

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on February 6, 2002 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Russell Mills, Legislative Research Department
 Dennis Hodgins, Legislative Research Department
 Theresa Kiernan, Office of the Revisor
 Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Gale Haag, Fire Marshal for the State of Kansas
Jack Taylor, Emporia Fire Chief
Roger Rife, Hays Fire Chief
John Lloyd, Wellington Fire Chief
Mary Jane Stattelman, Kansas Grain and Feed Association
Sandy Jacquot, League of Kansas Municipalities
L.J. Leatherman, Kansas Trial Lawyers Association
Pat Michealis, Kansas State Historical Society, Archivist
Marc Galbraith, Kansas State Library, Research and Information Services

Others attending: Please see attached

Chairperson Harrington opened the meeting by asking for bill introductions. Helen Pedigo, Deputy Counsel/Legislative Advisor, Governor's Office, asked the committee for the introduction of a bill concerning emergency medical service. Senator Vratil made a motion to introduce, and Senator Teichman seconded that motion. The motion passed.

Chairperson Harrington told the committee that she was planning to keep the bills the Adjutant General had introduced previously to Federal and State Affairs all together for future scheduling.

Chairperson Harrington opened the hearing on:

SB 376--State Fire Marshal hazardous materials response program

Chairperson Harrington directed the committee to look at the fiscal note for **SB 376**. (Attachment 1)

Mr. Gale Haag, Fire Marshal for the State of Kansas, presented testimony in favor of the bill. (Attachment 2) He also presented a letter from Jim Clark, Assistant Attorney General. (Attachment 3) Mr. Haag presented the committee with a copy of K.A.R. 22-24-1 Definitions. (Attachment 4) Mr. Haag presented the committee with a map of the state of Kansas entitled, "Response regions as proposed by the Hazardous Materials Advisory Committee." (Attachment 5) Mr. Haag concluded by presenting the committee with a list of the Advisory Committee Members. (Attachment 6)

In response to a question from Senator Brungardt, Mr. Haag stated that he was in support of the Legislature trying to help, but he was opposed to the bill itself. Senator Brungardt asked the committee what the origin of the bill was, and Theresa Kiernan responded that it was introduced in the Joint Committee on Rules and Regs; she stated that she would guess that Rules and Regs was trying to provide some guidelines within their delegation of power. Senator O'Connor stated that new section four would be changing current law. Mr. Haag stated that it is contrary to current law. Senator O'Connor asked what the reasoning behind that changes was; Theresa Kiernan responded that she would try to find out.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on February 6, 2002 in Room 245-N of the Capitol.

Jack Taylor, Emporia Fire Chief, presented testimony in opposition to the bill. ([Attachment 7](#))

In response to a question from Senator Vratil, Mr. Taylor stated that the fire departments would like to be able to rely on the state. Senator Vratil asked Mr. Taylor if mutual aid responders went to another county, that county would be held liable, and Mr. Taylor said no. Following further discussion by Senator Vratil, Mr. Taylor stated that it would be impractical for the State Fire Marshal to be the command center for first responder dispatches, Theresa Kiernan stated that section 2 gives the fire marshal certain guidelines on what kind of rules and regulations to adopt. She stated that it validates those rules and regs and comes as a result of the broad delegation of power. Ms. Kiernan clarified with Mr. Taylor that the bill states that the state would not be liable for workers' liability, but the city would. Mr. Taylor stated that he wanted the state to help out with liability as they would with a full-time employee. Ms. Kiernan asked Mr. Taylor if he responds under the adjutant general's request for emergency response, and Mr. Taylor stated that he did not know.

Senator Barnett stated that this seemed like a valid concern because if there was a catastrophic event, there would be a need for volunteer help. Senator Gooch asked if the bill does not move forward or did not exist, what would happen. Chairperson Harrington stated that the committee needed to move on to hear the rest of the testimony and then ask the question again about the bill.

Roger Rife, Hays Fire Chief, presented testimony in opposition to the bill. ([Attachment 8](#))

John Lloyd, Kansas State Association of Fire Chiefs, Wellington Fire Chief, presented testimony in opposition to the bill. ([Attachment 9](#))

Mary Jane Stattelman, Kansas Grain and Feed Association, presented testimony in opposition to the bill. ([Attachment 10](#))

Sandy Jacquot, League of Kansas Municipalities, presented testimony in opposition to the bill. ([Attachment 11](#))

L.J. Leatherman, Kansas Trial Lawyers Association, presented testimony in opposition to the bill. ([Attachment 12](#))

Chairperson Harrington drew the committee's attention to written testimony in opposition to the bill from Michael Selves, Director, Johnson County Emergency Management ([Attachment 13](#)) and Gary Curmode, Sedgwick County Fire Chief. ([Attachment 14](#))

Chairperson Harrington opened the hearing on:

SB 380-Printed materials of state agencies

Theresa Kiernan provided the committee with a brief explanation of the bill. In response to a question from Senator Teichman, Ms. Kiernan stated that Legislative Services would maintain a current listing of information available to Legislators on-line so that they would know what was available to them.

Pat Michealis, Kansas State Historical Society, Archivist, presented neutral testimony requesting the committee to consider delaying the bill. ([Attachment 15](#))

Marc Galbraith, Kansas State Library, presented neutral testimony also requesting the committee to consider delaying the bill. ([Attachment 16](#))

Chairperson Harrington asked the committee for questions, and there were none. Chairperson Harrington asked the committee what its recommendation would be concerning the bill. Senator Teichman stated that she thought it would be best for the committee to wait for the task force to look at it. Senator Vratil stated that he wondered if the State Historical Society would mind taking on responsibility for bringing up the topic again next year and the committee could rely on the Society to reintroduce the bill following an opportunity to review it.

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Ms. Michaelis stated that the State Historical Society accepted that responsibility. Senator Vratil stated that he would like the minutes to reflect that they have accepted responsibility, and the committee will hold them responsible.

Senator Brungardt stated that, concerning **SB 376**, he would like to know if Rules and Regs can handle the requirements. Ms. Kiernan stated that there is an interest in a legal defense by the state, not necessarily the state picking up the liability. Helen Pedigo stated that the concept, as she understands the law, of a regional Hazmat team dealing in various counties indicated that if there are volunteers from one county into another county, they want to be covered. Ms. Kiernan stated that the committee can clarify the bill if that is what it wishes to do. Ms. Pedigo stated that one option might be to confine the reservation in the bill or another option might be to not deal with the bill.

Senator O'Connor stated that she still had a great deal of questions and concerns about the bill. She stated that she is not prepared to work the bill and would request working it on another day.

Russell Mills stated that several chiefs have told him that they will not continue the process of their contracts as long as this bill is open. Chairperson Harrington stated that Senator O'Connor may have to vote against the bill if she was not comfortable.

Senator Brungardt made a motion to recommend the bill be not passed. Senator Vratil seconded the motion. The motion passed.

The meeting was adjourned at 12:00 p.m. The next meeting will be held at 10:30 a.m. on February 7, 2002 in Room 245-N.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: February 6, 2002

NAME	REPRESENTING
Ed Redmon	Ks State Council of Firefighters
Gale Haag	K S F M
Jim Claw	Unit A6 - Fire Marshal's Office
Dennis Phillips	Topeka Fire Fighters Local 83 IAFF
Daniel Thompson	K S F M
LARRY R BAEK	LKM
Jandy Jacquet	LKM
Mary Joanne Stettelman	KS Agrilous Retailers Assoc.
Greg Thompson	SEDWICK County Fire Dist #1
Dennis R Throck	Ks. State Professional Fire Chiefs
Parry Ellis	COMANCHE County Fire Dept
ROBERT McNamee	COBY Fire DEPT.
Dick KLAUS	Ellis County Rural Fire
Vivig Augustin	Salina Fire Dept.
Marilyn Sommer	Dir of Planning
John M. Lloyd	Ks. State Association of Fire Chiefs
Edulis W. Moore	Arkansas City Fire Dept.
Roger Rife	Hamp Fire Dept.
Dave Sterbenz	Topeka Fire Dept.
Matt Bergman	Pat Hubbel Assoc



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Bill Graves
Governor

Duane A. Goossen
Director

February 6, 2002

CORRECTED

The Honorable Nancy Harrington, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Harrington:

SUBJECT: Corrected Fiscal Note for SB 376 by Joint Committee on Administrative Rules and Regulations

In accordance with KSA 75-3715a, the following corrected fiscal note concerning SB 376 is respectfully submitted to your committee.

SB 376 would amend current statutes regarding hazardous materials and the Office of the State Fire Marshal. The bill would:

1. Require the State Fire Marshal to establish a Hazardous Material Incident Response Program and to coordinate the response by state agencies, cities and counties in a hazardous materials incident.
2. Add the definition of "hazardous materials" and "hazardous material incident" to current law.
3. Define "hazardous materials agency" to include local firefighters, and any state or local agencies that are considered appropriate by the State Fire Marshal.
4. Require the State Fire Marshal to adopt rules and regulations relating to hazardous material incidents including establishing consistent hazardous materials training standards and training materials.

