

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 P.M. on March 11, 2008, in Room 783 of the DSOB.

All members were present except:

Representative Clay Aurand - excused
Representative Doug Gatewood - excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Hank Avila, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes
Kristen Kellems, Revisor of Statutes
Florence Deeter, Committee Assistant

Conferees appearing before the committee:

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture
Amy Thompson, Senior Auditor, Legislative Post Audit
Brad Harrelson, State Policy Director, Kansas Farm Bureau
Elaine Schwartz, Executive Director, Kansas Public Health Association, Inc.
Jack Maybee, Sanitation Division, Johnson County Environmental Department
Richard Morrissey, Interim Director, Division of Health, Kansas Department of Health and Environment
Kay Johnson, Environmental Services Director, City of Wichita
Leon F. Vinci, DHA, National Environmental Health Association {written only}
Ron Hein, Attorney, Hein Law Firm, Chartered {written only}

Others attending:

See attached list.

The Chairman announced a sub-committee to be chaired by Representative Schroeder, addressing the ancillary issues in **SB 89**. Representatives Light and Bowers were appointed to serve on the sub-committee.

Hearing on SB 557 - Department of Agriculture; certification of free sale; food safety

The Chairman opened the hearing on **SB 557** and requested staff Raney Gilliland to brief the committee. Mr. Gilliland said a 2004 Governor's executive reorganization order (ERO) and subsequent legislation transferred some powers and duties related to food safety from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Agriculture. The ERO was expanded to apply to food vending machines, retail food stores, and food processing plants. Mr. Gilliland said the duties were overlapping and not clearly stated. Additionally, the bill includes new parameters including, failure to renew a license incurs a \$10.00 restoration fee, and the issuance of a dual license. He said the rules and regulations surrounding the sale of meat and poultry became more stringent than requirements of the federal government. Mr. Gilliland said the bill includes language for the Secretary of KDA to issue a certificate of free sale, with the maximum fee not to exceed \$25.00.

The Chairman introduced Constantine Cotsoradis, Deputy Secretary, KDA. Mr. Cotsoradis spoke in support of **SB 557**, indicating the Department's involvement in evaluating the existing licensing structure (Attachment 1). He requested technical amendments be made to help increase the effectiveness of the food safety regulatory activities.

The Chairman closed the hearing on **SB 557**.

Hearing on SB 584 - Transfer of food service and lodging duties to Department of Agriculture

The Chairman opened the hearing on **SB 584**, requesting staff, Raney Gilliland to brief the committee. Mr. Gilliland said the bill deals with both food and lodging inspection and transfers responsibility for inspection and licensing to the KDA, effective October 1, 2008. He said the transfer of duties from the KDHE to KDA

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on March 11, 2008, in Room 783 of the DSOB.

will include lodging inspection of hotels, motels and, rooming and boarding houses. Other types of food service inspections include coffee shops, private clubs, soda fountains and other facilities.

Amy Thompson, Senior Auditor, Legislative Post Audit, provided background information on **SB 584** (Attachment 2). She addressed three specific areas needing improvements and concluded that benefits could be realized by combining food safety inspection programs under the Department of Agriculture.

Brad Harrelson, State Policy Director, Kansas Farm Bureau, said the Bureau strongly supports moving food safety and inspection functions to the KDA (Attachment 3).

Elaine Schwartz, Executive Director, Kansas Public Health Association, Inc. (KPHA), spoke in opposition to **SB 584**, stating the citizens of Kansas would not be benefitted by this change (Attachment 4). She indicated the KDHE provided excellence in the arena of public health and safety of food, and deviation from the agency's responsibilities could bring about confusion and loss of efficient coordination in reporting of inspections. She said training of new hires and existing staff would require additional expense for KPHA. Ms. Schwartz referenced the number of phone calls to KPHA regarding food safety are referred to KDHE, who she believes are most responsible for public health and safety.

Jack Maybee, Director of Sanitation Division of Johnson County Environmental Department, expressed concerns regarding **SB 584**, and spoke in opposition to the bill (Attachment 5). He said the KDA and KDHE have unique responsibilities and keeping them separate allows each department to maintain good services to the public. Mr. Maybee said assurances for each county to have a significant role in any reorganization would be appreciated. He expressed concerns regarding communication and coordination delays that could jeopardize public health.

