

3. Adopt Updated Resolution Transferring Board's Authority to Exercise Management Control Over Security of Certain Biosecurity Research Institute (BRI) Related Classified Information to a Security Executive Committee – KSU

**Julene Miller,
General Counsel**

Summary

Kansas State University requests that the Board again consider adopting a Resolution to continue precluding the Regents from exercising management control over classified information that is accessible to the University under projects involving the National Center of Medical Intelligence and other similar entities, and transferring such control to a University Security Executive Committee. In support of the University's pursuit of this Biosecurity Research Institute (BRI) project, the Board first adopted a Resolution of this nature at its March 2009 meeting, accompanied by a requirement for annual feedback from the Security Executive Committee regarding its activities. Adoption of such a Resolution (and updating it as new Regents take office) is necessary in order to exclude the Regents from a federal law requirement that they each individually obtain the Personnel Security Clearance necessary to access Top Secret Information.

Background

In May of 2001, the Board approved a \$40,000,000 capital improvement request to begin design and construction of phase one of a food safety and security research facility⁸ at Kansas State University, pending approval of a research specific bond initiative.⁹ The purpose of the facility was to allow expansion of the University's capacity to conduct research in areas relevant to emerging biological and chemical threats for pre- and post-harvest food safety, animal disease, crop plant resistance to disease and pests, and countermeasures for biological and chemical agents, thus providing a mechanism for protection against emerging threats, whether natural, accidental or intentional. Developing its building program for this project in the time period surrounding the events of September 11, 2001, the University recognized that some funding for a project of this nature might be available through federal entities such as the new White House Office of Homeland Security, Homeland Security Council, Department of Agriculture and Department of Defense, and began investigating potential opportunities to partner with one or more of those entities. One partnership that came to fruition was with the Department of Defense (DoD) Defense Intelligence Agency, which provided \$14,000,000 in funding for most of the fixed equipment in the BRI with the expectation that classified information might be necessary to guide BRI research and that such information would need to be protected. Facility clearance is a required component of this process.

One of the DoD requirements for Facility Clearance is that all officials with management authority over the BRI, or over policies regarding documents housed at or accessible to the University, must either obtain Personnel Clearance or be excluded by the DoD from this requirement. Because Kansas law gives the Board governing authority over the state universities and the universities' contracts, the DoD has determined that members of the Board of Regents are officials who either must obtain a clearance or delegate their management authority.

Personnel Clearance for this particular project and type of classified information (top-secret) requires a "single scope background investigation" that is very involved. That type of investigation usually takes several weeks to complete, and requires responding to a 127- page security questionnaire with fingerprinting, which federal agents then use to conduct a comprehensive review of criminal, civil, credit, local agency checks, education verification, employment verification, social security identity verification, a polygraph and other reviews to determine any

⁸ The name of the project was changed to "The Biosecurity Research Institute" (BRI) in 2003.

⁹ The 2002 Legislature enacted the University Research Development Enhancement Act, K.S.A. 76-777 *et seq.*, authorizing the Board to form a subsidiary corporation known as the University Research and Development Enhancement Corporation (URDEC) to work with KDFRA to issue bonds to finance the costs of constructing this and other research and development facilities.

dependencies or involvement with persons or entities deemed to be a potential threat to U.S. intelligence. This type of clearance must be renewed every five years.

To be excluded from the personnel clearance requirement, the DoD requires adoption of a Resolution that transfers authority to exercise management control and supervision over security of certain classified information to a University Security Executive Committee. In this case, the DoD has determined that the Security Executive Committee must include Kansas State University's President, Provost, Vice President for Research, and Facility Security Officer, and their successors, each of whom will be required to undergo Personnel Clearance requirements. The Resolution must be updated each time new Regents take office. Even if the Board adopts the updated Resolution to exclude new Regents from the more extensive background investigation requirement, a few checks are still required due to the Board's authority to set policy for the University. These checks are much more limited, however, requiring only a record check through the National Crime Information Center and the Terrorist Watch List, and social security numbers will be compared to names to be sure there is a match (identity verification).

When faced with similar DoD requirements, the Boards of Regents of Arizona, the Texas A&M University System, Texas Tech University System and the University of California each chose to adopt resolutions. The Arizona Board of Regents and the Board of Regents of the Texas A&M University System each designated one Regent as a member of the relevant management teams, thus requiring clearance for that one Regent, and excluded all the other Regents. The Board of Regents of the Texas Tech University System excluded all of the Regents from clearance. The Board of Regents of the University of California adopted a resolution providing that the Board Chair, a minimum of a quorum of the Board, and the Board CEO would all serve as members of its management team would be processed for clearance. Just one Regent was excluded from the requirement.

In March of 2009, this Board first adopted a Resolution of this nature, thereby allowing the University to move forward to seek Facility Clearance for this project. The Resolution was most recently updated in September of 2014.

Recommendation

If the Board desires Kansas State University's continuance of the project and to be excluded from Personnel Clearance requirements that accompany the Facility Clearance process, the Board must adopt an updated Resolution that transfers its management control over the classified information that may become available to individuals at the University. The Resolution is set forth below, and provides that such authority would then reside in a Security Executive Committee comprised of the President, Provost, Vice President of Research and Facility Security Officer for Kansas State University.

Alternatively, the Board could decide to exclude some of its members and place others on the Security Executive Committee, place a Board staff member on the Committee, or any combination thereof.

