

1. The following changes were included in HB 2016 and it has been recommended that we make them permanent. Should the committee include the following in its report to the Legislature for further study and consideration during the 2021 session?

- In K.S.A. 48-925(b), make clear that the list of powers delegated to a governor by subsection (c) is comprehensive and not merely illustrative.
- Requiring each emergency order to specify which power(s) is enumerated in K.S.A. 48-925(c) provides its legal authority.

The following items were raised by conferees as concerns with provisions in HB 2016. Should the committee recommend that the Chairs of the House and Senate Judiciary Committees work with the Office of Revisor of Statutes to further research and, if deemed necessary, propose legislation through the committee process to be introduced in the 2021 session?

2. HB 2016 requires local health officers to make sanitary inspections of each school building and grounds. Should counties have local authority, based upon local needs and staffing, to determine if this is a requirement?

3. Because HB 2016 changed the penalties to be civil, enforcement now requires a court order which can be hard to obtain while courthouses are closed. KAC suggested that there is a “lack of an effective mechanism” to enforce statewide orders. Should a different enforcement mechanism be put into law?

4. In addition to the civil penalties set forth in HB 2016, should some violations still be subject to misdemeanor criminal violations when there is the likelihood of immediate danger to self, others, or property?

5. Should the language in Section 6 of HB 2016 regarding the closure of businesses be amended to make it more similar to the change in K.S.A. 48-925(e), which expired September 15, 2020? Suggested language to include in Section 6 could be, “the governor may not issue an order that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit...”

6. Should adult-care homes be granted liability to immunity?

7. The following items were raised by conferees as issues that may need further research and possible clarification in state law. Should the committee include the following in its report to the Legislature for further study and consideration during the 2021 session?

- Review K.S.A. 48-925(c)(11) to make sure the delegation of power to a Governor is “administrative” not “legislative,” as case law suggests that “legislative” power cannot be delegated at all. The Legislature may need to put in additional boundaries on the delegation of power.
- Review the authority of the Legislature to revoke a Governor’s use of the delegated emergency powers to determine whether such authority violates separation-of-powers. Once delegated can the Legislature “take it back?”
- The Legislature should clarify that that states of disaster emergency are to be “proclaimed” and the exercise during a proclaimed state of disaster emergency of powers delegated in K.S.A. 48-925(c) is to be by issuance of “orders.” K.S.A. 48-925(b) states the powers in K.S.A. 48-925(c) are to be exercised by “orders and proclamations,” while the text of K.S.A. 48-924(b)(1) states a Governor is to “proclaim” a state of disaster emergency. The commingling of the terms “orders” and “proclamations” does not appear to serve any purpose but injects a level of ambiguity.
- The Legislature should clarify how it intends a Governor’s K.S.A. 48-925 delegated emergency powers to interact with the constitutional and statutory powers of other entities, i.e. the State Board of Education and local school boards.
- HB 2016 allows counties to adopt less-restrictive orders than a governor’s emergency order relating to public health and also provides a mechanism by which those local boards may review and modify orders of local health officers. The Legislature should carefully review the text and operation of those provisions. For example, the statute authorizing “less restrictive” local orders never expressly states those less-restrictive local orders would replace a governor’s order in that county (although the intent appears clear). Similarly, the current statutory language applies only to orders “relating to public health,” which seems somewhat peculiar within the current architecture of KEMA.

The following suggestions were raised by conferees and committee members regarding the ability of a Governor to declare a disaster and the level of oversight by the Legislative Branch. Should the committee include the following in its report to the Legislature for further study and consideration during the 2021 session?

8. Should there be a separate category of disaster for human pandemics (much like the one in current law for animal/crop pandemics)?

9. Instead of by type of disaster (animal/crop pandemic, natural disaster, human pandemic, etc.) should the authority of a Governor and the level of oversight by the Legislature be determined by the length of the disaster? For example, a Governor could declare a disaster for a tornado that lasts for 21 days. In this situation, there would be very little legislative oversight. However, if a Governor were to declare a disaster that is extended beyond 21 days, additional levels of legislative oversight would begin to kick in at 21 days, at 60 days, and at 90 days.

10. Regarding legislative oversight, how should that oversight be provided? Should it be provided by the State Finance Council, the Legislative Coordinating Council, or some other expanded legislative body?

11. What mechanism, if any, should exist for revoking emergency orders issued by a Governor under authority of KEMA? KEMA provides for revocation by concurrent resolution of the Legislature, and 2020 House Concurrent Resolution 5025 unsuccessfully attempted to provide for revocation by the Legislature Coordinating Council.

12. Should the body providing legislative oversight be able to make its own motion to extend a disaster declaration and not be subject to a veto of the Governor?

13. Should the body providing legislative oversight be extend a disaster declaration by less than 30 days, more than 30 days, or only 30 days?

The following items were raised by conferees as concerns with current law.

14. Currently, KEMA requires no review or approval for legality. Should someone or some group be responsible for reviewing the legality of emergency orders? If so, who? It was suggested that the Attorney General could conduct the review. Another option would be to have a three person group made up of the Governor (or the Governor’s designee), the Attorney General (or the Attorney General’s designee), and the Chairperson of the LCC (or the Chairperson’s designee) conduct the review.

15. Should there be clarifying language on any publication requirement before an emergency order can have the “force and effect of law”?

