

MINUTES OF THE SELECT COMMITTEE ON KANSAS SECURITY

The meeting was called to order by Chairman Lee Tafanelli at 11:25 a.m., January 30, 2004 in Room 241-N of the Capitol.

All members were present except:

- Representative John Faber - excused
- Representative Mario Goico - excused
- Representative Andrew Howell - excused

Committee staff present:

- Robert Waller, Senior Analyst, Legislative Research Department
- Bruce Kinzie, Office of Revisor of Statutes
- Lura Attig, Committee Secretary

Conferees appearing before the committee: none

Others attending:

The meeting was called to order by Chairman Lee Tafanelli. Committee members and staff were welcomed to the 2004 session.

Chairman Tafanelli asked for bill introductions from committee members. Chairman Tafanelli requested committee introduction of the following legislation:

- A bill to define the term "first responder." This term has been used to identify emergency medical service personnel. Within the Department of Homeland Security, the term has been generalized to include a wide variety of persons, such as veterinarians, Health Department officials, and others.

**Motion made by Representative Krehbiel and seconded by Representative Holmes. Motion passed.**

- A bill directing the Division of Budget to track all Department of Homeland Security federal funds that enter the state budget system, and place the authority of reviewing, coordinating, and approving the distribution of all Department of Homeland Security funds with the Adjutant General's Department, Division of Emergency Management.

**Motion by Representative Owens, seconded By Representative Carlin. Motion passed.**

Chairman Tafanelli introduced Director Richard Morrissey, Department of Health and Environment Division of Health, to give his report (Attachment 1) on the recent *Trust for America Health Issue Report* issued in December 2003. Director Morrissey informed the committee that *Trust for America Health* is an advocacy organization in Washington, D.C. whose purpose is to advocate for public health activities, those being, general support, and additional funding from Congress in Homeland Security. The report, although generating a lot of concern, did not utilize the indicators/standards instituted by the federal granting sources. Director Morrissey noted that the indicators are not utilized by Kansas Department of Health and Environment nor was the Department consulted in how they selected those measures.

Chairman Tafanelli thanked Director Morrissey for his report and asked what was the time frame in distributing funds to local units of government?

Mindy Reese, Director, Bio-Terrorism Program, stated that the Department had improved its system and the contracts went out for signature in September 2003. The contracts were returned with the signatures of county commissioners with a turnaround time of about two weeks. The first installment payments (which was 20% of the total contract) were made in September and October. The Department is still waiting for one county to return the signed contract. The second installment will be made in November, December, and January,

CONTINUATION SHEET

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depending on when the deliverables (an approved work plan and budget) are met. Director Reese noted that the Department did not have the manpower to process 99 contracts with local units of government, which initially created a large burden on the program and the business office. The system has been streamlined and the delivery of those funds has been expedited.

Director Morrissey added there are no specific guidelines in terms of time. The expectation is that funding is to be distributed in a timely manor in order to be used by local governments. Additionally, he noted that a percentage is not mandated to be passed through to local governments as opposed to other federal grant programs.

Chairman Tafanelli thanked Director Morrissey for his report.

Robert Waller, Senior Analyst with the Kansas Legislative Research Department, distributed copies of the Interim Committee Report (Attachment 2) and briefed the committee on the report.

Committee questions followed.

Chairman Tafanelli asked for further comments or business to come before the committee. There were none.

The Chairman announced that the Committee will hold hearings on **HB 2393** at the next meeting, which will be on call.

Chairman Tafanelli adjourned the meeting at 12:30 p.m.

**Response to Trust for America's Health Report  
Presented to  
House Select Committee on Security  
By  
Richard J. Morrissey  
Acting Director of Health  
Kansas Department of Health and Environment**

**January 30, 2004**

**Introduction**

Thank you for the opportunity to testify regarding the Trust for America's Health Report. My name is Richard Morrissey. I am the Acting Director of Health for the Kansas Department of Health and Environment.

In December 2003, Trust for America's Health (TFAH), a national non-profit organization, released a report titled "Ready or Not? Protecting the Public's Health in the Age of Bioterrorism." The report attempts to identify strengths and weaknesses of state Bioterrorism programs throughout the United States, using 10 key indicators as performance benchmarks. The indicators chosen by TFAH were not standards established by the federal Department of Health and Human Services, which funds the Kansas Bioterrorism Program and other state and local programs across the country, nor were they standards established by any organization as a benchmark for state program evaluation. In addition, states were not consulted in the surveying process or asked to respond to the indicators. The criterion for making each determination is largely unknown. Finally, the TFAH indicators were not the same indicators used by the federal funding agency to evaluate success of state agency programs.