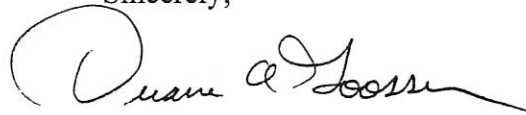
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5. Authorize the State Fire Marshal to organize advisory committees to assist in the development of the Hazardous Materials Incident Response Program.
6. Exclude members of the hazardous materials incident response team from being covered by the Workers Compensation Act or the Tort Claims Act unless the member is a full-time employee of the state.
7. Authorize the State Fire Marshal to recover costs incurred by the hazardous materials incident response team.

In the fiscal effect statement originally issued, it was incorrectly stated that the bill “would eliminate the rules and regulations by the State Fire Marshal for the development and implementation of a statewide system of hazardous materials assessment and response.”

The Office of the State Fire Marshal states that passage of SB 376 would have negligible fiscal effect on the Hazardous Materials Response Program currently operated by the agency.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Beth Fenske, Fire Marshal

**Testimony of
Gale Haag, State Fire Marshal
Presented to the Senate Federal and State Affairs Committee
January 30, 2002**

The Kansas Fire Marshal's Office appears today in support of a legislative response to the threat of hazardous material incidents.

Before discussing SB 376, I want to give you a brief overview of the current status of hazardous material incident response in Kansas.

SB 376 is not the first legislative response to the threat of hazardous material incidents. In 1996, Governor Bill Graves appointed a special task force to review the State's emergency response system. On March 12, 1997, the Kansas Highway Patrol presented SERC with a proposal for hazmat response. On July 8, 1997, a proposal was presented by fire service organizations that would utilize current hazmat response resources consisting of equipment and trained personnel from local fire service organizations and state agencies' resources and expertise.

After numerous meetings with state agencies and private industry involved in hazmat, a united effort was made for a proposal which became the essence of HB 2012.

HB 2012 added "hazardous material" to K.S.A. 31-133, giving the State Fire Marshal jurisdiction over it, in addition to fire and explosion. The bill passed the Senate 40 to 0; and passed the House 107 to 15.

Regulations were promulgated, which are attached to my testimony. These regulations cover much of the same issues that SB 376 does, see attached memo.

The main issues we have with the bill are: (1) status of hazmat team members under the Tort Claims Act; and (2) the Fire Marshal's authority under K.S.A. 31-133 in the areas of fire and explosion, in addition to hazardous materials (see memo).

The Legislature created the State Fire Marshal's office in 1913. In that year there were 770 deaths due to fire in Kansas; in 2000, the latest year statistics are available, there were 38. This success is due not only through the efforts of local governments in training and equipping local fire departments, but is also due to the team effort of local governments and the State Fire Marshal's Office in adopting and enforcing regulations and fire and building codes.

With the work that has been done over the past four years, we think that the State of Kansas is already ahead of the curve in responding to local hazardous material incidents. We think that portions of SB 376 will cause problematic delays and a duplication of work already done by the Legislature and public service agencies as far as response to local hazardous material incidents are concerned.

However, there is still the September 11 factor to consider. Obviously HB 2012 and the work that resulted from it preceded the attack on the World Trade Center. In that regard, if SB 376 is an attempt to put the State of Kansas in a position to deal with a massive hazardous material attack on the citizens of the State of Kansas, then the State Fire Marshal is in full support of that effort.

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CHAPTER 65

HOUSE BILL No. 2012

AN ACT concerning the state fire marshal; relating to the powers and duties thereof; amending K.S.A. 31-133 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 31-133 is hereby amended to read as follows: 31-133. (a) The state fire marshal shall adopt reasonable rules and regulations, consistent with the provisions of this act, for the safeguarding of life and property from the hazards of fire and explosion ~~fire, explosion and hazardous materials~~. Such rules and regulations shall include, but not be limited to the following:

(1) The keeping, storage, use, sale, handling, transportation or other disposition of highly flammable materials, including crude petroleum or any of its products, natural gas for use in motor vehicles, and of explosives, including gunpowder, dynamite, fireworks and firecrackers; and any such rules and regulations may prescribe the materials and construction of receptacles and buildings to be used for any of such purposes;

(2) the transportation of liquid fuel over public highways in order to provide for the public safety in connection therewith;

(3) the construction, maintenance and regulation of exits and fire escapes from buildings and all other places in which people work, live or congregate from time to time for any purpose, including apartment houses, as defined by K.S.A. 31-132a, and amendments thereto; ~~but~~ Such rules and regulations shall not apply to buildings used wholly as dwelling houses containing no more than two families;

(4) the installation and maintenance of equipment intended for fire control, detection and extinguishment in all buildings and other places in which persons work, live or congregate from time to time for any purpose, including apartment houses as defined by K.S.A. 31-132a, and amendments thereto; ~~but~~ Such rules and regulations shall not apply to buildings used wholly as dwelling houses containing no more than two families;

(5) requiring administrators of public and private schools and educational institutions, except community colleges, colleges and universities, to conduct at least one fire drill each month at some time during school hours, aside from the regular dismissal at the close of the day's session, and prescribing the manner in which such fire drill is to be conducted;

(6) procedures for the reporting of fires and explosions occurring within the state and for the investigation thereof;

(7) procedures for reporting by health care providers of treatment of second and third degree burn wounds involving 20% or more of the victim's body and requiring hospitalization of the victim, which reporting is

hereby authorized notwithstanding any provision of K.S.A. 60-427, and amendments thereto, to the contrary;

(8) requiring administrators of public and private schools and educational institutions, except community colleges, colleges and universities, to establish tornado procedures, which procedures shall provide for at least three tornado drills to be conducted each year at some time during school hours, aside from the regular dismissal at the close of the day's session, shall describe the manner in which such tornado drills are to be conducted, and shall be subject to approval by the state fire marshal;

(9) requiring administrators of community colleges, colleges and universities to establish tornado procedures, which procedures shall be subject to approval by the director of the local council of defense in the county or, if there is no such county director, by the head of the state civil defense division; and disaster agency of the county;

(10) the development and implementation of a statewide system of hazardous materials assessment and response; and

~~(10)~~(11) other safeguards, protective measures or means adapted to render inherently safe from the hazards of fire or the loss of life by fire any building or other place in which people work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses containing no more than two families.

(b) Any rules and regulations of the state fire marshal adopted pursuant to this section may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes.

(c) The rules and regulations adopted pursuant to this section shall allow facilities in service prior to the effective date of such rules and regulations, and not in strict conformity therewith, to continue in service, so long as such facilities are not determined by the state fire marshal to constitute a distinct hazard to life or property. Any such determination shall be subject to the appeal provisions contained in K.S.A. 31-140, and any amendments thereto.

New Sec. 2. The state fire marshal may provide a toll-free telephone number where persons may call the state fire marshal to request a response to a hazardous materials incident.

Sec. 3. K.S.A. 31-133 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 7, 1999.

January 25, 2002

TO: Gale Haag
State Fire Marshal

FROM: Jim Clark
Assistant Attorney General

RE: Testimony on SB 376

This morning I met with Dan Thompson, Hazardous Materials Response Division Director, and compared the provisions of SB 376 with the Hazmat regulations and KSFMO practice. Our conclusions are:

Sec. 1(a) - Already done by K.S.A. 31-133 haz mat amendments of 1999.

Sec. 1(b) - Definitions acceptable, cover all areas of hazardous materials (however most haz mat threats are "imminent" rather than "eminent" as specified in line 34).

Sec. 2(a) - Already done, subsection (1) by K.A.R. 22-24-13; (2) by 22-24-4; (3) by 22-24-5; (4) by 22-24-4; (5) by 22-24-11 & 12; (6) by 22-24-13.

Sec. 2(b)(1) - Districts already established (see map).

Sec. 2(b)(2) - Done, see K.A.R. 22-24-1 through 22-24-18.

Sec. 2(b)(3) and Sec. 5. - Power to sue would be new duty and authority for the KSFMO. However, the AG already has authority to sue for damage to the environment in K.S.A. 65-171u; and authority to recover for cleanup under K.S.A. 65171v. Recovery for hazardous material incident response team expenditures could be specifically added to either statute, which would eliminate creating a new legal division within the KSFMO.

Sec. 3 - Already done (see attached list of committee and accomplishments).

Sec. 4 - Creates a small problem in that the section reverses existing law (see January 8, 2000 memo), as well as directly contradicts K.A.R. 22-24-16. Without such coverage, very few, if any fire departments will participate out of fear of liability and having to bear the costs of litigation.

Sec. 5 - See 2(b)(3) above.

Sec. 6 - Would effect be to leave in effect K.A.R. 22-24-1 through 22-24-18, or would they be automatically repealed upon repeal of hazardous material authority in K.S.A. 31-133 in Sec. 7.

Sec. 7 - See Sec. 6.

Other than the practical problems of delay and duplication of effort in starting over; the creation of a need for a KSFMO legal section by Sec. 2 & 5; and the removal of Tort Claims Act coverage by Sec. 4; there may be a larger problem. While not stated in the language of the bill, the existence of the bill itself seems to reflect a concern that the Fire Marshal lacks sufficient authority in K.S.A. 31-133 to promulgate regulations implementing a proper response to hazardous material incidents. If this is true, then it may also reflect a similar concern of lack of authority to deal with the remaining subjects in the statutes: fire and explosives, most of which have been in operation for over 20 years.

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K.A.R. 22-24-1. Definitions. (a) "Chemical assessment team" (CAT) means either of the following:

(1) A type of emergency response team whose primary objective is the assessment of chemical hazards; or

(2) those members of a hazardous materials response team whose primary objective is the assessment of chemical hazards.

