



2021

State Finance Council



LAURA KELLY, Governor

AGENDA

STATE FINANCE COUNCIL

December 9, 2021

1:30 p.m.

by Webex

Approval of State Finance Council minutes of October 26, 2021

Item to be considered:

1. Request of the SPARK Executive Committee to approve the allocation CRF money to fund existing testing programs through December 31, 2021.

STATE FINANCE COUNCIL

MINUTES

October 26, 2021  
3:00 p.m.

The Kansas State Finance Council was called to order by Governor Laura Kelly at 3:05 p.m. The following members were present:

PRESENT VIA WEBEX

Senator Ty Masterson, Senate President  
Senator Larry Alley, Senate Majority Leader  
Senator Dinah Sykes, Senate Minority Leader  
Senator Rick Billinger, Senate Ways & Means Chair  
Representative Ron Ryckman, Jr., Speaker of the House  
Representative Dan Hawkins, House Majority Leader  
Representative Tom Sawyer, House Minority Leader  
Representative Troy Waymaster, House Appropriations Chair  
Governor Laura Kelly

APPROVAL OF MINUTES

Representative Sawyer moved that the Minutes of the September 3, 2021, meeting be approved. Senator Sykes seconded the motion. Motion was adopted unanimously. Votes were as follows:

President Ty Masterson	Yes
Senator Larry Alley	Yes
Senator Dinah Sykes	Yes
Senator Rick Billinger	Yes
Speaker Ron Ryckman, Jr.	Yes
Representative Dan Hawkins	Yes
Representative Tom Sawyer	Yes
Representative Troy Waymaster	Yes
Governor Laura Kelly	Yes

AGENDA ITEM 1

**1. Approval of the Request of the Insurance Commissioner to Increase the Securities Act Fee Fund (SAFF) Expenditure Limitation**

Bobbi Mariani, Director of Administrative Operations and Human Resources of the Kansas Insurance Department presented an overview regarding the request to increase the SAFF expenditure limitation by \$750,000 in the current fiscal year to cover the cost of obtaining contracts and other items in order to perform the work denoted in the settlement agreement in *Blumer, et al. v. State of Kansas* (Shawnee Cty. Dist. Ct., Case No. 2019-CV-720) for reviewing and updating fund receipts and expenditures for entities that pay fees into the Fund.

Governor Kelly called for a motion to approve the request. Representative Hawkins moved and Representative Waymaster seconded the motion. The motion was adopted unanimously. Votes were as follows:

President Ty Masterson	Yes
Senator Larry Alley	Yes
Senator Dinah Sykes	Yes
Senator Rick Billinger	Yes
Speaker Ron Ryckman, Jr.	Yes
Representative Dan Hawkins	Yes
Representative Tom Sawyer	Yes
Representative Troy Waymaster	Yes
Governor Laura Kelly	Yes

RESOLUTION NO. 21-735:

The resolution authorizes the approval of the request of the Kansas Insurance Department for approval to increase the Securities Act Fee Fund expenditure limitation by \$750,000 in the current fiscal year.

AGENDA ITEM 2

**2. Request of the Attorney General to Review the Claim Judgment in the Matter of the Wrongful Conviction of Jose Delacruz**

Dennis DePew, Deputy Attorney General, Chief of the Civil Litigation Division at the Office of the Kansas Attorney General, reviewed the wrongful conviction claim of Jose Delacruz for a criminal contempt of court conviction in Reno County, Kansas. The judgment awards compensation in the amount of \$123,101.46 and attorney fees of \$10,731.60. Mr. Delacruz is also eligible to participate in the state health plan for the 2021-2022 year and also participate in the college tuition waiver program.

In 2010, Mr. Delacruz was charged with felony murder and aggravated robbery. In 2011, he was convicted only of the aggravated robbery charge and sentenced to 83 months. There were other co-defendants in the crime and the judge ordered Mr. Delacruz to testify in the trials against the other defendants. Upon advice of counsel, Mr. Delacruz declined to testify. The Reno County District Attorney brought criminal contempt of court charges against Mr. Delacruz for failure to testify. The district court found him guilty and sentenced him to 108 months to run consecutively to the 83-month sentence for aggravated robbery. *State v. Delacruz*, Reno Cty. Dist. Ct., Case No. 2011-MR-006. Mr. Delacruz appealed and the Kansas Supreme Court vacated the district court's judgment in *State v. Delacruz*, 307 Kan. 523, 411 P.3d 1207 (2018). Mr. Delacruz served 631 days of the sentence for the criminal contempt conviction prior to the Kansas Supreme Court's decision. As a result, under K.S.A. 60-5004, Mr. Delacruz is entitled to compensation for the 631 days he served.