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture, brought testimony stating the Department can neither support or oppose the legislation proposed in **SB 584** (Attachment 6). He said the KDA readily accepts training from other KDHE programs to facilitate transfer of any staff. Mr. Cotsoradis reported the agency is highly satisfied with the professionalism and expertise demonstrated by present food safety staff.

Richard Morrissey, Interim Director, Division of Health, KDHE, provided background information surrounding the issues of public health and food safety (Attachment 7). He said Kansas has a long history beginning with Dr. Samuel J. Crumbine, a national pioneer in public health, who in 1913 served as Secretary of Health under the Hotel and Restaurant Commission. This organization eventually became the Department of Health and Environment in 1974. Mr. Morrissey maintained a neutral position on **SB 584**, stating the existing relationship between KDA and KDHE regarding food safety has been conducted efficiently.

Kay Johnson, Environmental Services Director, City of Wichita, submitted testimony, which in her absence, was presented by Laura Quick, Supervisor of Food Section, Environmental Services (Attachment 8). The agency though officially neutral on **SB 584**, has concerns for consumer interests in the process of transferring inspections to KDA. Ms. Quick reiterated the necessity of efficient communication from the agency should there be any reporting of food-borne illness. She said the City of Wichita would be in full cooperation with the decision regarding transfer of inspection duties to KDA.

Written testimony submitted by Leon F. Vinci, DHA, explained his position of opposition (Attachment 9). Written testimony submitted by Ron Hein, Hein Law Firm, Chartered, on behalf of the Kansas Restaurant and Hospitality Association, maintained a neutral position on **SB 584**. (Attachment 10)

The Chairman closed the hearing on **SB 584**.

The meeting was adjourned at 5:05 p.m. The next meeting is scheduled for March 12, 2008, at 3:30 p.m.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 11, 2008

NAME	REPRESENTING
Dick Morrissey	KDHE
Jack W. Maybee	Johnson County Environmental Department
Amy Thompson	Post Audit
Austin Hayden	Hein Law firm
Spesch	PMCA of KS

**Testimony on SB 557 to
House Agriculture and Natural Resources Committee**

by
Constantine Cotsoradis
Deputy Secretary
Kansas Department of Agriculture

March 11, 2008

Good afternoon, Chairman Faber and members of the committee. I am Constantine Cotsoradis with the Kansas Department of Agriculture. I am here in support of SB 557, which will make several important changes to statutes related to our food safety programs.

In 2004, Governor Sebelius issued Executive Reorganization Order 32 that transferred certain food safety inspection functions from the Kansas Department of Health and Environment to the Kansas Department of Agriculture. Among these functions were inspections of retail food stores, food service in retail food stores, food processing plants, vending machines and ice cream trucks. KDHE retained inspection responsibility for stand-alone food service establishments (restaurants). A memorandum of understanding between our agencies addresses facilities that do not fit neatly into the existing licensing structure.

During our first year handling the new food safety duties, we noticed several areas needing improvement. What we gleaned that first year prompted us to conduct a more thorough review of our licensing structure so we could develop effective remedies that advance food safety while being equitable to industry.

First, we found facilities we regulate aren't equal; their operations and product distribution vary greatly. Therefore, we propose a new statute to establish that inspection frequency be based on risk. That will allow us to inspect low-risk operations, like the mom and pop store or local co-op with a soda fountain and coffee pot, differently than the mega grocery store with the deli counter and a seafood shop that makes and serves sushi.

Second, we propose a new statute that gives us authority to issue a single, combined license for facilities under our jurisdiction. This would allow us to issue one license to a retail food store with food service, as opposed to requiring separate licenses for each business operation. Current law does not allow this.