(b) "Division" means the hazardous materials response division of the Kansas state fire marshal's office.

(c) "Emergency response team" means a hazardous materials response team or chemical assessment team that has entered into a contract with the state fire marshal's office to provide a response to hazardous materials incidents.

(d) "Hazardous materials response team" means a team whose primary responsibility is to respond to hazardous materials incidents with full capabilities to control or mitigate the situation in order to protect life and property from the hazardous materials incident.

(e) "Local authority" means the local unit of government's public safety agency that is in overall command at the scene of a hazardous materials incident.

(f) "Management system" means a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure with responsibility for the management of assigned resources to effectively accomplish stated objectives at the scene of an incident.

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(g) "Mitigation" means the actions taken by an emergency response team to lessen the severity or intensity of a hazardous materials incident. Mitigation shall not include restoration of the scene to its preaccident condition and shall not be interpreted as including cleanup procedures, remediation, or both.

(h) "NFPA" means the national fire protection association.

(i) "Primary response area" means the geographic portion of the state to which an emergency response team has been assigned to provide the principal response to incidents occurring in that area.

(j) "Regional response team program" means the system of regionally located emergency response teams who have contracted with the state fire marshal to provide a response to hazardous materials incidents occurring in that area.

(k) "Response area" means the primary or secondary response area of an emergency response team.

(l) "Secondary response area" means the geographic portion of the state to which an emergency response team has been assigned to provide the alternate response to incidents occurring in that area.

(m) "State fire marshal" means the state fire marshal or the state fire marshal's designee. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

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22-24-2. **Team response areas.** (a) The primary and secondary response areas for each emergency response team shall be established by the state fire marshal. Each team shall be assigned at least one secondary area.

(b) The factors used by the state fire marshal in establishing these primary and secondary response areas shall include the following:

(1) The number and geographic location of fixed facilities manufacturing, using, or storing hazardous materials that may pose a threat to life or property if released;

(2) the number of miles of primary transportation routes in a given area, including highways, rail lines, commercially navigable waterways, pipelines, and airports;

(3) the population of each county;

(4) any special conditions that may be present in a given area of the state and the need for specialized equipment unique to those conditions that might affect emergency response capability;

(5) the existing local capabilities for dealing with hazardous materials incidents; and

(6) any other factor that could contribute to the potential for a hazardous materials release that could threaten life or property, thus meriting an emergency response.

(c) The boundaries of each response area shall be reviewed and, if needed, adjusted by the state fire marshal at least every two years. The adjustment of

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boundaries shall not be modified, conditioned, or limited by any collective bargaining agreement or memorandum of agreement.

(d) Each emergency response team shall respond to any area of the state when directed to do so by the state fire marshal. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

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22-24-3. Adoption by reference. (a) The following nationally recognized standards are hereby adopted by reference:

(1) "Recommended practice for responding to hazardous materials incidents," national fire protection association pamphlet no. 471 (NFPA 471), including appendices, 1997 edition;

(2) "standard on professional competence of responders to hazardous materials incidents," national fire protection association pamphlet no. 472 (NFPA 472), including appendices, but excluding chapters 7, 8, 9, 10, and 11, 1997 edition; and

(3) "standard for competencies for EMS personnel responding to hazardous materials incidents," national fire protection association pamphlet no. 473 (NFPA 473), including appendices, 1997 edition.

(b) Each team member shall comply with the provisions of "hazardous waste operations and emergency response," 29 C.F.R. 1910.120(q), as in effect on March 7, 1996, and hereby adopted by reference. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

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22-24-4. Qualifications of team members. (a) Each member of each emergency response team shall successfully complete annual refresher training that meets or exceeds the continuing education requirements of 29 C.F.R. 1910.120(q)(8).

(b) Each employer of one or more emergency response team members shall document all hazardous material training and continuing education, and these records shall be made available to the state fire marshal upon request. Each employer of one or more emergency response team members shall annually certify to the state fire marshal in writing that each team member has met the medical requirements of 29 C.F.R. 1910.120(q)(9) and the educational requirements of 29 C.F.R. 1910.120(q)(6)(i), (ii), and (iii).

(c) Any of the training or educational requirements identified in these regulations may be waived by the state fire marshal, and a substitute requirement or standard issued by the occupational safety and health administration or the NFPA may be approved by the state fire marshal, if the substitute requirement or standard is equivalent to, meets, or exceeds the requirement to be replaced.


(Authorized by and implementing K.S.A. 31-133; effective, T-
_____, _____; effective P-_____.)

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22-24-5. Composition of teams. (a) Each hazardous materials response team shall consist of at least nine members who possess the qualifications established by K.A.R. 22-24-3 and K.A.R. 22-24-4. A minimum of four members shall be available for response at any time.

(b) Each chemical assessment team shall consist of at least six members who possess the qualifications established by K.A.R. 22-24-3 and K.A.R. 22-24-4. A minimum of three members shall be available for response at any time.

(c) Each emergency response team member shall be certified by that individual's employer as meeting the qualifications for hazardous materials technicians established by NFPA 472. Each emergency response team member assigned to provide emergency medical support shall be certified by that individual's employer as meeting the qualifications for a level II responder or a higher level as defined by NFPA 473 and shall be currently certified or registered as an emergency medical technician by the state of Kansas board of emergency medical services.

(d) Emergency response teams may consist of personnel from one or more public or nonpublic entities. Each team shall designate a single point of contact for purposes of emergency dispatch, a single authority for contract administration, and the employer responsible for the employer requirements set out in these regulations. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

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22-24-6. Responsibilities of teams. (a) As its primary responsibility, each hazardous materials response team shall assist local authorities by recommending emergency actions necessary to protect life and property from the effects of a release of a hazardous material. These emergency actions may include preventing releases, mitigating a release, stabilizing the situation, and any other actions necessary to control the incident.

(b) As its primary responsibility, each chemical assessment team shall assist local authorities by providing technical advice and recommending mitigation actions to local incident commanders. Each chemical assessment team may assist the hazardous materials response team by responding in conjunction with them, assessing the chemical issues, and assisting in the formulation of strategies to mitigate or prevent incidents. The chemical assessment team may mitigate the effects of a release and stabilize the situation after contacting the hazardous materials response team and obtaining advice when necessary.

(c) When requested by the local incident commander and approved by the emergency response team commander, the emergency response team may remain at the scene and provide continuing assistance by monitoring cleanup activity conducted by local, state, or federal agencies or private entities for the purpose of ensuring public safety. The emergency response team shall not be required to remain at the scene. If the emergency response team remains, the team's costs shall be recoverable costs against the responsible party as provided in K.A.R.

22-24-14.

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(d) An emergency response team shall not take any of the following actions:

(1) Transport, store, dispose of, or perform remedial cleanup of hazardous materials, except as may be incidentally necessary to mitigate an emergency;

(2) assume overall command of the hazardous materials incident, except that the team shall establish a joint command comprised of the local incident commander and the emergency response team commander if local authorities do not have incident command training; or

(3) mitigate incidents involving explosives, explosive devices, incendiary devices, shock-sensitive explosive chemicals, or clandestine drug labs, except to respond to the effects of a hazardous materials release that has occurred as a consequence of these incidents. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

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22-24-7. Reporting and documentation. (a) Each emergency response team shall submit to the state fire marshal's office a detailed report of its response to each incident. The report shall be prepared in a manner and on a form prescribed by the state fire marshal and shall include the following data:

- (1) A list of all equipment used and the personnel who responded;
- (2) a description of all emergency actions taken;
- (3) a copy of the site safety plans developed during the response; and
- (4) completed cost-recovery forms.

(b) When an emergency response has been activated, the emergency response team commander shall notify the Kansas department of health and environment and the Kansas division of emergency management.

(c) Each local jurisdiction requesting assistance from the emergency response team shall notify the local Kansas division of emergency management representative and the Kansas department of health and environment that an incident has occurred. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

OCT 10 2001

ATTORNEY GENERAL

APPROVED BY FDL

OCT 10 2001

APPROVED BY *AK*

22-24-8. Emergency preplanning. (a) Any emergency response team may submit a request to the state fire marshal for information concerning hazardous materials that are stored or used by a state agency. Upon request of the state fire marshal, the state agency shall furnish the requested information to the division.

(b) Each government agency, including any county, city, township, or school district, shall provide information relating to its storage or use of hazardous materials when requested by an emergency response team. The local government agency shall furnish the requested information directly to the requesting team.

(c) Information that may be requested under either subsection (a) or (b) shall include the following:

- (1) A copy of any facility preplans;
- (2) a copy of the state or local agency's hazardous materials emergency response plan;
- (3) a statement describing the local agency's level of hazardous materials training;
- (4) a description of the resources available locally to support hazardous materials response actions; and
- (5) any other information reasonably needed by the requesting team.

(Authorized by and implementing K.S.A. 31-133; effective, T-
_____, _____; effective P-_____.)

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4-11

22-24-9. Emergency response assistance. Any emergency response team may secure for use during an emergency response any technical assistance or specialized equipment necessary to safely and properly respond to an incident. When the incident involves explosives, explosive devices, incendiary devices, or shock-sensitive explosive chemicals, the team shall request assistance from a qualified bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit. No emergency response team member shall take any action except as directed by the responding explosives unit. The costs associated with the activation of a bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit shall not be recoverable from the hazardous materials emergency response program. (Authorized by and implementing K.S.A. 31-133; effective, T-_____,_____; effective P-_____.)

