

*As Amended by Senate Committee*

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*As Amended by House Committee*

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*Session of 2004*

## HOUSE BILL No. 2585

By Committee on Local Government

1-23

12 ~~AN ACT~~ ~~subjecting~~ ~~certtain~~ ~~entities receiving certain tax moneys to the~~  
13 ~~open meetings act and open records act.~~

14 *AN ACT relating to the Kansas department of agriculture; transfer-*  
15 *ring powers and duties of the secretary of the department of*  
16 *health and environment to the secretary of agriculture; amending*  
17 *K.S.A. 65-688 and 74-560 and K.S.A. 2003 Supp. 74-567 and re-*  
18 *pealing the existing sections.*

19

20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. Any convention and visitor's bureau or committee or sim-  
22 ilar organization or group which receives money or revenue derived from  
23 a levy imposed pursuant to K.S.A. 12-1693 or 12-1697, and amendments  
24 thereto, or other public moneys shall be and is hereby deemed to be a  
25 public body and agency and shall be subject to the open meetings act  
26 (K.S.A. 75-4317 *et seq.* and amendments thereto) and to the open records  
27 act (K.S.A. 45-215 *et seq.* and amendments thereto).

28 ~~Section 1. The Topcka convention and visitor's bureau, inc.~~  
29 ~~shall be and is hereby deemed to be a public body and agency and~~  
30 ~~shall be subject to the open meetings act (K.S.A. 75-4317 *et seq.*,~~  
31 ~~and amendments thereto) and to the open records act (K.S.A. 45-~~  
32 ~~215 *et seq.*, and amendments thereto).~~

33 ~~Sec. 2. This act shall take effect and be in force from and after its~~  
34 ~~publication in the Kansas register.~~

35 *New Section 1. On and after October 1, 2004, the Kansas de-*  
36 *partment of agriculture shall succeed to whatever right, title or in-*  
37 *terest the department of health and environment has acquired in*  
38 *any real property in this state concerning the functions transferred*  
39 *by this act or by 2004 Executive Reorganization Order No. 32, and*  
40 *the authority shall hold the same for and in the name of the state*  
41 *of Kansas. On and after October 1, 2004, whenever any statute,*  
42 *contract, deed or other document concerns the power or authority*  
43 *of the department of health and environment or the secretary of the*

1 *department of health and environment concerning the functions*  
2 *transferred by this act or by 2004 Executive Reorganization Order*  
3 *No. 32 to acquire, hold or dispose of real property or any interest*  
4 *therein, the Kansas department of agriculture shall succeed to such*  
5 *power or authority.*

6 *New Sec. 2. Except as otherwise provided in this act, on Octo-*  
7 *ber 1, 2004, officers and employees who, immediately prior to such*  
8 *date, were engaged in the performance of powers, duties or func-*  
9 *tions of the department of health and environment concerning food*  
10 *and food service which are transferred by this act or by 2004 Ex-*  
11 *ecutive Reorganization Order No. 32, or who become a part of the*  
12 *Kansas department of agriculture, or the powers, duties and func-*  
13 *tions of which are transferred to the Kansas department of agricul-*  
14 *ture, and who, in the opinion of the secretary of the Kansas depart-*  
15 *ment of agriculture, are necessary to perform the powers, duties*  
16 *and functions of the Kansas department of agriculture, shall be*  
17 *transferred to, and shall become officers and employees of the Kan-*  
18 *sas department of agriculture.*

19 *New Sec. 3. On and after October 1, 2004, when any conflict*  
20 *arises as to the disposition of any power, function or duty or the*  
21 *unexpended balance of any appropriation as a result of any aboli-*  
22 *tion, transfer, attachment or change made by or under authority of*  
23 *this act, such conflict shall be resolved by the governor, whose de-*  
24 *cision shall be final.*

25 *New Sec. 4. (a) On and after October 1, 2004, the Kansas de-*  
26 *partment of agriculture shall serve as custodian for all agency re-*  
27 *records as defined by the Kansas open records act, related to those*  
28 *sections of chapter 36, article 5 and chapter 65, article 6, from*  
29 *which authority is transferred from the secretary of health and en-*  
30 *vironment to the secretary of agriculture. The department of health*  
31 *and environment shall continue to serve as custodian as defined by*  
32 *the Kansas open records act for all agency records related to chap-*  
33 *ter 36, article 5 and chapter 65, article 6 generated prior to October*  
34 *1, 2004. A request for records generated prior to October 1, 2004,*  
35 *pursuant to the Kansas open records act may be made to the Kansas*  
36 *department of agriculture and it will be forwarded to the depart-*  
37 *ment of health and environment upon receipt.*