Each state received a score of 0 to 10 (with 10 being highest) based upon its perceived conformance with each indicator. Based upon the TFAH study for the report, which was concluded in August 2003, Kansas scored a "3," receiving credit for spending 90 percent or more of the federal fiscal year 2002 federal Bioterrorism preparedness funding, having at least one laboratory able to handle biological agents, and having an initial state Bioterrorism plan.

**Response to the Trust for America's Health Report**

The Kansas Department of Health and Environment (KDHE) believes if the TFAH today undertook a more comprehensive, in-depth review, our state's Bioterrorism Program would score a 6 or 7 on the 10-point scale, placing us in the upper half of all state scores.

KDHE offers the following clarifications about each of the seven indicators it was deemed to have not met.

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Attachment 1

**Passed at least 50 percent of federal funds to local health**

**departments:** The Kansas Bioterrorism Program has made a continued commitment to provide funding directly to local health departments as part of the cooperative funding agreement with CDC. The amount of funding shared with local health departments was nearly 50 percent in the first year and in the current funding cycle; the Kansas Bioterrorism Program passed 51 percent of federal funds directly to local health departments. Kansas did not receive a point for this indicator, but should.

**State spending on public health was increased or was maintained:**

Like many other states, Kansas has reduced state spending to make up budget shortfalls over the past several years. Although no federal Bioterrorism funds have been used in place of state funds, Kansas did not receive a point for this indicator.

**Sufficient workers to distribute Strategic National Stockpile supplies:**

The criteria for this indicator have been regarded by most states as being unrealistic. There is a nationwide shortage of qualified health workers, and Kansas is not exempt from this shortage. The TFAH report uses the CDC's "Green" rated states as a threshold; however, this rating can only be achieved after CDC has conducted an exercise with a state at the CDC's discretion. As previously noted, the CDC continues to be pleased with progress made in SNS planning at the state and local levels by the Kansas Bioterrorism Program, and has recently increased our state's rating from Amber to Amber Plus, which qualifies our state for a full-scale SNS exercise. We are well on our way to achieving Green status (two steps from our current status) within the coming months.

**Has enough bioterrorism-capable laboratories to handle a public health emergency:**

The Kansas Bioterrorism Program has developed working relationships with no less than 42 sentinel laboratories during the past two years. Additionally, KDHE and Kansas State University have upgraded their laboratories to safely and securely provide confirmatory clinical testing services. The TFAH report did not quantify how many Bioterrorism-capable laboratories are considered to be "enough," and did not provide the criteria used for determining this indicator. The Kansas Bioterrorism Program has worked diligently over the past two years in this area, and has far surpassed any reasonable expectation for increasing its laboratory capacity and readiness. Kansas did not receive a point for this indicator, but should.

**No more than 3 counties without continuous high-speed Internet connections to the national Health Alert Network (HAN):**

The 99 Kansas local health departments serving all 105 Kansas counties are linked to the Health Alert Network and have 24/7 pager coverage. A

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number of sparsely-populated counties in Kansas do not have access to high-speed Internet connections due to infrastructure limitations. A better indicator would be the one designated by the CDC, which uses "90 percent of population covered" as their critical benchmark for HAN, a measure considered more appropriate for purposes of assuring public health and safety. Had this been the standard for the TFAH report, Kansas should have received a point for this indicator.

**Has pandemic flu plan:** Contrary to the TFAH report findings, Kansas has in fact developed a draft plan to respond to a pandemic influenza outbreak. KDHE is consulting with CDC on the status of the draft plan, and should have received a point for this indicator.

**State-specific information about SARS was available during the SARS epidemic:** KDHE published news releases to increase awareness and provide health education information about SARS during the global epidemic earlier this year, and did provide links to the CDC SARS page on the agency's Web site. In addition, the KDHE Epidemiologic Services Section provided clinical information packets about SARS to hospitals and private physicians. Kansas should have received a point for this indicator.

### **Conclusion**

The Kansas Bioterrorism Program continues to make great strides toward improving capabilities at all levels to prepare for and respond to public health emergency situations. Much progress has been made, and good momentum has been built to continue improvements at all levels, statewide. The Centers for Disease Control and Prevention completed its second comprehensive site visit to the Kansas Bioterrorism Program less than one week ago, and continues to provide positive feedback about the accomplishments made in Bioterrorism planning and preparedness at all levels in Kansas.

Thank you for the opportunity to provide testimony on this topic. I will now stand for questions.