Subsequently, Mr. Delacruz filed a claim for civil compensation stemming from his wrongful incarceration. A Journal Entry of Judgment vacating the conviction was approved by the Court. *In the Matter of the Wrongful Conviction of Jose Delacruz*, Reno County District Court, Case No. 2020-CV-251. The Court awarded Mr. Delacruz compensation, and a Certificate of Innocence was issued on September 10, 2021.

Governor Kelly requested clarification regarding the conviction for the aggravated robbery charge. Mr. DePew stated Mr. Delacruz served the full term for the aggravated robbery conviction and then served 631 additional days of the 108-month sentence for the criminal contempt charge until the Kansas Supreme Court issued its decision vacating the trial court's judgment.

Governor Kelly stated that the case had been fully reviewed by the State Finance Council as required by statute.

AGENDA ITEM 3

**3. Request of the Attorney General or approval of a Tort Claim Settlement in *Bledsoe v. KDADS, et al.***

Governor Kelly called for a motion to recess the open session to an Executive Session to discuss the tort claim on the agenda. Representative Waymaster moved that the open meeting of the State Finance Council, being held by Webex, be recessed for a closed, executive meeting pursuant to K.S.A. 75-4319(a), for consultation with the Attorney General and members of the staff of the Attorney General to discuss matters relating to a proposed tort claim settlement under consideration pursuant to K.S.A. 75-6106 under the justification listed in K.S.A. 75-4319(b)(2), because discussion of such matters in an open meeting would waive attorney-client privilege; that the State Finance Council resume the open meeting, being held by Webex, at 3:30 p.m. and that this motion, if adopted, be recorded in the minutes and be maintained as a part of the permanent records of the State Finance Council. Representative Hawkins seconded the motion. The motion was adopted, and the State Finance Council recessed to an Executive Session at 3:19 p.m.

The open meeting of the State Finance Council convened at 3:30 p.m.

Governor Kelly called for a motion to approve the request for the approval of the tort claim settlement in *Bledsoe v. KDADS, et al.* Speaker Ryckman moved that the request for approval such tort claim be approved. Representative Hawkins seconded the motion. Motion was adopted unanimously. Votes were as follows:

President Ty Masterson	Yes
Senator Larry Alley	Yes
Senator Dinah Sykes	Yes
Senator Rick Billinger	Yes
Speaker Ron Ryckman, Jr.	Yes
Representative Dan Hawkins	Yes
Representative Tom Sawyer	Yes
Representative Troy Waymaster	Yes
Governor Laura Kelly	Yes

ADJOURNMENT

Governor Kelly called for a motion to adjourn. Senator Sykes moved for adjournment, and Representative Waymaster seconded the motion. The motion was unanimous by voice vote and the meeting adjourned at 3:35 p.m.

MEMORANDUM

TO: Governor Laura Kelly and State Finance Council  
FROM: Adam Proffitt, Director of the Budget  
DATE: December 8, 2021  
SUBJECT: State Finance Council Meeting of December 9, 2021



An explanation of the item on the agenda for the State Finance Council meeting scheduled for December 9 is presented below.

**1. Request of the SPARK Executive Committee to approve the allocation CRF money to fund existing testing programs through December 31, 2021.**

The SPARK Executive Committee asks State Finance Council to approve the allocation of up to \$14.9M of recouped CRF money to fund existing testing programs through December 31, 2021 or until funds are depleted. The CRF dollars will be used to extend funding for employer testing for businesses that are currently relying on university and contract labs and extend funding for Kansas Department of Health and Environment (KDHE) and for community testing efforts, which include the operation of Kansas Health and Environmental Laboratories (KHEL)-operated mass testing sites, processing PCR tests for local health departments, and offering antigen tests at KDHE Community Testing Partners.

**To:** State Finance Council  
**From:** SPARK Executive Committee  
**Date:** December 8, 2021  
**Re:** KDHE testing program extension via CRF funding

On November 15, 2021, the SPARK Executive Committee voted to approve for State Finance Council's consideration the expenditure of recouped Coronavirus Relief Fund (CRF) dollars that are currently available and unallocated for general continuation of a set of existing, State-funded COVID-19 testing programs, with the qualification that any funds reimbursed by FEMA will be clawed back. The SPARK Executive Committee asks State Finance Council to approve the allocation of up to \$14.9M of recouped CRF money to fund existing testing programs through December 31, 2021 or until funds are depleted. The CRF dollars will be used to extend funding for employer testing for businesses that are currently relying on university and contract labs and extend funding for Kansas Department of Health and Environment (KDHE) and for community testing efforts, which include the operation of Kansas Health and Environmental Laboratories (KHEL)-operated mass testing sites, processing PCR tests for local health departments, and offering antigen tests at KDHE Community Testing Partners.