While developing these remedies, we also learned there are ambiguities between the executive reorganization order, the bill the Legislature passed to complement the ERO, and the Kansas Food, Drug and Cosmetic Act and the Kansas Food Service and Lodging Act. Therefore, we request several technical amendments:

- Amend K.S.A. 74-596, 74-597 and 74-598 to clarify meaning of “act.” This links the governor’s ERO and SB 296 (2004).
- Amend K.S.A. 65-688 to clarify that the Kansas Department of Agriculture has authority to promulgate regulations that require a food establishment to be operated in a safe, sanitary manner.
- Add a new statute that will make both the retail food and food processing licenses renewable annually and provide for a \$10 late fee for licenses not renewed within 30 days of expiration.
- Add a new statute that continues all existing rules and regulations after the new statute is implemented.

We also propose to amend the statute to allow us to increase from \$3 to \$5 the fee for reissuing a license. This change is based on a cost analysis and our meetings with the Kansas Department of Health and Environment regarding changes they are considering.

We also added language to specify that we have authority to inspect and license food processing plants in food service establishments. This would eliminate the jurisdictional gray area between KDA and KDHE, and KDHE would continue to license and inspect food service establishments that process foods for sale only at that food service establishment.

The final statutory change we seek is to allow us to charge a fee up to \$25 for issuing certificates of free sale. Over the past two years we have seen a steady increase in the number of requests for certificates of free sale so businesses can sell their products abroad. It is important that we continue to issue the certificates in a timely manner to preserve our ability to export Kansas products, and the change would apply to all of our programs, not just food safety.

Also, KDA would like to note that we support the amendment made in the Senate on pg. 6 that exempts meat and poultry and dairy processing plants from obtaining retail store or food processing licenses. Currently, meat and poultry and dairy inspectors review the retail or food processing portion of the facility and doesn’t require the business to be licensed under a separate authority. This amendment just puts in statute what is currently in practice.

Because conditions involving food safety are dynamic, and because effects on consumers can be dramatic, we believe in maintaining a strong presence in the food safety arena. We strongly support these policy changes because they will protect consumers and, at the same time, increase the efficiency and effectiveness of our food safety regulatory activities.

Thank you for your support. I will stand for questions at the appropriate time.



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Testimony for the House Agriculture and Natural Resources Committee on SB 584

Amy Thompson, Senior Auditor, Legislative Post Audit

March 11, 2008

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you to provide background information on SB 584. This bill addresses an issue raised in our 2003 performance audit, *Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them*.

At the time we completed our audit, the primary responsibility for ensuring food safety was divided between the Department of Agriculture and the Department of Health and Environment:

- the Department of Agriculture was responsible for meat, poultry, dairy, and egg inspection programs
- KDHE was responsible for inspecting food service establishments, which included restaurants, grocery stores, and food processing plants and warehouses

At that time, the two Departments spent about \$3.2 million for food safety inspection staff and \$700,000 on contracts with local health departments to inspect restaurants in 14 counties. We found a number of problems with Kansas' system at that time, including:

1. **Kansas' system had a number of inefficiencies.** For example, inspectors from more than one agency or program inspected the same businesses (grocery stores saw multiple inspectors from the Department of Agriculture and KDHE). In addition, inspection territories overlapped, and some establishments were inspected more often than necessary.
2. **Coordination needed to be improved.** At that time, KDHE and the Department of Agriculture didn't routinely share records, and the overlapping authority for some commodities like meat in grocery stores could cause delays in response times. In addition, many of the inspectors had said coordination between the Departments needed to be improved.
3. **Similar food businesses were regulated inconsistently.** For example, some high risk establishments (grocery stores and food processing plants) weren't required to be inspected on a regular basis. In addition, at that time Kansas laws required similar businesses to be regulated differently. For example, State-inspected meat processing plants were inspected often—sometimes twice per week---while meat processing at grocery stores wasn't required to be inspected at all.

HS Ag & Nat'l Resources
3-11-08
Attachment 2

We also found that five states had significantly combined their food safety functions at the time—four of which had placed primary responsibility for food safety inspection programs within their departments of agriculture.

We concluded that combining food safety inspection programs could produce several benefits:

- a single agency housing all programs could provide the incentive to regulate similar food businesses and processes more consistently
- communication would improve because information could be shared more easily.
- Kansas could realize some significant savings and improve food safety if food safety inspections were combined **and** inspections were switched to a risk-based approach:
 - A combined inspection program could eliminate duplicate driving time and overlapping inspection duties, which we estimated would save the State about \$90,000.
 - Conducting inspections under a risk-based approach (at frequencies that appear to better reflect their relative risk compared to each other) could generate nearly \$680,000 in savings per year. These savings actually could be realized whether or not the inspection programs were combined.