38 *(b) The department of health and environment will immediately*  
39 *make available to the Kansas department of agriculture upon re-*  
40 *quest any records, memoranda, writings, entries, prints, represen-*  
41 *tations or combinations thereof of any act, transaction, occurrence*  
42 *or event of the department of health and environment related to*  
43 *those functions transferred to the secretary of agriculture.*

1     ***New Sec. 5. (a) The balances of all funds or accounts thereof***  
2 ***appropriated or reappropriated for the department of health and***  
3 ***environment relating to the powers, duties and functions trans-***  
4 ***ferred by this act are hereby transferred within the state treasury***  
5 ***to the Kansas department of agriculture and shall be used only for***  
6 ***the purpose for which the appropriation was originally made. On***  
7 ***and after October 1, 2004, all such balances shall be deposited in***  
8 ***the food safety fee fund and may be used to carry out the respon-***  
9 ***sibilities and duties of the division of food safety of the Kansas de-***  
10 ***partment of agriculture, as established by this act.***

11     ***(b) There is hereby created the food safety fee fund. The Kansas***  
12 ***department of agriculture shall remit all moneys received by or for***  
13 ***it from fees, charges or penalties to the state treasurer in accordance***  
14 ***with the provisions of K.S.A. 75-4215, and amendments thereto.***  
15 ***Upon receipt of each such remittance, the state treasurer shall de-***  
16 ***posit the entire amount in the state treasury to the credit of the food***  
17 ***safety fee fund. All expenditures from the food safety fee fund shall***  
18 ***be made in accordance with appropriation acts upon warrants of***  
19 ***the director of accounts and reports issued pursuant to vouchers***  
20 ***approved by the secretary of agriculture or by a person or persons***  
21 ***designated by the secretary.***

22     ***Sec. 6. K.S.A. 65-688 is hereby amended to read as follows: 65-***  
23 ***688. (a) As used in this section and K.S.A. 65-689, and amendments***  
24 ***thereto:***

25     ***(1) “Retail food store” means any establishment or section of an***  
26 ***establishment where food and food products are offered to the con-***  
27 ***sumer and intended for off-premises consumption. The term in-***  
28 ***cludes delicatessens that offer prepared food in bulk quantities***  
29 ***only. The term does not include roadside markets that offer only***  
30 ***fresh fruits and vegetables for sale, food service establishments or***  
31 ***food and beverage vending machines,***  
32 ***or any plant which is registered***  
33 ***by the department of agriculture under article 7 of chapter 65 of the***  
34 ***Kansas Statutes Annotated or which is licensed by the department of***  
35 ***agriculture under article 6a of chapter 65 of the Kansas Statutes***  
36 ***Annotated.***

37     ***(2) “Food processing plant” means a commercial operation that***  
38 ***manufactures, packages, labels or stores food for human consump-***  
39 ***tion and does not provide food directly to the consumer. “Food***  
40 ***processing plant” shall not include any operation or individual bee-***  
41 ***keeper that produces or stores honey who does not process or offer***  
42 ***the honey for sale at retail,***  
43 ***or any plant which is registered by the***  
44 ***department of agriculture under article 7 of chapter 65 of the Kansas***  
45 ***Statutes Annotated or which is licensed by the department of agriculture***

1 ~~under article 6a of chapter 65 of the Kansas Statutes Annotated.~~

2 (3) “Food” means a raw, cooked or processed edible substance, ice,  
3 beverage or ingredient used or intended for use or for sale in whole or in  
4 part for human consumption or chewing gum.