Report of the  
Special Committee on Kansas Security  
to the  
2004 Kansas Legislature

**CO-CHAIRPERSON:** Representative Lee Tafanelli

**CO-CHAIRPERSON:** Senator Jay Scott Emler

**RANKING MINORITY MEMBER:** Senator Jim Barone

**OTHER MEMBERS:** Senators Dave Jackson, Nick Jordan, and Lana Oleen; Representatives Sydney Carlin, Mario Goico, Carl Krehbiel, and Joe Shriver

**STUDY TOPICS**

Terrorism Exercise

*December 2003*

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Select Committee on Kansas Security

Meeting Date 1-30-04  
Attachment 2

Select Committee on Kansas Security

# Special Committee on Kansas Security

## TERRORISM EXERCISE

### CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Kansas Security recommends:

- Development of a clarifying definition for the term "first responder" to conform with federal definitions.
- Creation and maintenance of a state-wide communication system which would provide interoperability for all state agencies and local units of government which would connect to the system. (The Committee supports the actions of the Public Safety Communications Committee chaired by David Lake, Administrator for the Board of Emergency Medical Services) in its efforts to create such a system.);
- Review and identify Homeland Security funding received by state agencies.
- Creation of an Oversight Committee or the endorsement of the Governor's Council on Homeland Security to review and approve the distribution of Homeland Security funding by state agencies.
- Draft a letter from the Legislative Coordinating Council (LCC) to the Environmental Protection Agency (EPA) and the Kansas Congressional Delegation to address concerns relating to state access to vulnerability and threat assessments conducted on community water systems.
- Encourage the LCC to continue the development of contingency plans for the continuity of government activities for the Legislative and Judicial Branches.
- Continued review by the LCC of the potential issuance of key-cards to registered lobbyists in order for them to access the Capitol.
- Introduction of legislation to amend the Kansas Open Meetings Act and the Kansas Open Records Act to allow the closure of meetings by local units of government when they are discussing matters of terrorism, emergency response plans, or Homeland Security.

**Proposed Legislation:** The Committee recommends the introduction of one bill on this topic.

### BACKGROUND

The Legislative Coordinating Council granted the Special Committee on Kansas Security three meeting days to discuss the results of the recently completed terrorism exercise, to review federal terrorism funding

received by the State of Kansas, and to review agricultural and animal terrorism issues.

Additionally, in fulfilling its duties as the Special Committee on Kansas Security, the Committee held hearings on:

- The continuity of government;

- The Kansas Open Meetings Act and the ability of local units of government to close meetings to discuss security measures with private organizations; and
- Human health issues affected by a natural or intentional emergency event.

### COMMITTEE ACTIVITIES

The Committee heard testimony from various agencies relating to the exercises coordinated and completed to evaluate the state's plans, procedures, readiness, and response to a terrorist event. Further testimony was presented from state agencies relating to: agricultural and animal safety security measures currently being implemented; continued threats and vulnerabilities; and federal funding to combat terrorism. Additional testimony was presented from representatives of the Overland Park Police Department, the League of Kansas Municipalities, and the Kansas Association of Counties, who discussed the Open Meetings Act and its impact on local governments. The Committee also heard from the Kansas Highway Patrol on assessments being conducted with the counties (as mandated by the Department of Homeland Security) to acquire federal funding. In conducting its meetings and due to the nature of the information being discussed, the Committee invoked the use of Joint Rule 5 of the LCC which allows for closure of meetings from the public to discuss matters of security. Therefore, the testimony and information presented during those meetings is not documented within this report.

The following conferees addressed the aforementioned topics with the Committee.

The Director of Legislative Administrative Services (LAS) gave an update on the continuity of government activities, which included three topics: continuity of operations, Capitol complex security threat levels, and building evacuation procedures (also in attendance were the Chief Clerk of the House of Representatives and the Secretary of the

Senate). The Director of LAS informed the Committee of the standing Continuity of Operations Committee and its membership under the command of the Adjutant General, and its duty to determine the needs of the Legislature during an emergency event. The Director discussed procedures in place to maintain off-site data storage by Computer Services and LAS, plans to be implemented during the Legislative Session, and building evacuation information.

The Administrator of Adjutant General's Department, Division of Emergency Management (DEM), and the Kansas Department of Health and Environment's (KDHE) Bio-terrorism Program Director provided a review of the 2002 Prairie Plague Exercise. Testimony was distributed describing the exercise, a state map depicting the six Homeland Security Regions in Kansas, and the Final Report on the exercise. The conferees discussed the length of the event and the number of agencies which participated. These conferees also stated that the purpose of the exercise was to gain insight into the reality of a massive public health crisis from the local perspective and to identify new planning and training priorities for every level of response. The conferees also provided information on local emergency plans, the formation and implementation of those plans, and the determination process relating to federal funding being passed to local units of governments.

