

MEMORANDUM

**TO: Chairwoman Kellie Warren
Vice Chairman Rick Wilborn
Ranking Member David Haley
Members of the Senate Judiciary Committee**

FROM: Will Lawrence, Chief of Staff, Governor Laura Kelly

RE: Testimony in Opposition to SB 273

DATE: February 24, 2021

Dear Chairwoman Warren, Vice Chairman Wilborn, Ranking Member Haley, and members of the Senate Judiciary Committee:

Thank you for the opportunity to testify regarding the contents of SB 273 and discuss Governor Kelly's position on amendments to the Kansas Emergency Management Act. Due to the sweeping changes contained in SB 273 and the time constraints between the language being made publicly available and the timing of this hearing, my testimony will focus broadly on some of the immediate concerns.

First, the context in which SB 273 is being considered is extremely important. The COVID-19 pandemic may very well be one of the longest lasting disasters in modern history. Governor Kelly issued an emergency declaration on March 12, 2020. That declaration is currently set to expire on March 31, 2021. We are still very much in a state of emergency for the COVID-19 pandemic. This is not unique to Kansas. I am unaware of any state that does not have an emergency declaration in place. While there is "light at the end of the tunnel," the declaration should not end on March 31. Allowing it to expire would have devastating consequences on multiple levels including the vaccine distribution, delivery and administration.

The Kansas Response Plan (KRP) requires a state of disaster emergency in order for the Kansas Division of Emergency Management (KDEM) to assist local governments with matters related to COVID-19 or other emergencies. The emergency declaration "shall activate" the disaster response and recovery portions of the state disaster emergency plan. The declaration "shall be the authority" for the deployment and use to which the plan or plans apply." Here is what that means: without a declaration, the KRP is not in effect and without the KRP, neither KDEM nor the Adjutant General possesses the authority to implement the plan or perform their duties under KEMA. KDEM has no authority to task other agencies to assist with a response and cannot mission assign other state agencies, including the Kansas National Guard (KSNG).

The KRP provides the structure for supporting local jurisdictions that choose to have a state of disaster declaration in place at the local level. This ties together a complete spectrum of incident management activities across communities and the state by defining operational and resource coordinating structures. The KRP addresses all hazards that could impact Kansas and supports both county and federal emergency response plans. It is the nationally recognized best model.

Since March 12, 2020, the State Emergency Operations Center (SEOC) has been activated with 15 Emergency Support Functions (ESFs) and other supporting agencies. The KRP and Biological Annex has been implemented. As of February 17, 2021, the following resources have been provided:

- 4,327 resource requests received for personal protective equipment, supplies, personnel and equipment;
- 56,721 cases of PPE distributed from the disaster warehouse;
- 8,000,000 self-stable meals packaged;
- Over 5,300,000 meals distributed;
- 167 ventilators deployed across the state;
- 18,567 total night stays of individuals in non-congregate care shelters;
- KSNG has transported over 24,600 sample collections to Kansas Health and Environment Laboratory (KHEL); and
- KSNG has tested over 18,000 individuals within our underserved population.

Should the emergency declaration expire on March 31, 2021, the following would happen:

- SEOC would cease operations;
- Tort liability and immunity protections for individuals supporting the emergency management activities will end;
- Non-congregate sheltering for essential personnel including healthcare workers, emergency/first responders and public safety officials that require quarantine or isolation along with individuals living in congregate settings will end;
- Supplying bulk food to the Kansas food banks supporting communities, mobile food pantries, Harvesters Community Food Network and Second Harvest Community Food Banks will end;
- The use of contracted nurses to support state operated vaccine clinics will end;
- SEOC supported vaccination distribution and delivery to local health departments, nursing homes, assisted living centers, and state-run vaccination clinics for underserved populations and teachers will end;
- Transportation of test specimens to laboratories will end;
- Procurement and distribution of critical PPE, supplies, and medical equipment to include ventilators and powered air purifying respirators (PAPRs) will end;
- Support from 151 KSNG members currently supporting COVID-19 response (which is currently 100% federally funded) will end; and
- FEMA may end the states incident period and response costs moving forward would not be eligible for federal reimbursement.

Second, this should be a careful and deliberative process and any changes should be targeted and measured. The changes contemplated in New Section 1 of SB 273 alone are broad, sweeping and have not been fully vetted.

Here is just one example of a likely problem with this concept:

Creating a separate “public health disaster” and completely altering how emergency orders are promulgated risks jeopardizing the state response. For instance, what would constitute a “public health disaster?” We are currently thinking about this in the context of a pandemic. What if there was an emergency at Wolf Creek? Pursuant to the KRP, that would fall under a “public health disaster.” If there was an immediate need for an emergency order from the governor, the new process would cause delay in the emergency response. For example, if the governor had to issue an order to direct and compel a mandatory evacuation of people or livestock or order a crop embargo due to contamination, the governor would first be required to submit the order to the attorney general. The governor then must wait at least 24 hours before submitting it to the joint committee on emergency management. Then the committee chair must call a meeting within the next 24 hours. This doesn’t require the meeting to occur. It just must be called for. A minimum 24-hour delay in this process will jeopardize life and property at a time when immediate action is needed.

While there are many other areas of major concern in SB 273, it was not possible to fully vet this bill in the time allowed for review. I would caution against the expedited process this bill appears to be on to allow it to be fully and properly vetted. Given the expedited process and the contents of SB 273, Governor Kelly stands in opposition to its passage.