Our audit recommended that the Legislature transfer responsibility for all food safety-related inspections into a single agency. Even if those programs weren't combined, we recommended that a risk-based food safety inspection system should be implemented because of the potential for improved public safety and cost savings.

As you know, Executive Reorganization Order No. 32 in January 2004 transferred the inspection of grocery stores and food processing plants and warehouses from KDHE to the Department of Agriculture. The responsibility for inspecting restaurants remained with KDHE.

Senate Bill 584, as written, would closely follow our recommendation that all food-safety-related inspections be combined into a single agency.

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE on AGRICULTURE and NATURAL
RESOURCES

RE: SB 584 – an act concerning transferring certain food safety
inspection powers to the Kansas Department of Agriculture.

March 11, 2008
Topeka, Kansas

Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations

Chairman Faber, and members of the House Committee on Agriculture and Natural Resources, thank you for the opportunity to appear before you today. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization and represents more than 127,000 food-consuming members through the 105 county Farm Bureau Associations across Kansas. More than forty thousand of these members are agricultural producer families actively engaged in food production.

Five years ago, KFB rose in strong support of transferring food safety and inspection functions to the Kansas Department of Agriculture (KDA). We appreciate the efforts of the 2004 legislature in passing into law the first step in transferring those duties to KDA. It can be concluded by the information and results from that action provided by the Department, that this initial transfer has been successful. It has led to increased regulatory efficiency, consistency in enforcement, and enhanced consumer protection. Based on those conclusions we believe now is the time to finish the job.

The 2003 Legislative Post Audit report on combining food safety programs also supports this step be taken. The report concludes that cost savings and greater efficiency could

HS Ag & Nat'l Resources
3-11-08
Attachment 3

be gained by combining all food safety-related inspections into a single agency. More importantly however, overall improvements in assuring food safety for Kansans could be achieved according to the report. That should be everyone's goal and is certainly ours.

Therefore, we strongly support SB 584. Farm Bureau members not only have a vested interest in a strong regulatory program to assure continued safe food and fiber, but also an obligation to support improved and strengthened food safety efforts from field to table. We appreciate the opportunity to provide input as you consider this proposal and urge the committee to act favorably on moving food safety and inspection functions to the Kansas Department of Agriculture. Thank you.

**2008
KPHA
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March 11, 2008

**To: The Honorable Representative John Faber
Re: Testimony in Opposition to SB584 Transfer of food service and lodging
duties to Department of Agriculture**

Thank you, Mr. Chairman, for this opportunity to testify before the House Agriculture and Natural Resources Committee. My name is Elaine Schwartz, the Executive Director of KPHA, the Kansas Public Health Association. President, Janis Goedeke, Crawford County Health Director could be here. So, it is my responsibility to articulate KPHA's position in opposition to SB584.

To begin I will give you some history about KPHA for a better understanding of who we are. KPHA is the oldest and largest organization of public health professionals and health advocates in the state. Today we represent almost 700 members from over 50 occupations and 140 organizations in all 105 counties of the state. We bring together from all across the state: researchers, academia, health service providers, health advocates, administrators, teachers, private or public organizations and foundations in a unique, multidisciplinary environment of professional exchange, study, and action, in public health practice and the public health policy process.

The membership of KPHA is very a cross-cutting representation for health in Kansas. Approximately one half represent county and state health department staff, (Health officers, Bureau Chiefs, Program Managers, and field staff), one third are University staff from KU, KSU, WSU, Pittsburg State, Emporia State, and Washburn, and the remaining one sixth are staff from non-governmental associations such as the Nurses, Hospital, Medically Underserved, Heart, Lung the Health Institute, Kansas Action for Children, Tobacco Free Kansas, Hospice, Head Start, Academy of Family Physicians, the major Kansas Health Foundations and many other health advocate groups. We formed AHS-KS, who sponsors Health Day at the Capital. We are currently working on sponsoring Legislative Health Forums across the state in April.

