

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Rick Wilborn at 8:42 am on Thursday, June 04, 2020, in room 346-S of the Capitol.

All members were present

Committee staff present:

Connie Burns, Committee Assistant
Jason Thompson, Office of Revisor of Statutes
Natalie Nelson, Legislative Research Department
Sky Westerlund, Committee Assistant

Conferees appearing before the Committee:

Secretary Lee Norman, Kansas Department of Health and Environment
Will Lawrence, Office of the Governor
Tim Graham, Director of Government Affairs, Governor's Office
Mitzi McFatrach, Kansas Advocates for Better Care
Mike Burgess, Disability Rights Center
Heather Morgan, Kansas Association of Community College Trustees
Scott Bruner, Kansas Department of Aging and Disability Services (KDADS)

Others in attendance:

[See Attached List](#)

Continuation of hearing on:

SB 7 Enacting the governmental response to the 2020 COVID-19 pandemic in Kansas and providing certain relief related to health, welfare, property and economic security during this public health emergency

Chairman Wilborn continued the hearing on the bill.

Secretary Lee Norman, Kansas Department of Health and Environment (KDHE), appeared before the Committee to address questions and concerns on contact tracing. ([Attachment 1](#)) The Secretary stated that contact tracing is not a new process and Bluetooth and GPS technologies not used; the information is protected and remains confidential. Quarantine and isolation are normal practice when needed to mitigate the spread of infectious disease.

The Committee had concerns about how to protect people in correctional facilities or facilities under government control. The Secretary responded that KDHE labs are now testing for specific COVID-19

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antibodies, and also are doing the blood tests and working very closely with the Department of Corrections.

Asked if he had any concerns about the contact tracing provisions of the bill. Secretary Norman stated that he would be uncomfortable if contact tracing efforts had to be suspended until Rules and Regulations were promulgated. KDHE uses an electronic disease surveillance system called EpiTrax, which has very strict guidance under the federal Health Insurance Portability and Accountability (HIPAA) standards.

The Committee had concerns about adult care facilities not having personal protective equipment (PPE) or testing available, at the same time also hearing from some stakeholders that hospitals are now prepared and just waiting for COVID patients. The Secretary responded that while supply chain issues caused delays in PPE delivery to facilities at the beginning of the pandemic, KDHE has dispensed \$58 million worth of PPE to those that have requested, and KDHE has provided unlimited support to county and local health departments providing infection control consulting and more.

The Committee had concerns about schools being reopened if there was another spike. The Secretary stated that the agency is working with both the State Boards of Education and the Board of Regents to reduce the risk with social distancing. He was not comfortable speculating on what the plan would be for another spike, and made reference to how the state handled the spikes in meat packing plants or large work facilities.

Will Lawrence, Chief of Staff, Office of the Governor, and Tim Graham, Director of Government Affairs, Office of the Governor, appeared to address questions from the Committee concerning **SB 7** and the companion bill from the House. Mr. Lawrence stated that he had not done a comparison of the two bills, but asked the Committee to not make changes as that could result in a veto. Some of the changes from the prior bill the Governor vetoed include:

- Federal funds would remain in Governor's office but require approval for expenditures and dispersal by the State Finance Council (SFC);
- The provisions of Kansas Emergency Management Act (KEMA), takes all three emergency declarations and extends them from March 12 to September 15, and includes sunsets;
- There would be a sunset to emergency declaration. and restrictions to business closures and mass gatherings, including approval from the SFC;
- The State Board of Education would have to give approval for school closings; and
- More flexibility is granted to local health authorities and county commissioners.

Mr. Lawrence discussed the liability section of the bill and some of the protections offered for short term liability rather than long-term protections for following executive orders. The section on adult care facility is a very narrow focus for liability protections. He asked the Committee not to make

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adjustments to the bill.

The Committee had concerns on community colleges and adult care facilities being left unprotected and the compromises made for the bill to be acceptable to both sides.

Mitzi E. McFatrach, Executive Director, Kansas Advocates for Better Care, shared her concerns regarding the liability protection for adult care homes in the bill. ([Attachment 2](#)) She also stated that annual inspections by both state and federal regulators have been suspended during COVID-19, only the most severe level of abuse will result in an inspector investigation; police are barred from entering facilities; visitors are also banned from the facility; and aide training has been reduced from the usual 90 hours to 8 hours and all done on-line. She shared a report from the Centers for Medicare & Medicaid Services (CMS) that identified violations of infection control protocols showing only 41 out of 350 facilities in Kansas that were in compliance with infection control standards.

Chairman Wilborn reminded the Committee to keep their questions directed to the COVID-19 response legislation and not regulation issues.