16. Should a constitutional amendment be considered that would authorize the Legislature by statute (a) to delegate emergency powers to a Governor – or to other state entities or officials, and (b) to retain the ability to oversee use of those powers, such as by rejecting emergency orders by concurrent resolution or by action of a designated legislative body such as the LCC. If this authority were constitutionalized, it would avoid the difficult nondelegation and separation-of-powers concerns currently present in KEMA.

The following items were raised by conferees regarding the closure of businesses. Should the committee include the following in its report to the Legislature for further study and consideration during the 2021 session?

17. Should the closure of businesses require any legislative approval or oversight?

18. Should another person or group provide oversight (such as the Attorney General or State Finance Council)?

19. Should due process (including a 72-hour hearing requirement) be given to businesses that are shut down from a statewide order like they are given at the local level in K.S.A. 65-129c?

20. Instead of essential and non-essential businesses should businesses be able to stay open that are able to meet minimum health and safety requirements? If so, who would determine the minimum requirements and what would be the timeline to set those requirements? Could a Governor close down businesses while the requirements are being determined?

21. Should discretion be given to keep businesses open at the local level?

22. Should a governor be able close private schools or should they be treated as a business since they do not receive tax dollars and rely upon tuition to stay open?

The following items were raised by conferees or members of the committee. Should the committee include the following in its report to the Legislature for further study and consideration during the 2021 session?

23. Should cities have the authority to implement a lessor order than a statewide order?

24. Should there be a mechanism for enabling a state of disaster emergency to exist for purposes of qualifying for federal disaster assistance, or perhaps for other KEMA purposes such as activating emergency management plans, without necessarily enabling a Governor to access the emergency powers delegated by K.S.A. 48-925?

25. Should we extend the authority the Chief Justice currently has in HB 2016 by eliminating the sunset provision? Or should we decouple that authority from the need for a statewide emergency declaration and instead give the Chief Justice the authority to extend or suspend time limits and deadlines when an emergency substantially endangers or infringes upon the normal function of the judicial system or access to the Courts?

26. Should KDHE be required to maintain a central online repository by jurisdiction of all Chapter 65 local health officer orders currently in effect?

27. Is clarification needed of what “commandeered or otherwise used in coping with a disaster” means in K.S.A. 48-933(C)?

28. Should we remove or restrict the ability of counties to opt out of statewide orders? In the alternative, is there a way to have local control but to override that local control in certain circumstances?

29. Should a city that is located in two or more counties be able to determine which county’s orders it wants to follow?

30. Should a Governor be able to declare sequential states of disaster emergency thereby avoiding the time limitations in KEMA?

31. Should a Governor have to state with specificity which statutes are intended to be suspended by any order that exercises the power delegated in K.S.A. 48-925(c)(1).

32. Should cities of a certain size have a role in emergency management? (KEMA does allow a Governor to designate certain cities to have a response plan, but to date, no city in Kansas has ever been designated.)

33. Instead of having 105 counties making their own orders should Kansas look at a different model? One suggestion was to use the seven Homeland Security Regions that Kansas is divided into.

34. When an order states that cities have discretion to enforce the order, should the order be required to make it clear that the cities are acting on behalf of the state?

35. Should the requirements for calling a special session by the legislature during a disaster declaration be reduced? For example, instead of 2/3 requirement consider changing it to a simple majority to call a special session. This would require a constitutional amendment.

36. Should the Adjutant General have law enforcement powers (K.S.A. 48-934)?

37. The following items were raised by conferees as issues that the Legislature should study but are issues that fall outside the scope of this KEMA committee. Should the committee include these issues in its report to the Legislature for further study and consideration during the 2021 session?

- Should enforcement powers and/or penalties be available when agencies fail to comply with IT security standards and best practices?
- How to increase access to broadband statewide?
- Should Kansas Public Safety Telecommunicators be included in the term of “emergency responder” in disaster emergency relief efforts?

- Should the use of two-way audio-visual communication in court proceedings be permanent?
- Should the statutory speedy trial limits be suspended or eliminated?
- Should the content of the executive order allowing for nurse practitioners, nurse anesthetists, and physician assistants to practice in many facilities without physician supervision be made permanent?
- Should the content of the executive order allowing for health care professionals licensed in other states to practice in Kansas to deliver telehealth without a Kansas license be made permanent?
- Should a direct tax credit be provided in emergency instances when government puts into place orders prohibiting evictions and foreclosures?
- What information should KDHE be required to release during a pandemic? And what time limitation should be placed on the release of that information?
- What changes are necessary for the operation of the Legislature during an emergency (meeting offsite, remote voting, etc.)? Should the article 15 section 13 provision be expanded to include disasters?
- Education Proposals
 - Should the State Board’s guidance on meeting the statutory school term requirements be codified?
 - Should districts be mandated to provide additional educational opportunities for at-risk students while using remote learning environments?
 - Should education savings accounts be provided for students whose school district does not provide in-person instruction?
- Other Issues in HB 2016 That May Need Extended or Made Permanent
 - COVID-19 Contact Tracing Privacy Act
 - Curbside Alcohol Sales
 - Executive Order 20-09 offering temporary relief from motor carrier regulations.
 - Executive Order 20-13 allowing for deferred tax deadlines and payments.
 - Executive Order 20-20 allowing notaries and witnesses to act via audio-video communication technology
 - How to bridge gap for those adult-care home workers who were granted an occupational license exemption via Executive Order 20-23?