and security.

For 2015-16, the NSCS's state-funded payroll is estimated to be \$47.5 million. This request will fund the implementation of the federal regulation for all employees except those paid through federal and revolving fund activities. Implementation costs for those employees will be paid from the appropriate funding source.

### **Recommendation**

The Commission recommends funding this request on the condition the final U.S. Department of Labor rule is approved. If the final updated salary threshold or the effective date is significantly different, the amount requested should be adjusted accordingly.

### **Rationale for Recommendation**

The purpose of a deficit appropriation is to allow agencies to request funding for unforeseen or unknown issues that arise after the biennial budget has been approved by the Legislature and the Governor. As noted above, the Notice of Proposed Rulemaking was not announced until June 30, 2015.

Chapter 4 of the *Comprehensive Statewide Plan* includes funding exemplary institutions as one of the major statewide goals. More specifically, this goal recognizes that state funding should include sufficient funding to provide salaries and professional development opportunities that will attract and retain high quality faculty and staff. This request includes only state-funded employees.

In reviewing the methodology NSCS used to arrive at its estimate for the 114 identified state-funded employees, the individual circumstance of each employee was taken into account and the Commission believes a reasonable solution was identified by NSCS that kept the cost of implementation to a minimum.

While it is unknown when and at what salary threshold this rule will be implemented or even if this rule will be implemented, the Commission believes it is appropriate to make a request at this time due to the timing of the deficit request deadline of October 23<sup>rd</sup>.