Mike Burgess, Director of Policy & Outreach at the Disability Rights Center of Kansas, appeared as a neutral conferee on the bill. ([Attachment 3](#)) He stated the bill is a compromise and he would oppose efforts to expand the liability protections in any way that would negatively impact seniors and Kansans with disabilities.

Heather Morgan, Executive Director, Kansas Association of Community College Trustees, appeared before the committee in support of the bill. ([Attachment 4](#)) Ms Morgan asked to include Kansas community colleges in the bill to ensure they are provided with liability protection. Referencing a statement made by Ms. Morgan regarding potential contract disputes at community colleges, the Committee noted that the bill does not provide liability protection for contract disputes, only acts of negligence.

Scott Brunner, Deputy Secretary of Hospital and Facilities, and Janis DeBoer, Deputy Secretary, Kansas Department of Aging and Disability Services, (KDADS) appeared before the Committee to respond to questions and concerns. Mr. Brunner stated that KDADS is under contract with CMS and requires Kansas to complete infection control surveys in CMS certified facilities by the end of June. They also must investigate any complaints of abuse or residents in immediate jeopardy. At this time KDADS has completed 145 surveys.

Written testimony submitted:

Jessica Lucas, Cowley College Government Affairs Liaison, urged the Committee to amend the bill to include community colleges. ([Attachment 5](#))

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Steve Kearney, Executive Director, Kansas Technical Colleges, offered support for limited liability protection for post-secondary educational institutions related to COVID-19. ([Attachment 6](#))

Christine Zeller, RN, MSN, opposed to pending proposals to extend immunity to nursing homes. ([Attachment 7](#))

Maren Turner, State Director, AARP Kansas, opposed to efforts to grant immunity, related to COVID-19, to nursing homes, assisted living facilities, and other long-term care (LTC) facilities. ([Attachment 8](#))

Kansas Health Care Association and LeadingAge Kansas opposed to the definition in Section 9 (a). ([Attachment 9](#))

Kansas State Board of Healing Arts provided comments on the bill. ([Attachment 10](#))

Joseph Molina, on behalf of the Kansas Bar Association, opposed to the current legislation because it denies access to justice. ([Attachment 11](#))

Amanda Stanley, General Counsel, The League of Kansas Municipalities, provided comments on the bill. ([Attachment 12](#))

Callie Jill Denton, Executive Director, Kansas Trial Lawyers Association, opposed the COVID-19 response and reopening for business liability protection act found in new sections 8 through 15 of the bill and urged the Committee to remove those sections from the proposed legislation. ([Attachment 13](#))

Ron Hein, Advanced Practice Nurses Association, opposed to a proposed amendment to the bill by Rachelle Colombo, Kansas Medical Society. ([Attachment 14](#))

The Chairman recessed the meeting at 11:21 and announced the meeting would reconvene at 12:30 pm.

Senate Judiciary Committee Meeting - Afternoon

Final Action

Chairman Wilborn reconvened the meeting at 12:50 pm.

Chairman Wilborn stated that in discussion of the COVID-19 response measure, after more than 30 hours of hearings during *Sine Die* and extensive Committee hearings yesterday and today he is ready to move the legislation. The Chairman stated **SB 7** and **HB 2016** are identical except for one item, which he asked Revisor Jason Thompson to explain for the Committee.

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Mr. Thompson provided the Committee with copies of **SB 7** ([Attachment 15](#)), side-by-side comparison of **HB 2054** and 2020 Special Session **SB 7** and **HB 2016 - Enacting the governmental Response to the 2020 COVID-19 Pandemic in Kansas**, ([Attachment 16](#)) and the Supplemental Note on Special Session **HB 2016**, as amended by House on Final Action. ([Attachment 17](#)) He reminded the Committee that **SB 7** and **HB 2016** are identical and they can refer to either document.

Chairman Wilborn stated that the Committee would be working the House bill as it has already passed 107 -12. Chairman Wilborn asked if there are any amendments.

Senator Pyle stated he had an amendment that places the power for school closures with the local board of education of the school district or the governing body of the nonpublic school instead of the State Board of Education. ([Attachment 18](#))

Senator Pyle moved the amendment. Senator Petersen seconded the motion. The motion failed.

The Committee proceeded with discussion and comments on the bill. Chairman Wilborn asked for a motion on **HB 2016**.

*Senator Hardy moved to pass **HB 2016** out favorably. Senator Petersen seconded the motion. The motion carried.*

Chairman Wilborn thanked the committee for the long thoughtful hours put in on the bill.

The meeting was adjourned at 1:14 pm.