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4-12

22-24-10. Review and evaluation of response. Each emergency response team shall conduct an evaluation of its response to each incident after termination of the team's response. The team shall give all public and private agencies involved in the response the opportunity to participate in the evaluation. The team shall prepare a written report following completion of the evaluation, a copy of which shall be provided to the state fire marshal within 45 days after termination of the team's response. For good cause shown, the length of the time in which the report is submitted may be extended by the state fire marshal for an additional 90 days. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

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OCT 10 2001

22-24-11. Supplies, equipment, and vehicles for hazardous materials

response teams. Each hazardous materials response team shall have immediate access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials incidents: (a) Chemical reference and emergency response manuals;

- (b) personal protective equipment;
- (c) decontamination equipment and supplies;
- (d) leak-control supplies and equipment;
- (e) radios and other forms of communications equipment;
- (f) computer equipment and supporting software;
- (g) monitoring and detection equipment;
- (h) basic suppression equipment;
- (i) spill containment supplies and equipment;
- (j) assorted nonsparking hand tools;
- (k) basic first aid supplies; and
- (l) related incident management and administrative supplies and

equipment. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

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OCT 10 2001

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4-14

22-24-12. Equipment for chemical assessment teams. Each chemical assessment team shall have immediate access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials incidents: (a) Chemical reference and emergency response manuals;

(b) personal protective equipment;

(c) decontamination equipment and supplies;

(d) leak-control supplies and equipment;

(e) radios and other forms of communications equipment;

(f) monitoring and detection equipment;

(g) assorted nonsparking hand tools;

(h) basic first aid supplies; and

(i) related incident management and administrative supplies and equipment. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

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OCT 10 2001

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4-15

22-24-13. Emergency response criteria and dispatch. (a) Each emergency response team shall engage in an emergency response only if it is authorized by the state fire marshal. An emergency response may include technical assistance provided by a team via telephone or other means of communication or the deployment of team personnel and equipment to the scene of a hazardous material incident. An emergency response team response shall be authorized by the state fire marshal whenever it appears necessary to protect life or property from the effects or potential effects of a hazardous materials release.

(b) Each decision to authorize an emergency response shall be based on consideration of all of the following criteria:

(1) A hazardous materials release has occurred, or there is a significant potential for release.

(2) The release or threat of release poses a significant threat to life or property.

(3) Local authorities on the scene have determined that the situation exceeds their capabilities.

(4) Local authorities are requesting a team response.

(c) Only the local incident commander or designee for the jurisdiction in which the scene of the hazardous materials incident is located shall be authorized to request an emergency response team. Each request for an emergency response team shall be made to the state fire marshal. The communications arrangements provided by the state fire marshal shall allow 24-hour-a-day notification of a request for a response.

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4-10

(d) Each team, when authorized to respond under subsection (a), shall evaluate the situation, determine if an emergency response is needed, and act accordingly. Any question or concerns arising out of the team's decisions may be relayed to the division.

(e) An emergency response team may be authorized by the state fire marshal to provide standby technical assistance in support of a bomb squad response. A response under this subsection shall be limited to incidents involving explosives, explosive devices, incendiary devices, or shock-sensitive explosive chemicals. A bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit shall be on the scene. When an emergency response team responds under this subsection, its costs shall be recoverable under the provisions of these regulations. The costs of activation of a bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit shall not be recoverable expenses.

(f) If an emergency team is en route to an incident, the team's response may be cancelled only by the state fire marshal or by the local incident commander.

(g) The emergency response team commander or safety officer may terminate any response action at the scene of a hazardous materials incident when it is determined that response action would place any personnel in imminent danger. A team response may also be terminated at the scene of an incident by order of the local incident commander. (Authorized by and implementing K.S.A.

31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

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OCT 10 2001

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4-17

22-24-14. **Cost recovery.** (a) When an emergency response team is activated to respond to a hazardous materials incident, the party responsible for the hazardous materials shall be responsible for paying the costs incurred as a result of the team's emergency response. The responsible party shall be billed by the state fire marshal for these costs in a summary order. If the responsible party fails to pay the bill in full within 30 days of its issuance, a second billing shall be issued by the state fire marshal. The second billing and any subsequent billings shall include interest on the unpaid balance. If payment is not made in full within 60 days of the initial billing, the responsible party shall be contacted by the state fire marshal in an effort to obtain payment. If the matter remains unresolved, legal action shall be brought to recover the costs of the response, any legal fees, and other related expenses, including reasonable attorney's fees.

(b) Within 30 days of the original billing issued as a summary order, any responsible party who disagrees with a billing for costs incurred as a result of an emergency response may request a hearing, which shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto. The request for a hearing shall specifically identify the portion of the billing that is disputed and the factual basis of that dispute. Any remaining portion of the bill that is undisputed shall be paid in accordance with subsection (a). (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

OCT 10 2001

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4-18

22-24-15. Coordinating emergency response activities. (a) The local authority that has jurisdiction and that requested the emergency response shall provide all necessary assistance to the emergency response team. The emergency response team commander shall coordinate with those local, state, or federal agencies, or other organizations that are on the scene or providing assistance.

(b) Mutual aid agreements, interlocal agreements, or other forms of written agreements with local, state, or federal agencies within and without this state may be entered into by the state fire marshal to mutually support and foster assistance in response to hazardous materials incidents. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

OCT 10 2001

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OCT 10 2001

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4-19

22-24-16. Liability. Each member of each emergency response team shall be considered a state employee for purposes of coverage under the tort claims act, K.S.A. 75-6101 et seq. and amendments thereto, upon activation by the state fire marshal for an emergency response or in connection with authorized training.
(Authorized by and implementing K.S.A. 31-133; effective, T-_____,
_____; effective P-_____.)

DEPT. OF ADMINISTRATION

OCT 10 2001

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OCT 10 2001

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22-24-17. **Workers compensation.** For the purposes of workers compensation coverage, each member of each emergency response team shall at all times be considered an employee of the public or nonpublic entity contracting with the state fire marshal to provide emergency response team services. (Authorized by and implementing K.S.A. 31-133; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

OCT 10 2001

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OCT 10 2001

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22-24-18. Advisory committee. A hazardous materials advisory committee may be appointed by the state fire marshal to provide input and assistance to the hazardous materials program and act as advisor to the state fire marshal and the director of the division. The committee shall meet periodically as determined by the state fire marshal. (Authorized by and implementing K.S.A. 31-133 and 31-135; effective, T-_____, _____; effective P-_____.)

DEPT. OF ADMINISTRATION

ATTORNEY GENERAL

OCT 10 2001

OCT 10 2001

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APPROVED



4-22

SENATE BILL No. 376

By Joint Committee on Administrative Rules and Regulations

12-14

AN ACT concerning the state fire marshal; establishing a hazardous materials incident response program; amending K.S.A. 31-133 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The state fire marshal shall establish a hazardous materials incident response program. The state fire marshal shall be responsible for coordinated response by state agencies and cities and counties to a hazardous materials incident.

(b) For the purposes of this act:

(1) "Hazardous material" means any substance or material in a quantity or form which may be harmful or injurious to the health and safety of humans, animals, crops or property when released into the environment. Hazardous material includes, but is not limited to, explosives, radioactive materials, disease-causing agents, flammable liquids, solids or gases, combustible liquids, poisons, poisonous gases, oxidizing materials, corrosive materials, irritants, nonflammable gases, cryogenics and blasting agents.

(2) "Hazardous materials agency" includes, but is not limited to, local firefighters, the department of health and environment, the Kansas department of agriculture, the department of transportation, the department of human resources, the state corporation commission, the Kansas highway patrol, the adjutant general, the division of emergency management and any other state or federal agency deemed appropriate by the state fire marshal as designated by rule and regulation.

(3) "Hazardous material incident" means the occurrence or eminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause involving a hazardous material.

New Sec. 2. (a) To implement the provisions of this act, the state fire marshal shall adopt rules and regulations to:

(1) Establish appropriate procedures for requesting assistance of an emergency hazardous materials response team;

(2) establish consistent hazardous materials training standards and training materials after consultation with hazardous materials agencies;

1 (3) establish the composition of any hazardous materials incident re-
2 sponse team;

3 (4) establish the qualifications of and training requirements for any
4 hazardous materials incident response team;

5 (5) establish standards for supplies and equipment used by any haz-
6 ardous materials incident response team; and

7 (6) establish criteria for the operation of any hazardous materials in-
8 cident response team.

9 (b) In addition to the provisions of subsection (a), the state fire mar-
10 shal shall:

11 (1) Establish one or more hazardous materials emergency response
12 districts so that response time to any point in the state is at most two
13 hours;

14 (2) coordinate with hazardous materials agencies in the development
15 of rules and regulations to implement subsection (a);

16 (3) have power to sue;

17 (4) have the power to negotiate and enter into contracts necessary to
18 implement the provisions of this act; and

19 (5) be authorized to promulgate any rules and regulations necessary
20 to administer the provisions of this act in addition to the rules and reg-
21 ulations authorized by subsection (a).