5 (4) “Secretary” means **the secretary of** ~~health and environment~~  
6 ~~agriculture.~~

7 (b) **In order to reimburse the state of Kansas for inspections by**  
8 **the secretary of** ~~health and environment~~ ~~agriculture~~ **of retail food**  
9 **stores and food processing plants, the secretary of** ~~health and envi-~~  
10 ~~ronment~~ ~~agriculture~~ **shall adopt rules and regulations establishing a**  
11 **graduated inspection fee schedule to cover all of the cost of inspec-**  
12 **tion of retail food stores and food processing plants which shall not**  
13 **exceed \$200 per calendar year for each retail food store and food**  
14 **processing plant location. Whenever the secretary determines that**  
15 **the total amount of revenue derived from the fees collected pursuant**  
16 **to this section are insufficient to carry out the purposes for which**  
17 **the fees are collected, the secretary may amend such rules and reg-**  
18 **ulations to increase the amount of the fee or fees, except that the**  
19 **amount of any fee shall not exceed the maximum amount authorized**  
20 **by this subsection. Whenever the amount of fees collected pursuant**  
21 **to this subsection provides revenue in excess of the amount neces-**  
22 **sary to carry out the purposes for which such fees are collected, it**  
23 **shall be the duty of the secretary to decrease the amount of the fees**  
24 **prescribed for retail food stores or food processing plants by amend-**  
25 **ing the rules and regulations which fix the fees, as the case may be.**

26 (c) **All moneys received as fees under this section shall be re-**  
27 **mitted to the state treasurer at least monthly. Upon receipt of each**  
28 **such remittance, the state treasurer shall deposit the entire amount**  
29 **in the state treasury to the credit of the food inspection safety fee**  
30 **fund.**

31 (d) **The secretary of** ~~health and environment~~ ~~agriculture~~ **shall**  
32 **adopt rules and regulations necessary to carry out the provisions**  
33 **of this section.**

34 **New Sec. 7. The secretary of agriculture and the secretary of**  
35 **health and environment shall provide for a mechanism for ongoing**  
36 **communication and access between the division of food safety, as**  
37 **established by this act, and the bureau of epidemiology at the de-**  
38 **partment of health and environment. The secretary of agriculture**  
39 **and the secretary of health and environment shall take all reason-**  
40 **ably necessary steps to apply consistent standards, policies, proto-**  
41 **cols and procedures in the licensing, inspection and regulation of**  
42 **food service establishments, taking into account the relative risk**  
43 **posed by such establishments to public health and food safety.**

1     ***New Sec. 8. (a) There is hereby established within and as a part***  
2 ***of the Kansas department of agriculture, the division of food safety.***  
3 ***The secretary of agriculture shall appoint a director of such division***  
4 ***and such director shall be in the classified service of the Kansas***  
5 ***civil service act.***

6     ***(b) The secretary of agriculture may organize the division of***  
7 ***food safety in the manner the secretary deems most efficient, so long***  
8 ***as the same is not in conflict with the provisions of this act or with***  
9 ***the provisions of law, and the secretary may establish policies gov-***  
10 ***erning the transaction of business of the division of food safety***  
11 ***within the department.***

12     ***Sec. 9. K.S.A. 2003 Supp. 74-567 is hereby amended to read as***  
13 ***follows: 74-567. (a) The state board of agriculture shall have such***  
14 ***powers, duties and functions as prescribed by this section. The***  
15 ***board shall serve in an advisory capacity to the governor and the***  
16 ***secretary to review and make recommendations on department leg-***  
17 ***islative initiatives and proposed rules and regulations or proposed***  
18 ***revised rules and regulations prior to the submission of such rules***  
19 ***and regulations to the secretary of administration pursuant to***  
20 ***K.S.A. 77-420, and amendments thereto, other than rules and reg-***  
21 ***ulations pertaining to personnel matters of the department ~~and,~~***  
22 ***rules and regulations of the division of water resources and rules and***  
23 ***regulations of the division of food safety. The board shall not have any***  
24 ***powers, duties or functions concerning the day-to-day operations of***  
25 ***the Kansas department of agriculture.***

26     ***(b) The board shall serve in an advisory capacity to the agri-***  
27 ***culture products development division of the department of com-***  
28 ***merce. The board shall advise the division on issues and concerns***  
29 ***relating to agriculture products development and marketing.***

30     ***(c) The agriculture products development division of the de-***  
31 ***partment of commerce shall report to the board, at not less than***  
32 ***two meetings of such board each year, on the activities and func-***  
33 ***tions of the division.***

34     ***New Sec. 10. (a) The Kansas department of agriculture shall***  
35 ***create a statistically based random selection of not less than 1,000***  
36 ***retail food stores which shall be inspected, documented and evalu-***  
37 ***ated as a transferred programs baseline. The department shall in-***  
38 ***clude the results of the baseline inspections in the report required***  
39 ***on January 31, 2006, in section 11, and amendments thereto.***

