

March 3, 2021

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
Statehouse, Room 441B-E
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 273 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 273 is respectfully submitted to your committee.

SB 273 would change current law regarding state emergencies relating to the Kansas Emergency Management Act. The bill would make the Governor responsible for meeting the dangers to the state and people from public health disasters. The Governor's primary responsibilities during a public health disaster would be to provide guidance to the public and industry, direct state emergency operations, and seek and distribute funding and assistance to those responding to a disaster.

The Governor may issue a proclamation declaring a state of public health disaster emergency if a disaster has occurred or a threat is imminent. The state of public health disaster emergency would continue until the Governor determines the threat or danger has passed or has been dealt with. The Governor would terminate a declaration by proclamation. No state of public health disaster emergency could last longer than 15 days, unless ratified by a concurrent resolution of the Legislature. When the Legislature is not in session or if the Legislature is adjourned during session for three or more days, a state of public health disaster emergency may be extended for specific periods not to exceed 30 days each upon application by the Governor to the newly created Joint Committee on Emergency Management, with an affirmative majority vote. At any time by a concurrent resolution, the Legislature could require the Governor to terminate a state of public emergency with a proclamation.

The Governor could not issue a proclamation declaring a state of public health disaster emergency declaration if: (1) the Legislature did not ratify and continue the original declaration; (2) the Joint Committee on Emergency Management did not continue or extend the original state

of public health disaster emergency declaration; or (3) the Legislature, by a concurrent resolution, required the Governor to terminate the original declaration. The bill would outline procedures for similar infectious or contagious diseases or outbreaks. The bill would also outline the requirements of the Governor's proclamation for the public health disaster emergency.

In the event of the absence of the Governor from the state or the existence of a constitutional disability of the Governor, the bill would outline the order of succession for the appropriate state officer to issue a proclamation for a public health disaster emergency.

The Governor would be able to issue executive orders during the state of public health disaster emergency. However, prior to issuance, the Governor would be required to submit any executive orders to the Attorney General for legal review. The Attorney General would be required to provide an opinion for any executive orders within 24 hours of receipt, publish the opinion on the agency's website, and attach the opinion to the proposed executive order.

After review by the Attorney General, the Governor would be required to submit the executive orders to the Joint Committee on Emergency Management. Within 24 hours, the chairperson of the Joint Committee would call a meeting for review of the executive orders. With an affirmative vote of the majority of the Joint Committee, the Governor could issue the executive order. Any executive orders issued would be null and void after the state of public health disaster emergency has ended and may be revoked at any time by concurrent resolution of the Legislature.

The bill would outline additional powers to the Governor, including modifying any order, policy, or rule and regulation of any state agency; utilizing all available resources of the state government and each political subdivision; transferring the supervision or functions of state agencies for facilitating emergency activities; utilizing private property if necessary to cope with the disaster; and facilitating the cooperation and assistance of state and local governmental agencies and officials. These additional powers would be required to be implemented by the executive order process. The Adjutant General would help administer these executive orders, subject to the direction of the Governor.

The bill would allow the board of county commissioners of any county to issue orders relating to public health that are less stringent than any provision of an executive order issued by the Governor that affects more than one county. The bill would outline the procedures for this to occur.

The Joint Committee on Emergency Management would be comprised of five members of the Senate and five members of the House of Representatives. The bill would require each congressional district in the state to be represented on the Joint Committee to the greatest extent possible. The bill would outline the chairperson appointments, when the Joint Committee would meet, as well as allowing members to receive compensation, travel, and subsistence expenses, as allowed by statute. The Joint Committee would have the authority to require reports and testimony from the Governor, the Adjutant General, the State Board of Education, the Secretary of Health and Environment, and any other state or local official.

The bill would provide that the governing body of a city or city health officer may only use accepted scientific means as a justification to issue an order to prevent the spread of an infectious, contagious, or communicable disease. A local order could not inhibit the movement of individuals of any religious, civic, or business or commercial activity or inhibit the operation of any religious gathering or activity.

The bill would outline the procedures for any person aggrieved by an order issued by a city or city health officer, a board of county commissioners or a local health officer, the Secretary of Health and Environment, or the board of education of a school district to contest the order in district court. Also, the bill would outline timelines and procedures for these proceedings. The board of county commissioners would be required to conduct a hearing within 72 hours after receipt of a request by any individual aggrieved by an order issued by a local health officer; individuals would retain the right to require a hearing in district court, should they so choose.

SB 273 would allow the board of education of any school district to adopt a policy that affects the operation of any school within the district in the event of a state of public health disaster emergency declared by the Governor. The bill would outline the procedures of implementing these policies, and outline procedures for individuals aggrieved by the policies.