The Assistant Director of the National Agricultural Biosecurity Center at Kansas State University (KSU) appeared before the Committee and reviewed a bio-terrorism exercise conducted called "High Stakes." The Assistant Director explained that agroterrorism exercises were conducted by the State of Kansas, in conjunction with the National Agricultural Biosecurity Center (NABC) at KSU. The conferee provided information relating to all those who helped develop the exercise plans and procedures which was tested, and informed the members of the Committee about the objectives, goals, and overall conclusions derived from the exercise. The conferee also addressed foot



and mouth disease, and the steps that would be taken in the event of an outbreak of that disease.

The Livestock Commissioner of the Kansas Animal Health Department (KAHD) presented testimony regarding legislation passed during previous sessions which relates to animal security. The Livestock Commissioner discussed 2002 SB 395 and 2001 Substitute for HB 2468. These bills provided for emergency declaration process, the establishment of quarantine areas, and certain criminal penalties. In addition, the 2001 legislation ultimately prohibited the feeding of garbage to animals. The conferee also discussed initiatives being considered by KAHD which include pre-approved burial sites for diseased animals and animal identification. Additionally, the Livestock Commissioner discussed the creation of an Emergency Incident Website to be "opened" only during an emergency and utilized to provide information to the public. He also discussed its use for viewing or dissemination of sensitive information for use by KAHD, counties, or other state agencies. Further, the Livestock Commissioner provided information on foreign animal diseases (FAD), and noted that efficient control of FAD's was dependent upon producer cooperation and the rapid observation and confirmation of a disease by the Plum Island, New York National Laboratory. The Livestock Commissioner reviewed the state plan for FAD's; explained the process of early detection; reviewed the process of closure of state borders, livestock markets, and slaughter plants; reviewed the county response procedures, briefed the members on the number of personnel necessary to respond to an incident; and discussed a diagram showing a quarantined area depicting a surveillance zone. The Livestock Commissioner noted that during the "High Stakes" exercise, communication was the biggest problem in exercising the state plan since the cell phones would not work in the Emergency Operation Center (EOC).

The Chief Legal Counsel of the Kansas Department of Agriculture (KDA) appeared before the Committee to provide information

on legislation passed relating to agricultural security. The conferee stated that there were five statutes that have been adopted in recent years which impact food security: 2003 SB 31 which dealt with endangering the food supply; 2001 Substitute for SB 36 which expanded the Farm Animal and Field Crop Research Facilities Protection Act to extend the coverage to field crops; 2001 SB 139 which expanded state laws relating to the assumption of risk of domestic animal activity law to include bison, camels, giraffes, or any other creature of the ratite family; 2002 SB 334, which amended the provisions of the commercial feeding stuffs law, to allow the Secretary of Agriculture to issue and enforce printed stop sale orders for any commercial feeding stuff which may contain any substance injurious to public health. The conferee also testified to three primary areas of KDA authority which are the: Plant Protection Program; Meat and Poultry Inspection Program; and the Dairy Inspection Program, and explained that each of the regulatory programs has a significant interface with regulatory programs on the federal level. The conferee noted that KDA's efforts have been focused on maintaining the current food safety and agricultural product safety mechanisms, while broadening the scope sufficiently to include the prospect of intentional acts. The conferee also commented that the absence of comprehensive planning and coordination on the statewide level is severely lacking in agricultural and food safety security, and added that extensive work had been done in Kansas on infectious animal disease. However, the conferee stated coordinated planning for all other vulnerable food production and food processing sites and facilities within the state was virtually non-existent. The conferee suggested that the need exists for the development of a comprehensive plan that designates duties and utilizes the particular strengths and expertise of each level of participant from local and state law enforcement, food and agriculture regulating agencies, and academia.