22 New Sec. 3. (a) The state fire marshal is hereby authorized to organ-
23 ize, or cause to be organized, one or more advisory committees to assist
24 in the development of the hazardous materials incident response pro-
25 gram. Each advisory committee shall contain a representative from each
26 hazardous materials agency.

27 (b) No member of any advisory committee established under this
28 subsection shall receive any payment or other compensation from the
29 state fire marshal.

30 (c) No member of any advisory committee established under this sub-
31 section, except the state fire marshal, shall participate in the negotiation
32 of or receive any benefit from any contract authorized under this act.

33 New Sec. 4. No member of any hazardous materials incident re-
34 sponse team, except a full-time employee of the state fire marshal, shall
35 be deemed to be an employee of the state of Kansas for the purposes of
36 either the workers compensation act or the tort claims act.

37 New Sec. 5. The state fire marshal is authorized to recover costs
38 incurred by the state fire marshal attributable to causing a hazardous
39 materials incident response team to respond to a hazardous materials
40 incident. Such costs shall include travel expenses, wages, equipment costs
41 and such other costs as prescribed by the fire marshal by rule and regu-
42 lation. Such costs shall be recovered from any person or entity responsible
43 for safe handling or containment of the hazardous material involved in

1 the hazardous material incident.

2 New Sec. 6. No provision of sections 1 through 5, inclusive, and
3 amendments thereto, shall be deemed to amend, modify or repeal any
4 authority concerning hazardous materials under any statute or rule and
5 regulation in effect on the effective date of this act.

6 Sec. 7. K.S.A. 31-133 is hereby amended to read as follows: 31-133.

7 (a) The state fire marshal shall adopt reasonable rules and regulations,
8 consistent with the provisions of this act, for the safeguarding of life and
9 property from fire, ~~explosion and hazardous materials~~ and explosion. Such
10 rules and regulations shall include, but not be limited to the following:

11 (1) The keeping, storage, use, sale, handling, transportation or other
12 disposition of highly flammable materials, including crude petroleum or
13 any of its products, natural gas for use in motor vehicles, and of explosives,
14 including gunpowder, dynamite, fireworks and firecrackers; and any such
15 rules and regulations may prescribe the materials and construction of
16 receptacles and buildings to be used for any of such purposes;

17 (2) the transportation of liquid fuel over public highways in order to
18 provide for the public safety in connection therewith;

19 (3) the construction, maintenance and regulation of exits and fire es-
20 capes from buildings and all other places in which people work, live or
21 congregate from time to time for any purpose, including apartment
22 houses, as defined by K.S.A. 31-132a, and amendments thereto. Such
23 rules and regulations shall not apply to buildings used wholly as dwelling
24 houses containing no more than two families;

25 (4) the installation and maintenance of equipment intended for fire
26 control, detection and extinguishment in all buildings and other places in
27 which persons work, live or congregate from time to time for any purpose,
28 including apartment houses as defined by K.S.A. 31-132a, and amend-
29 ments thereto. Such rules and regulations shall not apply to buildings
30 used wholly as dwelling houses containing no more than two families;

31 (5) requiring administrators of public and private schools and edu-
32 cational institutions, except community colleges, colleges and universities,
33 to conduct at least one fire drill each month at some time during school
34 hours, aside from the regular dismissal at the close of the day's session,
35 and prescribing the manner in which such fire drill is to be conducted;

36 (6) procedures for the reporting of fires and explosions occurring
37 within the state and for the investigation thereof;

38 (7) procedures for reporting by health care providers of treatment of
39 second and third degree burn wounds involving 20% or more of the vic-
40 tim's body and requiring hospitalization of the victim, which reporting is
41 hereby authorized notwithstanding any provision of K.S.A. 60-427, and
42 amendments thereto, to the contrary;

43 (8) requiring administrators of public and private schools and edu-

1 cational institutions, except community colleges, colleges and universities,
2 to establish tornado procedures, which procedures shall provide for at
3 least three tornado drills to be conducted each year at some time during
4 school hours, aside from the regular dismissal at the close of the day's
5 session, shall describe the manner in which such tornado drills are to be
6 conducted, and shall be subject to approval by the state fire marshal;

7 (9) requiring administrators of community colleges, colleges and uni-
8 versities to establish tornado procedures, which procedures shall be sub-
9 ject to approval by the director of the disaster agency of the county; and

10 (10) ~~the development and implementation of a statewide system of~~
11 ~~hazardous materials assessment and response, and~~

12 ~~—(11) other safeguards, protective measures or means adapted to ren-~~
13 ~~der inherently safe from the hazards of fire or the loss of life by fire any~~
14 ~~building or other place in which people work, live or congregate from~~
15 ~~time to time for any purpose, except buildings used wholly as dwelling~~
16 ~~houses containing no more than two families.~~

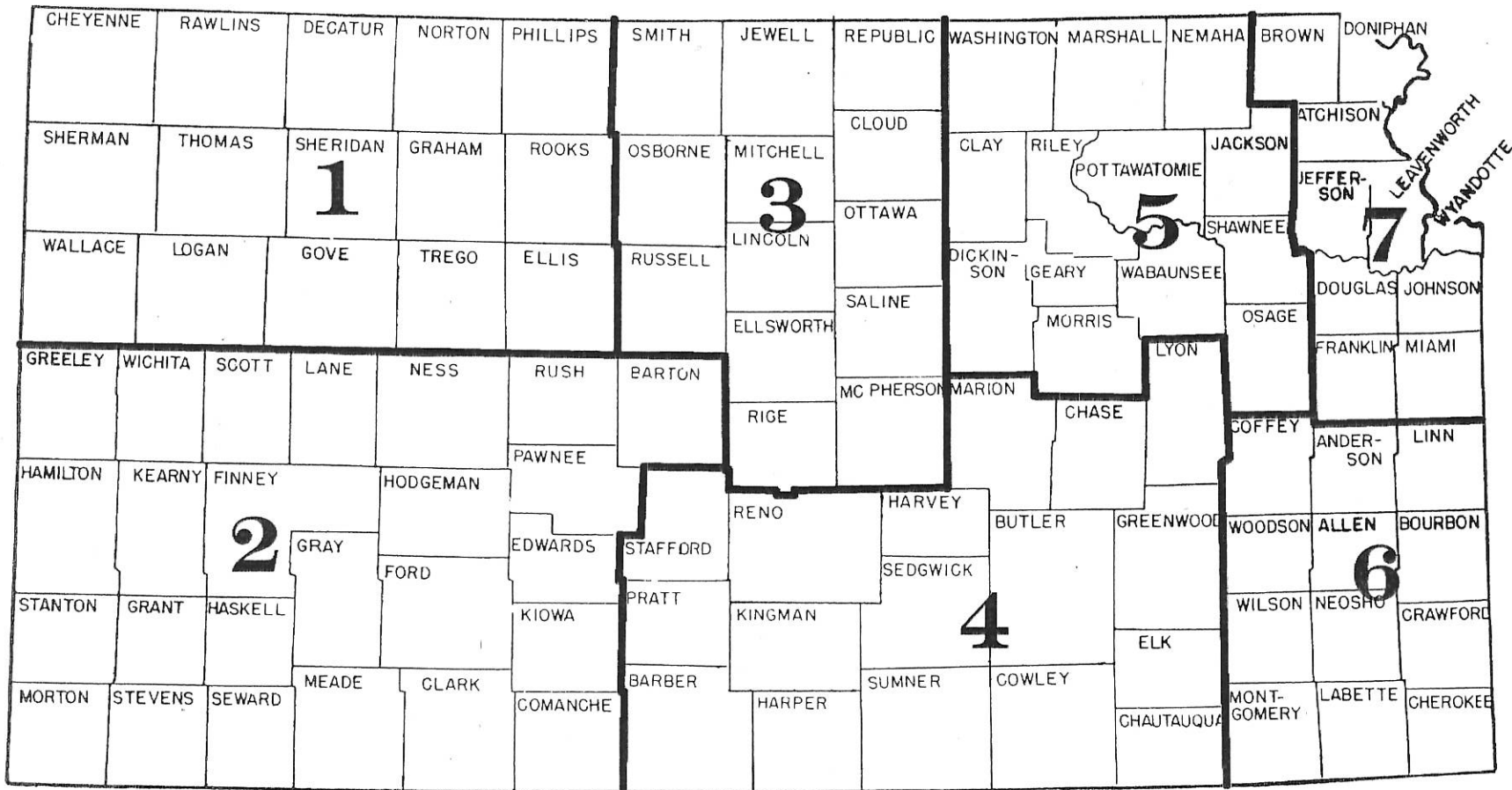
17 (b) Any rules and regulations of the state fire marshal adopted pur-
18 suant to this section may incorporate by reference specific editions, or
19 portions thereof, of nationally recognized fire prevention codes.

20 (c) The rules and regulations adopted pursuant to this section shall
21 allow facilities in service prior to the effective date of such rules and
22 regulations, and not in strict conformity therewith, to continue in service,
23 so long as such facilities are not determined by the state fire marshal to
24 constitute a distinct hazard to life or property. Any such determination
25 shall be subject to the appeal provisions contained in K.S.A. 31-140, and
26 amendments thereto.

27 Sec. 8. K.S.A. 31-133 is hereby repealed.

28 Sec. 9. This act shall take effect and be in force from and after its
29 publication in the statute book.

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Response Regions as proposed by the Hazardous Materials Advisory Committee

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X=Advisory Committee Members, Others are Training Committee Members

X----Gary Miller KDHE

X----Dennis Greenfield Transcare rep. PUBLIC SECTOR

X----Gene Krase/Leticia Arzate KDEM

X----Dennis Meyers Professional Fire Chiefs.