Staff recommends that the Board adopt the Resolution set forth below, thereby continuing the transfer of Board authority to exercise management control and supervision over classified information that is, or may become, accessible to Kansas State University researchers. Staff bases this recommendation on the following: 1) The Board has already, pursuant to K.S.A. 76-712 and Board Policy, delegated responsibility for administration of the affairs of the University, including management of records and other information, to the President of the University; 2) the President of the University is to be a member of the Security Executive Committee; 3) the remaining members of the Security Executive Committee are employees of the University; 4) a Regent participating on the Security Executive Committee would not necessarily have access to classified information directly, but rather have only such information as is necessary to make management decisions regarding the security of the information; 5) a Regent participating on the Security Executive Committee could not report any specific knowledge of classified information to other members of the Board; and 6) the Resolution is not irrevocable – if at any time the Board decides the arrangement is unworkable, it may reconsider, amend the

Resolution, and place one or more Regents or a Board staff member on the Security Executive Committee. The selected Regent or staff member would then be subject to the Personnel Clearance requirements.

It is also recommended that the Board continue to require annual feedback from the Security Executive Committee regarding its activities.

Proposed Updated Resolution

A RESOLUTION OF THE KANSAS BOARD OF REGENTS TO TRANSFER AUTHORITY TO EXERCISE MANAGEMENT CONTROL AND SUPERVISION OVER SECURITY OF CLASSIFIED INFORMATION PROTECTED PURSUANT TO EXECUTIVE ORDER 13526, AS AMENDED, ITS SUCCESSOR OR PREDECESSOR ORDERS, AND THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, AND IN THE POSSESSION OF KANSAS STATE UNIVERSITY; SUCH AUTHORITY TO BE TRANSFERRED TO A LEGALLY CONSTITUTED SECURITY EXECUTIVE COMMITTEE COMPOSED OF THE KANSAS STATE UNIVERSITY PRESIDENT, THE KANSAS STATE UNIVERSITY PROVOST, THE KANSAS STATE UNIVERSITY VICE PRESIDENT FOR RESEARCH AND THE KANSAS STATE UNIVERSITY FACILITY SECURITY OFFICER.

WHEREAS, the Kansas Board of Regents (the "Board") is vested under the Constitution and laws of the State of Kansas with supervision and control over Kansas State University (the "University") and is authorized under such laws to adopt this Resolution and perform, execute and carry out, or cause to be performed, executed and carried out, the powers, duties and obligations of the Board under this Resolution in connection with the University's operation as a Contractor pursuant to Department of Defense Directive No. 5220.22-M, "National Industrial Security Program Operating Manual," dated February 28, 2006 and Incorporating Change 1 dated March 28, 2013; and

WHEREAS, the Board has, pursuant to K.S.A. 76-712, delegated responsibility for administration of the affairs of the University to the chief executive officer ("President") of the University; and

WHEREAS, the Defense Security Service and the Board have heretofore determined that, in order for the University to obtain Facility Clearance pursuant to Department of Defense Directive No. 5220.22-M, supra, it is advisable to specifically, by Board Resolution, transfer authority to exercise management control and supervision over security of classified information protected pursuant to executive order 13526, as amended, its successor or predecessor orders, and the atomic energy act of 1954, as amended, and disclosed to the University, to a Security Executive Committee composed of the University President, the University Provost, the University Vice President for Research and the University Facility Security Officer; and

WHEREAS, the University President, the University Provost, the University Vice President for Research and the University Facility Security Officer have been processed for a personnel security clearance for access to classified information to the level of the facility security clearance to be granted to the University, as provided for National Industrial Security Program established by Executive Order 13526.

NOW THEREFORE, BE IT RESOLVED BY THE KANSAS BOARD OF REGENTS, AS FOLLOWS:

SECTION 1. The Board hereby transfers authority to exercise management control and supervision over security of classified information protected pursuant to Executive Order 13526, as amended, its successor or predecessor orders, and the atomic energy act of 1954, as amended, and disclosed to the University, to the University Security

Executive Committee. This transfer includes responsibility over all matters involving the security of such classified information in the possession of the University.

SECTION 2. The University Security Executive Committee to which the Board transfers authority under Section 1 shall consist of four members, each of whom have been processed for a personnel security clearance for access to classified information to the level of the facility clearance granted to the University. The four members shall be the following individuals, or their successors once cleared:

- President, Kirk H. Schulz
- Provost, April C. Mason
- Facility Security Officer, Craig A. Beardsley

SECTION 3. The following members of the Kansas Board of Regents agree that they shall not require, shall not have, and can be effectively excluded from, access to all classified information protected pursuant to executive order 13526, as amended, its successor or predecessor orders, and the atomic energy act of 1954, as amended, that is disclosed to the University and will not knowingly take action to affect adversely the policies and practices of the University in the performance of classified contracts of the Department of Defense, or associated User Agencies with the National Industrial Security Program, awarded to the University.

- Joseph B. Bain
- Daniel Shane Bangerter
- Ann M. Brandau Murguia
- William Charles Feuerborn
- Dennis A. Mullin
- David Murfin
- Zoe Anne Forrester Newton
- Daniel J. Thomas
- Helen H. Van Etten

CERTIFICATE

We, the undersigned Chair and President and CEO of the Kansas Board of Regents (the "Board"), hereby certify that the foregoing Resolution was lawfully adopted by the Board at its meeting held on September 16, 2015.

KANSAS BOARD OF REGENTS

(SEAL)

By _____
D. Shane Bangerter, Chair

ATTEST:

By _____
Blake Flanders, President and CEO