KPHA opposes HB 584, which would transfer the authority to regulate food service establishments and lodging facilities from the Kansas Department of Health and Environment (KDHE) to the Department of Agriculture (KDA). This means that inspection of restaurants and hotels will be done through KDA instead of KDHE. In short, this won't benefit the citizens of Kansas, and would, in our opinion set back the progress Kansas has made in assuring the protection of food safety to our citizens.

The purpose of restaurant and lodging inspections is fundamentally a public health issue that belongs in the agency that is responsible for public health. Essential services of public health include: 1) investigating health problems and hazards, 2) educating people regarding health issues, and 3) enforcing laws and regulations to protect health and safety. KDHE takes this charge seriously and helps food establishments keep the risk of food borne illness low through inspections of restaurants and education of restaurant staff by either KDHE staff or through contracts with county health department staff. The inspections are unannounced, and are conducted by public health sanitarians who are trained public health professionals with college degrees and backgrounds in the sciences.

When "food borne" illness outbreaks occur, KDHE and local health departments coordinate their efforts to quickly determine the source and risk factors associated with the outbreak and put measures in place to minimize the spread to other people. Further education and dissemination of information takes place to minimize the chance that similar outbreaks will occur.

The Governor's Executive Reorganization Order (ERO) in 2004 moved the regulatory authority for grocery stores and food manufacturers and deliberately kept restaurant inspections with KDHE. Grocery stores that have restaurants or buffets inside are regulated and inspected by Ag, to avoid duplication of inspections in one establishment by multiple state agencies.

In 2004, the Governor recognized that KDHE has the expertise and duty to protect human health and safety. Restaurants, schools, daycares, and hospital cafeterias (all currently regulated by KDHE) have the potential to make many people ill if food becomes contaminated during preparation. By contrast, mishandling of food in the home is not likely to sicken more than immediate family members.

The Department of Agriculture is currently responsible for meat and dairy inspections as well as inspection of grocery stores. But it also has an entirely separate (and important) mission devoted to promoting Kansas' agricultural interests, which could potentially become a "Conflict of Interest" in the matter of public interest and safety. It has a Director of Marketing and Research that reports directly to the Secretary of Agriculture and an Advisory Board of agribusiness representatives that review all of the agency's rules and regulations before they are finalized.

The U.S. Department of Agriculture has a similar dual role. Groups like the Consumers Union have urged USDA for years to adopt stricter policies concerning "downer" animals to no avail. The recent media attention to the Hallmark/Westland Meat packing company in Chino, California following inhumane methods to move "downer" animals into the food chain graphically and horrifically illustrates the result when an agency has conflicts of interest. Similar foot-dragging in the early response to Mad Cow Disease caused Great Britain to eventually group food safety regulation under an independent agency that reports to the Ministry of Health.

We believe that the Department of Agriculture has not understood or taken public health threats seriously in the years since they have been charged with food manufacturer and retail store regulations. Recent examples include the Salmonella contamination of peanut butter and chicken pot pies last year that made several people ill, including Kansans.

KDHE issued several warnings in the press to consumers to protect us from those food hazards and actively searched for causes in conjunction with other states and the CDC to uncover the sources. KDHE and local health departments sent information to health care providers about the recalled products and inspectors ensured that contaminated products were not used in restaurants or schools.

As far as we know, the Department of Agriculture did nothing other than pass along the press releases from the federal agencies. They did not send inspectors out to ensure that contaminated product was taken off the grocery shelves or even send letters to the owners of stores to educate them about the recall or remind them to remove the products. Although ensuring food safety in grocery stores is a specific responsibility of the Department of Agriculture, they did not seem to see that as their duty it occurred. Local Health Departments implored KDHE to do something to get contaminated foods off grocery store shelves, but the authority to do so is in the hands of the KDA, and when those concerns were sent to them no action was taken.

KDHE has increased its communication with the public by publishing restaurant inspection results and outbreak investigation reports on their websites. They publish the results of restaurant inspections on their web pages and note whether the inspection was a routine inspection or in response to a customer complaint. KDA has Food Safety Inspections posted to their web-site, but they are much less user friendly by the public.