40     ***(b) On February 1, 2005, the Kansas department of agriculture***  
41 ***shall report to the legislature the status of the baseline inspection***  
42 ***program using 359 randomly selected retail food stores from sub-***  
43 ***section (a).***

1     *New Sec. 11. Not later than January 31, 2005, and January 31,*  
2 *2006, the Kansas department of agriculture shall report to the house*  
3 *and senate committees on agriculture on the status of the transition.*  
4 *Such report shall be prepared in cooperation with the department*  
5 *of health and environment. The report shall include the steps taken*  
6 *to ensure that food safety resources are targeted at identifying, pre-*  
7 *venting and eliminating those concerns that constitute the greatest*  
8 *risk to public health and food safety. The report shall also include*  
9 *a description of what steps have been taken to engage stakeholders*  
10 *in the transition and in deciding what actions would tend to improve*  
11 *food safety.*

12     *New Sec. 12. (a) Any person or entity who shall violate any of*  
13 *the provisions of this act and amendments thereto or the rules and*  
14 *regulations adopted, may incur a civil penalty in an amount not*  
15 *more than \$1,000 per violation, and in the case of a continuing*  
16 *violation every day such violation continues may be deemed a sep-*  
17 *arate violation. Such civil penalty may be assessed in addition to*  
18 *any other penalty provided by law. Any civil penalty assessed pur-*  
19 *suant to this subsection is subject to review in accordance with the*  
20 *act for judicial review and civil enforcement of agency actions.*

21     *(b) Any person or entity who shall violate any of the provisions*  
22 *of this act and amendments thereto or the rules and regulations*  
23 *adopted, in an intentional and reckless manner shall be guilty of a*  
24 *class A, nonperson misdemeanor.*

25     *(c) Any food misbranded or adulterated or containing or sus-*  
26 *pected of containing any substance or substances injurious to pub-*  
27 *lic health or which is offered or exposed for sale in violation of any*  
28 *of the provisions of this act and amendments thereto shall be subject*  
29 *to seizure in place until such time that the final disposition of the*  
30 *food has been determined by sampling and analysis. Within 30 days*  
31 *of seizure in place, upon verification that the suspected food was*  
32 *misbranded, adulterated or contains a substance or substances that*  
33 *may be injurious to public health the secretary of agriculture shall*  
34 *issue an order establishing measures to prevent further contami-*  
35 *nation or the threat to public health. The opportunity for hearing*  
36 *pursuant to the Kansas administrative procedure act shall be pro-*  
37 *vided upon issuance of the order. The secretary of agriculture may*  
38 *order the destruction of contaminated food if no alternative assures*  
39 *that further contamination of health hazards are averted, and may*  
40 *be imposed in addition to any other penalty established by law. The*  
41 *district courts of the state of Kansas shall have jurisdiction to re-*  
42 *strain violations of this act by injunction.*

43     *New Sec. 13. The secretary of agriculture is hereby authorized*

1 *to contract with the governing body of any local unit of government*  
2 *to carry out rules and regulations established under this act within*  
3 *the boundaries of such local unit of government. For the purposes*  
4 *of carrying out the provisions of this act, the secretary of agricul-*  
5 *ture or the secretary's agent or the county or district attorney or*  
6 *their agents may enter any premises at any reasonable time, in*  
7 *order:*

8 (a) *To have access for the purpose of inspecting any premises,*  
9 *products or equipment subject to this act; or*

10 (b) *to inspect or sample food actually or reported to be adul-*  
11 *terated or a threat to public health; or*

12 (c) *to inspect or investigate complaints of violations of this act;*  
13 *or*

14 (d) *to sample products.*

15 *Should the secretary of agriculture, the secretary's agent or the*  
16 *county or district attorney or their agents be denied access to any*  
17 *premises where such access was sought for the purposes authorized,*  
18 *the secretary of agriculture or the county or district attorney may*  
19 *apply to any court of competent jurisdiction for a search warrant*  
20 *authorizing access to such premises for such purposes. The court*  
21 *may upon such application, issue the search warrant for the pur-*  
22 *poses requested.*

23 *The enforcement of the criminal provisions of this act shall be the*  
24 *duty of, and shall be implemented by, the county or district attor-*  
25 *neys of the various counties or districts. In the event a county or*  
26 *district attorney refuses to act, the attorney general shall so act.*  
27 *The secretary of agriculture is charged with the duty of enforcing*  
28 *all other provisions of this act.*