### **Background on Testing Program Funding and Current Need**

Previously, KDHE allocated \$141M of federal grant funding to make COVID-19 testing accessible for all Kansans, including support for commercial and university labs to help expand processing and sampling capacity. The surge of infections due to the Delta variant significantly depleted this budget. From June to September, the monthly cost of Kansas state-funded testing grew from \$4M to \$16M. The surge left KDHE with a balance of \$15M at the end of October, necessitating a change in approach. At the current weekly cost of \$3M+ per week, KDHE is expected to fully deplete funds before the end of 2021. Additional background information can be found in Attachment A.

### **Recouped CRF Funding**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of March 2020 provided the state of Kansas approximately \$1.3B in CRF funding, which was spent on high-priority COVID-19 relief and recovery investments. In conducting close-out procedures for the state agencies' CRF allocations, the Office of Recovery recouped \$14.9M of unused fund from state agencies. The SPARK Executive Committee is asking State Finance Council to approve the allocation of these recouped, unallocated funds to fund existing testing programs through the end of the calendar year.

### **Other Funding Sources**

KDHE is also dealing with changes in federal requirements and guidelines for FEMA reimbursement of testing costs. This funding will allow KDHE to maintain continuity of these programs while waiting to hear on FEMA reimbursement on a portion of state testing costs and to get a clearer view of testing finances into 2022. If FEMA grants reimbursement for testing program expenditures, the SPARK Executive Committee could claw back the covered funds for other uses.

## Overview of funds received for testing and allocated to contract lab testing

KDHE’s Unified Testing Strategy, which was launched in November 2020, aimed to make testing widely available to Kansans through mass testing sites, community testing partners, and Local Health Department (LHD) testing sites. This required contracting with Labs across the state to collect and process PCR tests. Significant portions of the federal grants were not eligible for use as contract lab funding or had to be allocated to contract lab funding among several other competing health priorities.

To date, Kansas has received \$469M for broad testing uses across four large federal funding sources: Coronavirus Relief Funds (CRF) via SPARK in 2020, Epidemiology and Lab Capacity (ELC) – Enhancing Detection (under two federal COVID relief bills), and various programs under ARPA. Of the \$469M, around \$141M was budgeted specifically for contract lab testing. The remaining \$328M consists of grants provided with very narrow guardrails for usage (e.g., direct pass-through to Rural Health Clinics) or spend on other critical activities related to testing and epidemiology (e.g., LHD staff augmentation). The total funds eligible for broad testing uses and the portion of those subsequently allocated and spent for testing through contract labs is shown in Table 1.

**Table 1: Total testing-eligible federal funding provided to Kansas with subset of eligible funds budgeted, spent, and remaining for contract lab testing, November 2020 through October 2021**

<b>Funding source</b>	<b>Bill</b>	<b>Total \$ eligible for broad testing uses</b>	<b>Total \$ budgeted for contract lab testing</b>	<b>...Of which spent</b>	<b>...Of which obligated</b>	<b>...Of which remaining</b>
CRF	HR 748	\$ 82,690,000	\$ 58,245,517	\$ 58,245,517	-	\$ -
ELC-Enhanced Detection	HR 266	\$ 81,300,000	\$ 11,415,579	\$ 7,410,574	\$ 4,005,005	\$ -
ELC-Enhanced Detection Expansion	HR 133	\$ 167,700,000	\$ 70,948,711	\$ 50,055,802	\$ 5,684,229	\$ 15,208,680
ARPA – Various Programs	HR 1319	\$ 137,162,554	\$ -	\$ -	\$ -	\$ -
<b>Total</b>		<b>\$ 468,852,554</b>	<b>\$ 140,609,807</b>	<b>\$ 115,711,893</b>	<b>\$ 9,689,234</b>	<b>\$ 15,208,680</b>

Note: HR 748 = CARES Act (2020); HR 266 = Paycheck Protection Program and Health Care Enhancement Act (2020); HR 133 = Consolidated Appropriations Act (2021); HR 1319 = American Rescue Plan Act (2021)

The following sections provide more detail on uses of CRF, ELC and ARPA dollars, with a summary of the amounts dedicated to contract lab testing.