X----Randall Duncan/Gary Curmode County Emergency Management

X----John Lloyd Kansas State Fire Chiefs Assn.

X----Roger Rife Member at Large

X----Dave Sturbenz Kansas State Firefighters Assn.

X----Jim Keating Honorary Member

Susan Barker KDOT

Jack Taylor Pres. of Prof. Fire Chiefs Assn.

Bill Brubaker Retired, Douglas Co. Fire

Hank Dupont Overland Park Fire Department

Kelly Kirk Liberal Fire Department, Captain

David Mathew Sedgwick County Fire Captain

Mike Patterson Hutchinson Fire Department Instructor

John Scanlon Leavenworth Fire Department Asst. Chief Training

Bill Srna Salina Fire Department

Rudy Leutzinger KDHR

Tim Lockett or John Marmon KHP

Gary Meyer Depart. of Agriculture

Glen Pribenow Ku Fire Service Training

SnFedst
Attach # 6
02/06/02

TESTIMONY

Presented to:

**Kansas Senate
Federal and State Affairs Committee**

Presented By:

**Jack Taylor
Chief
Emporia Fire Department
Lyon County Emergency Medical Services**

Emporia, Kansas

February 6, 2002

SnFedSt
Attach #7
02/06/02

Introduction and Bio

Jack Taylor
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Emporia, Kansas 66801
Phone 620-343-4230
Fax 620-341-4395
e-mail jtaylor@emporia.ws

Current Employment and Association Activities

- Chief of Emporia Fire Department/Lyon County Emergency Medical Service for one year. Primarily a full-time department offering the service of fire protection, emergency medical services, technical rescue and code services.
- Member of the Commission on Emergency Planning and Response.
- Member of the Kansas State Fire Marshal Regional Hazardous Materials Response Committee.
- Member of the University of Kansas Fire Service Training Advisory Committee.
- Active member of numerous Kansas and national emergency service organizations.

Past Employment and Association Activities

- Fire Chief of the Liberal Fire Department 1993-2001. A combination fire department in rural, southwest Kansas providing fire protection, first responder and technical rescue.
- Employed 1990-1993 as Associate Program Manager for Firefighter Certification Program at the University of Kansas Fire Service Training.
- Past President of the Kansas Professional Fire Chiefs Association.
- Past member of the Kansas State Fire Marshal Fire Service Council.

On July 8, 1997, a group of approximately 20 to 25 representative of the fire service from across the State of Kansas met in Topeka to discuss the concept of regional response to hazardous material incidents. It had come to our attention that Governor Graves was interested in the regional response concept and that the front runner to deliver the response was the Kansas Highway Patrol. If I remember correctly, the KHP intended to hire a number of additional personnel (30?) who would primarily be Motor Carrier Inspectors and respond to hazardous materials incidents as a sideline. The cost to the taxpayers in Kansas would have been tremendous only partly because of the cost of the additional personnel on the payroll. In addition, all of those personnel would have to undergo training to the HazMat Technician level and then they would have to be equipped to respond. The ultimate cost would have been tremendous. Another potential problem would be extended response times. Motor Carrier Inspectors would have to respond from their location when the call came in to get the equipment vehicle and then back to the incident scene. I observed activities of this nature while fire chief in Liberal when we

would have a fatality motor vehicle accident. We would spend an enormous amount of unproductive time waiting for the mapping crew to arrive so that we could bring our part of the incident to conclusion.

It was our opinion that we, the fire service, could operate the program with a lower cost and with greater proficiency than any other group for several reasons. The first reason is that the fire service tends to be the agency that responds first to these calls to begin with. Because that tends to be the case, fire departments have been training and preparing themselves for many years to respond to these incidents. Many of us have also been equipping ourselves to respond. There are already several fully operational Hazardous Materials Response teams across the State, ready to respond at a moments notice. There was an existing funding source in the State Fire Marshal's office that could finance the program at a significantly reduced cost than that of the KHP. Finally, if the fire service operated the regional system, it would be fire service people responding to assist fire service people and many of the turf battles that could occur would be avoided. We have a long experience of assisting each other in mutual aid for large fire incidents. We know each other and we know what to expect from each other which makes the overall effort run more smoothly. Therefore, we believed that preparing and equipping any other agency to respond to these incidents would be redundant and extremely costly.

Thus began the odyssey to convince the Governor's office and the legislators that the fire service could deliver the program and then to prepare the regulations and documents to make that happen. Many of us have worked long and hard in cooperation with the Fire Marshal's office to see the fruits of our labor finally before us. The contracts were sent out by the Fire Marshal's office in late 2001 with several departments, including the Emporia Fire Department, prepared to participate in and deliver the regional concept.

Approximately one month ago, I became aware of Senate Bill #376. In reading the bill, there is one troubling statement that has raised the concern of the fire service across the State. The new Section 4 states, "No member of any hazardous materials incident response team, except a full-time employee of the state fire marshal, shall be deemed to be an employee of the State of Kansas for the purpose of either the Workers Compensation Act or the Tort Claims Act."

In order to make this program work, the fire service of Kansas has agreed to use resources already in existence for the most part. As stated before, many of us already have personnel trained to respond and already have most of the necessary equipment. Some additional personnel will need to be trained and some additional equipment will need to be purchased, but it is nothing like starting from scratch. All the fire service has requested is to be reimbursed for expenses of personnel and equipment when we respond as an agent of the State and to receive initial training for some personnel and refresher training for all personnel. I can't think of a more efficient and effective way to use a relatively small amount of money to protect the citizens and environment of the State of Kansas.

The Workers Compensation portion of Section 4 is not at issue. That has been resolved long ago. It seems to us, however, that since we are using local resources to respond as an agent of the

State, many times outside of our local jurisdiction, that the least the State could do is agree to assist with legal protection should an action be taken. New Section 2 of Senate Bill 376 directs the State Fire Marshal to establish procedures for requesting assistance from a response team, establish consistent hazardous materials training standards and training materials, establish the composition of any hazardous materials incident response team, establish the qualifications of and training requirements for any hazardous materials incident response team, establish standards for supplies and equipment used by any hazardous materials incident response team, and establish criteria for the operation of any hazardous materials incident response team. By this act, every responding hazardous materials incident response team will be trained and operate under direction and guidance of a State agency using equipment and materials dictated by that same agency, however, the State wants to opt out of any legal protection of those operating under their very direction and guidance.

I have placed the contract proposal from Emporia on hold pending the outcome of these hearings. Some others have done the same, others have submitted contract proposals with the understanding that they will be terminated if the language remains as changed.

Regional response to hazardous materials incidents by well trained, properly equipped personnel is a great concept. The fire service in the State of Kansas stands ready to make this concept work. We ask you to carefully consider this issue and help us make this happen.

TESTIMONY

Presented to:

Kansas Senate
Federal and State Affairs Committee

Presented By:

Roger Rife
Chief
Hays Fire Department

Hays, Kansas

February 6, 2002

Sn Fed St
Attach #8
02/06/02

Introduction and Biography

Roger Rife
PO Box 490
Hays, Kansas 67601
Phone 785.628.7330
Fax 785.628.7314
E-mail rrife@haysusa.com

Current Employment and Association Activities

- Director-Fire & Inspection Services for the City of Hays, KS
- Member of the Kansas State Fire Marshal Regional Hazardous Materials Response Committee
- Associates degree in Fire Science Technology
- Hazardous Materials Technician
- Instructor for Hazardous Materials for the office of Kansas Department of Emergency Management
- Current member of several Kansas and National Organizations

In March of 2000, I was appointed to fill a position on the regional Haz-Mat Oversight committee. I had been following the committee's progress and saw the importance of this concept for the State of Kansas. The problem with Hazardous Materials exists today and the question that lurks in everyone's mind is, "Who will take the responsibility to deal with the Haz-Mat situations?" The discussion and feasibility of several different agencies that might address how to handle hazardous materials seem to always lead back to the fire service. The fire service has been dealing with hazardous materials in one form or another for many years. I have been with my department for 30 years and I have plugged gas lines, patched leaks on tanks and I could go on and on but the point jumps out that the fire service has been providing the responsibility for handling hazardous material incidents for years. Up until the last 10 years, not much formal training was spent on how to deal with hazardous materials situations. Now our department has jumped in with both feet to handle these incidents. As in our area, if you can't cuff it or shoot it, you call the fire department.

I believe that if you look around the State as I have, you will see that other fire departments, are performing these same functions. The Fire Department responsibilities have not changed, "SAVING LIVES AND PROTECTING PROPERTY" was the charge that Ben Franklin made when he established the first fire department and this responsibility still remains today.

I believe that I have said enough about whom should be handling the hazardous material incidents, now lets put a plan in place. This has happened with the

dedication of many professionals from the three and four letter agencies from the State to having industry people serve on this committee as well as emergency management directors to fire department representatives from both large and small departments. Some of the questions that needed to be answered are as follows:

- Who will administer the program?
- Where will the funding come from?
- How do we go about designing the program?
- When can this program be put in place?