29 *New Sec. 14. (a) The secretary of agriculture may deny, sus-*  
30 *pend, revoke or modify the provisions of any license issued under*  
31 *this act, if the secretary finds, after notice and hearing, that the*  
32 *applicant or licensee has:*

33 (1) *Been convicted of or pleaded guilty to a violation of this act*  
34 *or any rule and regulation promulgated thereunder;*

35 (2) *failed to comply with any provision or requirement of this*  
36 *act or any rule and regulation adopted thereunder;*

37 (3) *interfered with or prevented the secretary or any authorized*  
38 *representative of the secretary from the performance of that per-*  
39 *son's job duties regarding any inspection or the administration of*  
40 *the provisions of this act; or*

41 (4) *denied the secretary or any authorized representative of the*  
42 *secretary access to any premises required to be inspected under the*  
43 *provisions of this act.*

1     ***(b) Before any license shall be suspended, modified, revoked or***  
2 ***denied renewal, the secretary shall inform the applicant or licensee***  
3 ***of the date and place of hearing upon such proposed revocation,***  
4 ***denial or suspension.***

5     ***(c) The licensee or applicant may appeal from the decision and***  
6 ***order, in accordance with provisions of the act for judicial review***  
7 ***and civil enforcement of agency actions.***

8     ***Sec. 15. K.S.A. 74-560 is hereby amended to read as follows:***  
9 ***74-560. (a) On and after the effective date of this act, in order to***  
10 ***reorganize the administration, planning and regulation of the state's***  
11 ***agriculture industry there is hereby established within the execu-***  
12 ***tive branch of government the Kansas department of agriculture,***  
13 ***which shall be administered under the direction and supervision of***  
14 ***a secretary of agriculture.***

15     ***(b) The state board of agriculture, established pursuant to K.S.A. 74-***  
16 ***562, shall nominate three individuals to the governor for the appointment***  
17 ***as secretary of agriculture. The governor either shall select and appoint***  
18 ***a person nominated to be secretary or shall reject the nominations and***  
19 ***request the board to nominate three new individuals for the appointment***  
20 ***as secretary. Upon receipt of any such request for the nomination of three***  
21 ***new individuals, the board shall nominate three new individuals for the***  
22 ***appointment as secretary in the same manner*** ***The secretary shall be ap-***  
23 ***pointed by the governor. The nominees secretary shall have a demon-***  
24 ***strated executive and administrative ability to discharge the duties***  
25 ***of the office of secretary. Every appointed secretary of agriculture***  
26 ***shall be appointed subject to confirmation by the senate as provided***  
27 ***in K.S.A. 75-4315b, and amendments thereto. The secretary shall***  
28 ***be a member of the governor's cabinet. The secretary shall serve at***  
29 ***the pleasure of the governor. The secretary shall be in the unclas-***  
30 ***sified service under the Kansas civil service act and shall receive an***  
31 ***annual salary to be fixed by the governor. The acting secretary of***  
32 ***agriculture who is serving as the secretary on the effective date of***  
33 ***this act shall be the secretary of agriculture as established by this***  
34 ***act, shall serve at the pleasure of the governor and shall be subject***  
35 ***to confirmation by the senate as provided in K.S.A. 75-4315b, and***  
36 ***amendments thereto. Any action of the Senate taken prior to the***  
37 ***effective date of this act which confirms an individual as the sec-***  
38 ***retary of agriculture is hereby validated and shall constitute con-***  
39 ***firmation by the Senate of such individual as secretary of agricul-***  
40 ***ture under this section.***

41     ***(c) The secretary shall organize an annual public informational***  
42 ***meeting. The meeting shall take place in each congressional district***  
43 ***on a rotating basis.***



1     ***(d) The provisions of the Kansas governmental operations ac-***  
2     ***countability law apply to the Kansas department of agriculture, and***  
3     ***the department is subject to audit, review and evaluation under***  
4     ***such law.***

5     ***Sec. 16. K.S.A. 65-688 and 74-560 and K.S.A. 2003 Supp. 74-***  
6     ***567 are hereby repealed.***

7     ***Sec. 17. This act shall take effect and be in force from and after***  
8     ***its publication in the statute book.***