The bill would further amend the Act by changing the definition of a “public health disaster.” Specifically, the Governor would not have the power or authority to temporarily or permanently:

1. Alter or modify the Kansas Criminal Code or the Kansas Code of Criminal Procedure;
2. Take any action that imposes limitations on gatherings or other activities of a religious nature;
3. Authorize the seizure of any ammunition, or suspend or limit the sale, dispensing, or transportation of firearms or ammunition;
4. Alter or modify any provisions of the election laws of the state; and
5. Take any action that would give preferential treatment for elective abortion over other elective medical procedures over any other business or commercial activity.

The bill would remove reference of the State Finance Council from the Act and would refer to the Joint Committee on Emergency Management. Also, the bill would make references in the Act to the powers conferred to the Governor. The bill would outline the responsibilities and requirements of the Secretary of Health and Environment with regards to issuing orders to take action to prevent the spread of infectious or contagious disease. The bill would provide that no local board of health or local health officer could prohibit any school district or school attendance center from operating.

A local health officer could not issue an order that: (1) substantially burdens or inhibits the gathering or movement of individuals or the operation of any religious, civic, business or commercial activity, unless the order includes justification for accepted scientific reasons and how

the order accomplishes a remediation of the infections or contagious disease; (2) burdens or inhibits the operation of any religious gathering; or (3) has the effect of limiting travel between counties, except that an order requiring an individual or group of individuals to quarantine could not be limited. A local health officer could issue non-binding guidance and information for the conduct of gatherings or activities.

The provisions of SB 273 would be severable, if any portion of the bill would be declared unconstitutional or invalid. The bill would become effective upon publication in the *Kansas Register*.

The Adjutant General indicates the enactment of the bill would require no additional funds to implement. However, the agency notes that if the current COVID-19 pandemic emergency is not renewed prior to March 31, 2021, all eligible pandemic response activities that are currently being fully reimbursed by the Federal Emergency Management Agency (FEMA) would cease, leading to an increase in spending from the SGF in the current fiscal year. The agency notes that it spent approximately \$3.2 million during January 2021 that will be reimbursed by FEMA.

The Office of the Attorney General indicates provisions that would require the agency to review and produce opinions on executive orders could be implemented without additional funding or staff. However, the agency notes that certain provisions of the bill would likely be challenged in court as violating the separation of powers, with two branches of state government being on opposing sides of litigation. If that occurs, the agency would be required to hire outside counsel to represent one of the sides at a cost of approximately \$250,000 to \$300,000, all from the State General Fund. This estimate is made from costs of counsel in similar litigation in recent years.

The Division of the Budget estimates that SB 273 has the potential for increasing litigation in the courts. If it does, there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a fiscal effect cannot be determined.

The Department of Health and Environment notes that public health disasters have not been realized on a regular basis. However, any additional workload for increased oversight, reporting, and communications required by SB 273 could be implemented with the agency's existing staff. If a disaster would continue for several months, then additional staffing could be needed, such as a communications officer, fiscal analyst, epidemiologist, and a litigation attorney. However, a potential fiscal effect cannot be estimated.

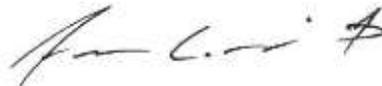
The Department of Education indicates the bill would have no fiscal effect on state aid payments to school districts. The provisions of the bill regarding the State Board of Education could be implemented with its existing staff and budget.

Legislative Administrative Services (LAS) indicates that the enactment of the bill would increase expenditures in the Legislature's budget, with the creation of the Joint Committee on Emergency Management, beginning in FY 2021. LAS estimates additional costs of \$6,237 in FY 2021 and \$39,445 in FY 2022, all from the State General Fund, would be required for expenses of

the newly created committee for an estimated one meeting in FY 2021 and six meetings in FY 2022. The costs would include legislator salaries, subsistence, and mileage reimbursement (\$5,898 in FY 2021 and \$35,385 in FY 2022), as well as a committee assistant salary (\$339 in FY 2021 and \$4,060 in FY 2022). Any fiscal effect associated with SB 273 is not reflected in *The FY 2022 Governor's Budget Report*.

The Kansas Association of Counties states that the limitation of powers included in the bill could defect a response to an emergency; however, a fiscal effect cannot be estimated.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Ryan Wright, Office of the Governor
Willie Prescott, Office of the Attorney General
Michael Neth, Office of the Adjutant General
Jay Hall, Association of Counties
Karen Clowers, Legislative Services
Wendi Stark, League of Municipalities
Debbie Thomas, Judiciary
Craig Neuenswander, Education
Dan Thimmesch, Health & Environment