KDHE or the inspectors in the contracted counties respond to all customer complaints in restaurants and food service establishments. KDHE also follows up on reports of food borne illness and outbreaks, along with our local health departments, to find and remove the source and to limit the spread of disease. In fact, KDHE worked with other states to determine the source of contamination of the peanut butter and pot pies and communicated those results to the Department of Agriculture rather than KDA working with other states to find the cause.

Last year the Legislature funded KDHE to develop regulations and a program for inspecting lodging facilities. They have done that with the understanding that the cornerstone of the program is protecting the public's health. KDHE has provided education to hotels and other lodging establishments about bedbugs, pools and spas sanitation, and the importance of cleanliness of ice buckets and coffeemakers in rooms. Guidance on these topics and others keeps lodging facilities in Kansas healthy for travelers and gives us a reputation of being a healthy place to visit.

Local health departments already face difficulties in being able to carry out their functions with very limited resources. It is more difficult for local health departments to work with two state agencies on one issue and results in a more disjointed

response. KDHE is the lead public health agency in the state and has a strong relationship with local health agencies. Local health departments have worked over the years with KDHE and know what to expect from that agency in response to food inspections, food borne illnesses, and outbreak investigations. These are relationships that do take years to develop and hone. This transfer will have significant impact on the efficiency of state and local operations.

The transition is likely to cost the state, at least initially. The Department of Agriculture will need to hire and train staff; the training would likely be from KDHE, which has provided most of the training to them since the ERO in 2004. After the ERO in 2004, positions were transferred from KDHE, but not all of the staff elected to transfer resulting in additional costs to recruit and train staff, when there had already been trained staff in KDHE.

It may not matter to the public which state agency employs restaurant and lodging inspectors, as long as the job is done. The issue of what state agency inspects these establishments becomes an issue when there is disconnect between food inspections and food borne illness. Outbreak investigations become a problem if two agencies are responsible for what should be a seamless continuum of services. Coordination will not be as efficient as it is when one agency has oversight of the entire process. KDHE should have that oversight and in the past has demonstrated that they can protect the public's health and safety. While it does not matter to most members of the public who does inspections, they will expect that it occurs in the way that best protects them.

We should not transfer more food safety responsibilities to the Department of Agriculture. If anything, we should make the Kansas Department of Health and Environment responsible for *all* food safety, including meat, poultry, dairy, and egg inspection. Their bottom line is the health of Kansans. We would save money while maintaining or even improving food safety.

KPHA often receives calls from the general public from all over the state wanting to find out about or reporting food problems with a particular eating or lodging establishment. We then willingly refer them on to the state agency we believe responsible for public health and safety, the Kansas Department of Health and Environment. We believe referring them on to the Kansas Department of Agriculture would not only be confusing but most likely conveying a conflict of interest to not only consumers, but also to many health experts who make these calls.

Attached to my testimony is an article from the Kansas Health Institute's News Service Alert. We believe comments made by KPHA member, Yvonne Gibbons, Director of the Saline/Salina Health Dept., in this article also sums up our opinion.

This bill has been touted as a way to increase the visibility of state agriculture, but, at the expense of public health, it will do the state and its citizens a great disfavor. We hope, Mr. Chairman, you and the committee agree!

Thank you for your attention, and I will be happy to respond to questions.

**MARCH 11, 2008 HEARING ON SENATE BILL 584
HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE**

JOHNSON COUNTY TESTIMONY

- Good afternoon, my name is Jack Maybee, director of the Sanitation Division of the Johnson County Environmental Department. Johnson County is one of seven regions in Kansas empowered through state contracts to enforce the Kansas Food Code at food service establishments within their jurisdictions. This means that Johnson County inspects restaurants in lieu of the state, although the state provides plenty of oversight. My division is responsible for these inspections.
- The purpose of the County's food safety inspection program is to reduce the risk of contracting food borne illnesses at restaurants and other food service establishments. The program is an integral part of the core public health protections provided by the County to its citizens.
- Since ERO 32 transferred authority for some food safety inspections to the Department of Agriculture several years ago, the County has held contracts with both the Kansas Department of Health and Environment (KDHE) and the Kansas Department of Agriculture (KDA) to inspect food service establishments. We have good working relationships with both agencies, but the split imposed by ERO 32 has created a number of challenges and hardships on local contract counties.
- As you know, SB 584 would transfer all remaining state authority for food safety from the Kansas Department of Health & Environment (KDHE) to the Kansas Department of Agriculture (KDA). This raises a number of concerns for the County:
 - KDA and KDHE have very different missions. KDHE's mission is to protect public health. The purpose of the food safety program is also to protect public health. It is good public policy for food safety to stay in the agency where public health is the focus. This is not to criticize KDA, but rather to recognize that departments deliver their best services when the service is consistent with their primary mission. When it isn't, the service often takes a back seat.