A Representative of the Kansas Farm Bureau (KFB) explained agricultural security and how it impacts KFB's members. The

conferee stated that KFB members support the actions by the U.S. Department of Homeland Security that ensure agriculture's continued ability to produce food and fiber. He discussed plans to develop and test a response plan that would be activated in the event of a foreign animal disease outbreak in conjunction with that of the State of Kansas, KAHD, and other private organizations. The conferee informed the Committee that KFB policy encourages farmers and ranchers to develop and implement their own individual, voluntary bio-security plans and to minimize the opportunities for crime to occur. The policy also recommends that regulatory agencies adopt bio-security measures, with prearranged visits and on-farm inspections. In regard to animal identification, the conferee remarked that KFB's member-adopted policy opposes mandatory animal identification, and that members support the development of a new, world-class national animal health emergency management plan for the U.S. Independent businesses that may change their practices and have certain flexibility presently are concerned about disclosing the exact number of livestock they may have on the premises.

A representative with the Kansas Livestock Association (KLA) testified on the size of the cattle industry in Kansas, and how bioterrorism would affect the Kansas economy including: the value of the industry, its importance to the state, the state's ranking relative to the number of cattle and calves on farms, the number of cattle and calves on grain feed, and production by commercial slaughter plants. The conferee also provided detailed information relating to the economic impact of the livestock industry on Kansas, especially in the western section of the state. The conferee suggested that the Committee address the funding for the KAHD's disease control functions which could possibly be discontinued at the end of FY 2006. It was noted that the proposed Animal Identification Program would be discussed during an upcoming convention in December, and that there would be members who would oppose or be reluctant to support an animal identification system.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that:

- The term "first responder" be further clarified. During testimony, the Committee expressed concern relative to the designation of an individual or an entity as a "first responder", and noted that currently the federal definition for the term is much broader than the definition utilized by the State of Kansas.
- The development and creation of a statewide communication system to be utilized by state and local agencies. The Committee heard testimony detailing the difficulties with multiple agencies responding to an emergency and attempting to coordinate efforts via the "communication" network currently available. The Committee supports the Public Safety Communication Committee (chaired by David Lake, Administrator of the Board of Emergency Medical Services) in its effort to create a system that is federally Project 25 compliant. The system would create interoperability statewide by providing the "backbone" that would allow local agencies access to a statewide communication network and ease communication among cities, counties, and the state for those who choose to connect.
- Homeland Security dollars be reviewed and identified through the current budgetary system. The Committee recommends the earmarking of those funds for ease of identification and tracking.
- An Oversight Committee be created or the endorsement of the Governor's Council of Homeland Security (with legislative management) to review and approve the distribution of Homeland Security funding by designated state agencies to other state agencies and local units of government. The Committee met with a great level of difficulty in tracking the funding, and ensuring that the agencies are communicating effectively in distributing the

funds. The Committee would like to make certain that funding is being expended in the most efficient and effective way possible to ensure the safety of Kansas citizens.

- The LCC compose a letter to the Environmental Protection Agency (EPA) and the Kansas Congressional Delegation to inquire of the current policy which prevents the State of Kansas emergency and law enforcement agencies access to vulnerability and threat assessment studies relating to community water systems. Currently, the EPA only allows EPA personnel access to those documents for security reasons and excludes access to state and local officials. The 2002 Special Committee of Kansas Security heard testimony from the Adjutant General's Department which expressed concern that access to those documents is imperative to its ability to respond to an incident or to assist in securing those locations to prevent an accident or event from occurring. The 2002 Committee directed the agency to continue its efforts in attempting to secure those documents. The 2003 Committee directed staff to contact the Adjutant General's Department to verify whether the EPA had changed the policy which denied access to those documents. Staff was informed that the policy remains unchanged.
- Legislation be introduced to allow local entities to close meetings and secure records relating to a general discussion of terrorism, emergency response plans, or Homeland Security based on testimony presented to the Committee by local

entities. Within the Kansas Open Meetings Act, there is a provision allowing executive sessions for matters "relating to the security of a public body or agency, public building or facility or the information system of a public body or agency" if the disclosure of information would compromise security. (KSA 75-4319 (b)(13).) The Overland Park Police Department, the League of Kansas Municipalities, and the Kansas Association of Counties provided testimony addressing the issue. Currently, a local entity (for example Overland Park) cannot close a meeting to discuss security measures with elected officials or to discuss sensitive or confidential security plans. The conferees were concerned that failure to update the Kansas Open Records Act and the Kansas Open Meetings Act to allow such closures places the local entities and private industry in a precarious position of being unable to develop secure plans behind closed doors.

- The LCC continue the development of contingency plans for the continuity of government activities for the Legislative and Judicial Branches. The Committee received an update on the plans from the Director of Legislative Administrative Services (LAS) and efforts being made to ensure the continuance of legislative business in the event that an emergency occurs.
- The LCC continue to review the issuance of key-card access to registered lobbyists. The Committee makes no recommendation at this time on this issue.