I feel the committee did an outstanding job of answering these and several other questions. Without going into a long dissertation it was agreed that the State Fire Marshal's office would be the place of choice for administering this program. With the return of funds to the State Fire Marshal's office, a funding mechanism was in place and why re-invent the wheel when there are other states that are currently providing these services. Let us check with these states and build our program around what they have found that worked the best for them.

The committee hammered long and hard on several issues and with the help of all concerned, was able to put forth a very just and workable plan. I was recently informed about Senate Bill 376 and have a great concern in reference to the new section 4. With the language contained in Senate Bill 376, my city manager is not interested in having our department become a Regional Response Team. We will meet the criteria that would be required of us but our city is not going to assume the State's responsibility when we are performing the tasks/functions that would be requested of us as a Regional Response Team. This would be extremely sad because we are the only department in a several county area that has the capabilities to meet the criteria required for the Regional Response Team concept.

We are placing our contract on hold pending the outcome of the hearings on SB376. For all of the language changes in SB376, mainly the new Section 4 and the unclarity of the new Section 1,(which can be interpreted and is being interpreted in so many different ways) to what I originally presented to my city commission, I will need to go back to our city attorney for his opinion on these changes. I need to know if he feels that we can still participate in the program. Frankly, I don't think there is a snowball's chance. On December 27, 2001, our city passed a Resolution authorizing the Mayor to Execute a Contract for Hazardous Materials Emergency Response Team. If SB376 is passed, I will need to ask that this Resolution be resended.

Please record this Testimony as being opposed to SB376.

**Testimony of
John M. Lloyd, President Kansas State Association of Fire Chiefs
Presented to the Senate Federal and State Affairs Committee
February 6, 2002**

The Kansas State Association of Fire Chiefs (KSAFC) appears today in opinion of a legislative response to the threat of hazardous material incidents.

KSAFC has been involved in the threat to hazardous material incidents since the start in 1996. We strongly support the legislation to improve the hazardous material response in the state and to provide a safe environment for the responders and citizens. This was done in a manner that fire departments across the state could improve their capabilities and help their neighbors. SB 376 does not support this concept and hurts the Regional Hazardous Material Program concept.

The first concern we have is in new section 1. This section refers to the State Fire Marshal as the coordinating agency for all hazardous material spills in the state. In the fire service this is the responsibility of the local incident commander at the scene. The State Fire Marshal Office is not equipped or trained to handle this heavy responsibility. The local incident commander has been able to make decisions at the scene on what assistance is needed with out going through a state agency.

The second concern we have is in new section 4. This section refers to only full-time employees of the State Fire Marshal Office are covered as state employees for Worker Compensation or the Tort Claims Act. In the current rules and regulations the State Fire Marshal Office will assist in the payment of Worker Compensation allowing the local response agency to keep their own coverage. The response agency will be covered under the State Tort Claims Act. This is a big issue for the response agencies to the point they will terminate the contracts. We feel the responders are being trained and directed to respond by the State Fire Marshal Office then the state should cover the liability.

The many members of the different agencies involved and the whole Kansas Fire Service has worked very hard to get this far and SB 376 will undo everything we have accomplished.

Sn Fed St
Attach #9
02/06/02

KANSAS AGRIBUSINESS RETAILERS ASSOCIATION



**KARA is
"Committed to
Professional
Development
and Business
Viability for
the Retail Crop
Production
Industry"**

Statement of the

Kansas Agribusiness Retailers Association

Presented to the

Senate Federal and State Affairs Committee

Senator Nancey Harrington, Chair

Regarding Senate Bill 376

February 6, 2002

Sn Fed St
Attach # 10
02/06/02

Good morning, Chairperson Harrington and members of the Senate Federal and State Affairs Committee. My name is Mary Jane Stattelman and I appear before you on behalf of the Kansas Agribusiness Retailers Association (KARA).

KARA is comprised of agribusiness retailers across the state that could potentially be impacted by this bill. KARA members handle various hazardous materials as defined in New Section 1. We are unclear what is the intent of this bill and whether it would duplicate or increase the already substantial amount of regulation that our members cope with when dealing with hazardous materials. The following is an abbreviated list of the regulations and reporting requirements that the KARA members already are required to comply with:

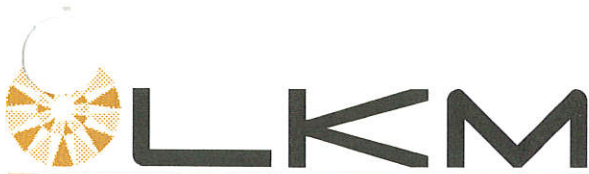
- report all fertilizer and pesticide spills to both the Kansas Department of Agriculture and the Kansas Department of Health and Environment;
- comply with all of the decal requirements regarding hazardous materials of the State Fire Marshall and Department of Transportation;
- report to the Corporation Commission outlining what type of hazardous materials we are transporting and how many miles that material will be transported;
- require each driver to have a commercial driver's license with a hazardous material designation
- KARA is comprised of agribusiness retailers across the state that could potentially be impacted by this bill. KARA members handle various hazardous materials as defined in New Section 1. We are unclear what is the intent of this bill and whether it would cause more regulation by the various agencies listed in the definition of hazardous materials agency. Our members are already heavily

regulated by a number of the mentioned agencies. Here is an abbreviated list of what KARA members already are required to do the following activities concerning hazardous materials:

- ensure that each driver has passed a drug test and that they have a current medical card;
- participate in an anhydrous ammonia school according to the EPA risk management plan; and
- register all of their bulk fuel and propane locations with the State Fire Marshall.

As I stated at the beginning of my testimony, we are unclear as to the intent of this bill and what impact it may have on our members. We are also unclear as to what costs the state fire marshall can recover pursuant to New Section 5.

Thank you for your time and attention. I would be happy to stand for any questions that you may have at this time.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Federal and State Committee

FROM: Sandy Jacquot, Director of Law/Legal Counsel *SJ*

DATE: February 6, 2002

RE: SB 376

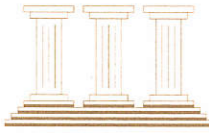
The League of Kansas Municipalities is presenting testimony today to express some concerns about SB 376. The probable goal of the bill, to make sure the state has a coordinated response to hazardous materials incidents, is a good one. The bill, however, is vaguely worded in sections and could be construed in ways that the sponsors may not have intended.

Several cities currently have the ability to respond to a hazardous materials incident in their cities, but under Section 1 of the bill, would need to be coordinated by the state fire marshal. There is an implication that the cities would need the permission of the fire marshal to respond. I doubt that is the intent of the drafters, but it should be clarified. Likewise, all phases of establishing a local hazardous materials incident response team seem to be under the direction of the fire marshal, as opposed to the local agency, including the composition of the team. We assume these sections refer to teams that have agreed to participate in the statewide response program and are not meant to apply to local fire departments in cities that have trained some of their members in hazardous materials response. Such intent should be clarified in the bill.

Section 4 of the bill is of particular concern. No member of the hazardous materials response team is deemed to be a state employee for the purpose of workers compensation or the Kansas tort claims act. This section could be construed to remove tort claims act coverage from city or other governmental unit firefighters, although they currently enjoy such protection as city employees. It further would put the risk of injury for team members responding to emergencies outside their jurisdiction on their own agency. The question becomes why any city would allow their firefighters or other personnel to participate in such a program. We would advise cities not to participate in such a program without Kansas Tort Claims Act protection.

Section 5 of the bill allows the fire marshal to recover costs incurred by the state fire marshal's office, but does not speak to the agencies that have participants on the hazardous materials incident response teams. Why would their costs not be recoverable, or are the response teams paid by the state?

It is our understanding that the fire marshal was well on the way to putting a program in place and had the support of many of our cities. If that is the case, this bill would seem to be an unnecessary piece of legislation. At the very least, the bill should be rewritten to address some of the legitimate concerns expressed by the League and others. Thank you for your consideration of our concerns.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Federal and State Affairs Committee

FROM: LJ Leatherman
Kansas Trial Lawyers Association

RE: 2002 376/Hazardous Materials Response Team

DATE: Feb. 6, 2002

Chair Harrington and members of the Senate Federal and State Affairs Committee, thank you for the opportunity to appear before you today on behalf of the Kansas Trial Lawyers Association. I am LJ Leatherman, a Topeka attorney and a member of the KTLA Board of Governors.

KTLA opposes this bill because it fails to protect volunteer members of a "hazardous materials incident response team" by providing workers compensation benefits to them if they are injured during such incident.

Section 4 of the bill specifically excludes response team members who are *not* full time employees of the State Fire Marshal's Department from being treated as an employee of the State of Kansas for purposes of the Workers Compensation Act or Kansas Tort Claims Act. In making this distinction, the bill excludes volunteers and part-time employees who are injured during a hazardous materials incident from the protections of the workers compensation act.

This is a dramatic shift in public policy, as set forth in existing law, which provides that persons serving as volunteer law enforcement officers, first responder, firefighters, emergency medical technicians or in a similar service are treated as an employee of the employer for whom he/she was volunteering. [See K.S.A. 44-508(b).] The public policy behind existing law is to encourage essential volunteer work in these areas.

Section 4, however, has the opposite effect of discouraging persons from providing such necessary volunteer services. This section could also result in persons who are doing the right thing by volunteering from being compensated if they are injured during the course of such volunteer services.