## **Overview of CRF Funding received for Unified Testing Strategy**

In November 2020, the SPARK Committee passed a motion to allocate \$82.7M to KDHE to stand up Kansas' Unified Testing Strategy. Of this approximately \$58M went directly into contract lab testing services. The remaining \$25M went to a variety of uses critical to standing up the Unified Testing Strategy including:

- Testing and lab supplies
- Marketing and communications
- Technology infrastructure
- Direct aid to qualified non-state entities (e.g., Kansas Independent College Association)

## **Overview of ELC Funding in HR 133 and HR 266**

To date, Kansas has received approximately \$360M in ELC funding that breaks down into two general categories.

*Broad Epidemiological Uses:* KDHE received ~\$250M in ELC Enhanced Detection grants for broad epidemiological uses (including contract lab testing) between the Paycheck Protection Program and Health Care Enhancement Act of 2020 (HR 266) and the Consolidated Appropriations Act of 2021 (HR 133). Of the \$250M, ~\$80M was budgeted directly for testing through contract labs, targeting community testing partners, mass vaccination sites, and employer testing. The remaining ~\$170M of ELC Enhanced Detection was allocated to a range of activities critical to pandemic operations including:

- Lab equipment to build out Kansas Health & Environmental Laboratories (KHEL) capabilities to meet pandemic testing needs
- Mobile lab capabilities
- State-wide contact tracing
- Genomic sequencing equipment
- Grants to LHDs to hire additional nursing and administrative staff
- Public communications on testing in Kansas
- Personnel to manage increased KHEL operations and mobile clinics

*Constrained Uses:* KDHE also received ~\$110M in other grants under the “ELC” categorization in addition to the \$250M cited above. This other ~\$110M is composed of:

- \$88M under ELC – School Testing under ARPA (see next section)
- \$7M for confinement facilities and homeless populations
- \$4M for data modernization
- \$8M (roughly) in various smaller grants (e.g., infectious disease training)

However, the ~\$250M in ELC Enhanced Detection grants are the only two large grants where broad testing is eligible.

## Overview of Funding for Health Needs from ARPA

Initially, the Office of Recovery projected the State of Kansas would be allocated approximately \$520M of funding for health-related needs. These projections were based on formulas used in prior COVID relief bills, which were applied to the federal allocations in ARPA. Based on actual notice of award and funding allocated to date by the federal government, Kansas has received significantly less than originally estimated at ~\$293M as of October 2021. This includes approximately \$137M for testing uses, \$105M for vaccines, \$22M for behavioral health, and \$29M for other pre-existing programs (e.g., crisis response workforce; disease intervention specialist workforce; health center program look-alikes that went directly to local entities; adult protective services). As Table 2 below shows, all grants making up the \$137M for testing have narrowly defined uses and therefore could not be allocated to contract lab testing across Kansas.

**Table 2: Testing grants provided to Kansas under ARPA to date**

<b>Program</b>	<b>Total Allocation</b>	<b>Federal Agency</b>	<b>Primary Recipient(s)</b>	<b>Responsible State Agency</b>	<b>Constraints</b>
ELC - School Testing	\$ 87,747,589	CDC	States, select locals	KDHE	Only K-12 schools eligible to apply
Small Rural Hospital Improvement Program - Testing and Mitigation	\$ 23,512,216	HRSA	States	KDHE	Direct pass-through to rural hospitals
Rural Health Clinic - COVID-19 Testing and Mitigation	\$ 16,300,000	HRSA	Certified Rural Health Clinics	No/Limited State Agencies	Direct pass-through to CRHCs
Detection and Mitigation of COVID-19 in Confinement Facilities	\$ 6,510,000	CDC	States, select locals	KDHE/ Corrections	Only for confinement facilities
Expand Genomic Sequencing	\$ 2,500,516	CDC	States, select locals	KDHE	Only for lab equipment
Detection and Mitigation of COVID-19 in Homeless Populations	\$ 449,760	CDC	States, select locals	KDHE	Only for homeless service sites, encampments, and congregate living facilities
Public Health Laboratory Preparedness (ARP)	\$ 142,473	CDC	States, select locals	KDHE	Only for lab equipment
<b>Total</b>	<b>\$ 137,162,554</b>				

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### **Overview of Spend against Lab Testing Contracts**

When launching the Unified Testing Strategy in 2020, KDHE ran an RFP process for contract lab testing and collection services across the state. These services included testing with community partners, mass vaccination sites and Local Health Departments (LHDs). Table 3 on the next page shows the totals costs accrued and paid for COVID-19 PCR lab processing by lab vendor. These do not include accrued costs that KDHE is yet to be invoiced for (estimated to be \$8M). The WellHealth costs are primarily from operations of mass testing sites and sample collections.

Note: contract expiration dates can be extended and additional purchase orders committed against a contract to match testing needs and fund availability.

**Table 3: Total purchase orders received and paid by lab partner contract from November 2020 through November 10, 2021.**

<b>Contract ID</b>	<b>Contract Title</b>	<b>Supplier</b>	<b>Contract Expire Date</b>	<b>Spending Authority</b>	<b>Purchase Order Total as of 11/10/2021</b>	<b>Paid out as of 11/10/2021</b>	<b>Remaining PO amount as of 11/10/21</b>	<b>Contract Origination</b>
49437	EXPANDED COVID TESTING	WELLHEALTH MANAGEMENT LLC	12/31/2021	Unlimited	\$ 21,113,430	\$ 21,113,430	\$ -	DofA Bid Event EVT0007649
49438	EXPANDED COVID TESTING	SINOCHIPS KANSAS LLC	12/31/2021	Unlimited	\$ 1,515,965	\$ 1,515,965	\$ -	DofA Bid Event EVT0007649
49440	EXPANDED COVID TESTING	WICHITA STATE UNIVERSITY	12/31/2021	Unlimited	\$ 17,035,247	\$ 15,875,989	\$ 1,159,258	DofA Bid Event EVT0007649
49441	EXPANDED COVID TESTING	4M HEALTHCARE LLC	12/31/2021	Unlimited	\$ 19,300,500	\$ 18,195,900	\$ 1,104,600	DofA Bid Event EVT0007649
49442	EXPANDED COVID TESTING	CLINICAL REFERENCE LABORATORY INC	12/31/2021	Unlimited	\$ 4,879,401	\$ 4,879,401	\$ -	DofA Bid Event EVT0007649
49443	EXPANDED COVID TESTING	MEDEVAC MIDAMERICA INC	12/31/2021	Unlimited	\$ -	\$ -	\$ -	DofA Bid Event EVT0007649
49444	EXPANDED COVID TESTING	UNIVERSITY OF KANSAS HOSPITAL AUTHORITY	12/31/2021	Unlimited	\$ 3,124,200	\$ 3,122,637	\$ 1,563	DofA Bid Event EVT0007649
49445	EXPANDED COVID TESTING	NIC USA	12/31/2021	Unlimited	\$ 7,951,090	\$ 7,951,090	\$ -	DofA Bid Event EVT0007649
49446	EXPANDED COVID TESTING	MAWD PATHOLOGY GROUP	12/31/2021	Unlimited	\$ 36,738,999	\$ 34,786,506	\$ 1,952,493	DofA Bid Event EVT0007649
49447	EXPANDED COVID TESTING	LAB ONE INC	12/31/2021	Unlimited	\$ 1,206,851	\$ 1,206,850	\$ -	DofA Bid Event EVT0007649
<b>Total</b>					<b>\$ 112,865,684</b>	<b>\$ 108,647,769</b>	<b>\$ 4,217,914</b>	

STATE OF KANSAS

State Finance Council Resolution

Date: December 9, 2021

Resolution No. 21-\_\_\_

WHEREAS, K.S.A. 75-3711a(a) authorizes any state agency, not otherwise specifically authorized by law, with the approval of the State Finance Council, to receive grants of money and funds appropriated under any federal act or from any other source; and

WHEREAS, K.S.A. 75-3711c(a)(2) indicates grants of approval pursuant to K.S.A. 75-3711a, above, are characterized as legislative delegations; and

WHEREAS, pursuant to the 2021 Session Laws of Kansas, Ch. 116, Sec. 63, p. 1945, the Strengthening People and Revitalizing Kansas (SPARK) Executive Committee has met and is recommending that the Governor's Office distribute up to \$14.9 million in recouped CRF – State Fiscal Recovery Funds to the Kansas Department of Health and Environment for continuation of COVID testing; and

WHEREAS, the requested action is the result of an unforeseeable occurrence, and delay until the next legislative session would be contrary to the best interest of the State; and

WHEREAS, the requested action was not rejected by the 2021 Legislature and is not contrary to known legislative policy; and

WHEREAS, the requested action will assist the State of Kansas in attaining an objective or goal which bears a valid relationship to the powers and duties of the State; and

WHEREAS, the program proposed will benefit the health or welfare of the people of Kansas;

THEREFORE, BE IT RESOLVED THAT the State Finance Council, by the Governor and a majority vote of its legislative members thereof, makes the above findings and approves the expenditure of up to \$14.9 million in recouped CRF funds for continuation of COVID testing as presented to the Council, effective immediately.

By: \_\_\_\_\_  
DeAngela Burns-Wallace, Secretary  
State Finance Council