For instance, a volunteer could be directed by the State Fire Marshal or his designee to take an injured member of the response team to the nearby hospital but in doing so he is injured in an automobile collision. Another example would occur if a member of the response team and a volunteer were injured while extricating someone from a building or

Terry Humphrey, Executive Director

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automobile during a hazardous materials incident. Under both circumstances, the injured full-time member of the response team would receive workers compensation benefits but the volunteer who was assisting the response team would receive no such benefits. The same unjust result would occur for a part-time employee of the state fire marshal. Such injustices should not occur to Kansans who volunteer to serve the state fire marshal during a hazardous materials incident.

The exclusion of part-time employees and volunteers from being deemed employees of the State for purposes of the Tort Claims Act is also unnecessary because current law addresses this issue. The act provides that subject to limitations the governmental entity is liable for the torts of its employees if a private person would be liable under similar circumstances. K.S.A. 75-6103(a). An employee is defined under K.S.A. 75-6102(d). Under this framework the governmental entity is therefore only liable for the wrongful act or omission of its employees acting in the scope of their employment.

An exclusion of part-time employees and volunteers acting at the direction of the state fire marshal during the hazardous materials incident could potentially result in the public and others who are injured due to the negligence or wrongful acts of those acting at the direction of state fire marshal from being compensated for their injuries while those who are fortunate to be injured by a full-time employee acting at the direction of the state fire marshal would be compensated for their injuries. Such a perverse result is unjust and is fully addressed by existing law.

For these reasons, KTLA respectfully urges you to delete Section 4 from SB 376.

Thank you for the opportunity to express our serious concerns about this bill. We encourage you to oppose Section 4 of this bill.

January 30, 2002

Senate Federal and State Affairs Committee

Re: **SB 376**

The Board of Directors of the Kansas Emergency Management Association (KEMA) wish to go on record as opposing Senate Bill 376 concerning the organization for hazardous materials incident response. We are informed that the bill will be considered by the Senate Committee on State and Federal Affairs tomorrow. Unfortunately, we cannot be present in person to expressing our position so we respectfully request that this e-mail be entered into the record of your hearings on this bill. Since KEMA represents the Emergency Management Coordinators/Directors in 83 of Kansas's 105 Counties, we are very concerned about the encroachment on the ability of local jurisdictions to respond to HAZMAT incidents which this bill represents. The Fire Marshall has already been given the authority to work with local jurisdictions to develop regional response teams. To extend this authority to include what amounts to actual management of local HAZMAT response resources is unnecessary and probably unworkable. We believe that the current cooperative efforts of the Fire Marshall's office and local emergency response agencies can and will produce a system we can work with. SB 376 will significantly undermine those efforts.

Respectfully,

Michael D. Selves, CEM
Director, Johnson County Emergency Management
Government Affairs Chair, KEMA

Sn Fed St
Attach # 13
02/06/02



SEDGWICK COUNTY, KANSAS

FIRE DISTRICT #1

Fire Chief Gary E. Curmode

Fire Marshal
Greg H. Thompson

Deputy Chief of Operations
Byron N. Chrysler

4343 N. WOODLAWN ● WICHITA, KANSAS 67220-3837 ● 316-744-0471 ● FAX — 316-744-0944

Good morning.

I am here to speak with you this morning on the topic of Senate Bill 376.

While I'm sure there was originally good intent behind the creation of this bill, I must point out that it has missed its original intent. Instead of making the Hazardous Materials Regional Response initiative better, it actually makes it worse.

Why is that?

Currently, we have a bill passed by the legislature allowing the initiative to begin. We have recently adopted and approved rules for the operation of the program. Specifically, Sedgwick County is in the process of responding with a contract to participate as a part of the existing system under the existing rules and regulations.

If this new bill is allowed to leave this committee without decisive action to eliminate it, we will no longer be interested in participating in the system. We will lose our interest for several reasons:

1. This bill becomes yet another tool to erode our ability to govern ourselves. It becomes an attack on Home Rule from the standpoint that in new Section 1, Paragraph (b), Subparagraph (2) Hazardous Materials Agency[ies] are defined as: includes but is not limited to, local firefighters... In New Section 2, Paragraph (a), Subparagraph (1), the fire marshal shall "Establish appropriate procedures for requesting assistance of an emergency materials response team;" [...] This could allow the fire marshal to directly appropriate local assets to respond to a hazardous materials emergency. This would allow a state official to direct and control local assets potentially without local permission. This amounts to a direct attack on home rule authority.
2. Sedgwick County would further not be interested in participating in the system proposed in SB 376 because of the provisions of New Section 4 of the act - which would specifically deny the protection of the tort claims act to local firefighters participating in a response team.

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For the foregoing reasons, we believe SB 376 to be fatally and irreparably flawed and damaged.

Please let us have a chance to work with the existing system and allow us to suggest any needed changes or improvements based on our actual experiences with the program.



Gary E. Curmode
Fire Chief

Testimony presented to the Federal and State Affairs Committee
on Senate Bill 380
February 6, 2002

Thank you for the opportunity to speak with you today about Senate Bill 380 concerning electronic copies of official state publications. My name is Pat Michaelis and I am the State Archivist. I am employed by the Kansas State Historical Society. For the last several years we have been developing guidelines for the management and preservation of electronic records created by state agencies and working with the information technology community within state government to begin implementation of these guidelines. However, the challenges of preserving electronic records (including electronic publications) are immense. Hardware and software becomes obsolete in 5 to 7 years so a publication preserved electronically, generally, will not be accessible in 10 years unless it is recopied and saved in new versions of the software used to create it. If that software ceases to be upgraded and used, then the information must be migrated to a compatible program. Through all this, if not done systematically to maintain content, context, and structure, portions of the information may be lost and records could lose their authenticity and reliability.

While the guidelines we have developed have received support within the IT community, few agencies have implemented electronic information management systems that address the need to preserve access to certain series of records over the long term or permanently. Therefore, most agencies do **not** have the sort of electronic archives envisioned by this bill.

We are not opposed to the concept of keeping publications that are only available electronically in that format. However, we feel that it might be prudent to consider options for an electronic archives of state publications other than at the individual agency level. These other options might include some sort of partnership among the State Library, the Kansas State Historical Society, and the state IT community. In fact, a task force to develop guidelines for the management and preservation of web based records was established by the Electronic Records Committee this fall. State publications that only appear on agency web sites are part of the issues being considered by this task force. Representatives from the State Library and the Kansas State Historical Society are participating in the work of this task force.

Other options might include some sort of standards for electronic state publications so that all agencies are using the same software and, thus, publications could more easily be maintained in a consolidated archives. This standardization would make future conversions more feasible and cost effective. If publications are kept by the agencies, metadata standards would be necessary so agency staff and the public could know that these publications exist and that they could be accessed when necessary.

We would like to suggest that Senate Bill 380 be delayed for a year so that the Web Based Records Management task force could complete its work and report to this committee suggested options for archiving electronic state publications. Senate Bill 380 could then be revised to incorporate the option deemed best by the Federal and State Affairs committee.

Thank you.

URLs for previous electronic records management and preservation efforts:

Electronic Records Management Guidelines

<http://www.kshs.org/archives/ermguide.htm>

Managing Electronic Mail

<http://da.state.ks.us/itab/E-Mail%20Guidelines.pdf>

Testimony presented to Federal and State Affairs Committee
on Senate Bill 380
February 6, 2002

Thank you for this opportunity to share some thoughts with you regarding SB 380. My name is Marc Galbraith. I am the Director of Research and Information Services Division of the Kansas State Library. While the State Library and the Kansas library community recognizes and shares the Committee's interest in economizing dollars for state agency publications and in fully utilizing the Internet as a means of access and distribution for agency publications, we do have some concerns regarding provisions of SB 380.

We are concerned that the six month exposure period provided by SB 380 is not sufficient. Our experience suggests that it is difficult to predict when people will need access to state agency publications. If agency publications are to be available on an Internet-only basis, and that access is limited to a window of six months, then many people may be denied easy access to important publications.

While we think a six month exposure period is too short, we would be concerned even if the period were increased to twelve months. We hold this concern because we know Web pages change. Web pages change for many reasons and if there is not a systematic mechanism for assuring preservation of Internet publications, as they change, the authenticity of Internet-only publications will be jeopardized and Internet-only publications will be lost.

While SB 380 provides that agencies will retain electronic documents in their agency archives, we are not aware of existing standards adopted by Kansas agencies for addressing complicated issues such as the best archival format to store electronic publications and the migration of publications to new formats as old formats become obsolete. If a systematic process is not applied across agencies we believe agency publications and records will be lost.

We are also concerned because we are not at all certain that agencies are, at this time, prepared to apply a standardized system of cataloging, or meta tagging, for the electronic publications retained in their archives. If some uniform system is not agreed upon, the process of retrieving archived publications could become sufficiently complicated to retard easy access and research and could lead, for all practical purposes, to the loss of agency publications.

Many states and other entities have begun to grapple with this issue; Kansas is among them. A task force has been formed to develop guidelines to manage and preserve web-based Kansas documents. Both the Historical Society and the State Library are members of that task force.

We very much appreciate your leadership on this issue and would like to respectfully recommend to the committee that the provisions of SB 380 be postponed for one year while the task force works toward the completion of its guidelines and recommendations. The State Library and the State Historical Society would like to jointly report back to you, a year from now, on the progress of the task force.

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