- Transferring the state food safety program to KDA could hamper local efforts to respond quickly to outbreaks of food borne illnesses. During such events, communication and timing are critical, and state epidemiology staff is intimately involved with local staff in assessing and responding to the situation. It is not clear to us whether KDHE's epidemiology function would transfer to KDA if this bill passes. If it does, how will KDA ensure adequate support for this very complex and critically important responsibility? If the epidemiology function doesn't pass to KDA, we are concerned about communication and coordination delays between the two agencies that could jeopardize public health.
- Transferring all restaurant inspections to KDA will disrupt the important linkages between the restaurant inspection program and other related public health programs. KDHE's food safety program is only one part of an integrated effort to reduce the spread of communicable diseases and prevent injury. Disrupting these linkages will cause inefficiencies within the entire public health system and will complicate the work of county health and environment programs.
- KDHE strongly supports local food safety inspection programs with rigorous training, regular coordination meetings, education and outreach materials, and clear inspection and enforcement procedures that result in expeditious correction of violations. These are all necessary tools, and without them, we will be unable to provide the safeguards we need to protect public health. We are not sure that KDA has the capacity or the culture to provide all these tools to counties at the same level as KDHE. We would hope that if this bill passes, KDA's regulations and procedures will be at least as stringent as KDHE's current regulations and procedures.
- If this bill passes, we will do whatever we can to assist both agencies with a smooth transition. We believe strongly that counties like Johnson provide the best food safety protection services to the public, compared with the protection that the state can provide on its own. While we would expect that our contract with KDA would be expanded to cover all the services we currently deliver for KDHE, we would appreciate formal assurances that counties will continue to play an integral role under any effort to reorganize the state's food safety program.

**Testimony on SB 584 to
House Agriculture and Natural Resources Committee**

**by Constantine V. Cotsoradis
Deputy Secretary
Kansas Department of Agriculture**

March 11, 2008

Good afternoon, Mr. Chairman and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture.

SB 584 would transfer on July 1, 2008, all of the powers, duties and functions of the department of health and environment concerning food service and lodging to the secretary of agriculture.

In 2004, by executive order of the governor and supplemental legislation, certain food safety inspection functions transferred to the Kansas Department of Agriculture from the Kansas Department of Health and Environment. Among the transferred functions were inspections of retail food stores, restaurants in food stores, food processing plants, vending machines and ice cream trucks. The Kansas Department of Health and Environment retained inspection responsibility for stand-alone restaurants.

We are very proud of the professionalism and expertise demonstrated by our food safety staff in inspecting processing plants, beverage plants, warehouses, retail stores, convenience stores, grocery stores, vending machines and restaurants in retail stores. Staff work extremely hard to protect consumers and to educate industry about food safety compliance.

As Secretary of Agriculture Adrian Polansky detailed in his state of Kansas agriculture report at the beginning of the session, we can report many efficiency gains with improved food safety compliance. However, as proud as we are of these achievements, we neither support nor oppose this legislation. This is a decision the legislature will have to make.

I will answer questions at the appropriate time.



*Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary*

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

**Testimony on Senate Bill 584
To
House Agriculture and Natural Resources Committee**

**Presented By
Richard J. Morrissey
Interim Director, Division of Health**

March 11, 2008

Chairman Faber and members of the Committee, my name is Richard Morrissey. I serve as Interim Director of the Division of Health at the Kansas Department of Health and Environment (KDHE). Thank you for the opportunity to appear before you today regarding issues related to food safety and public health. Senate Bill 584 proposes to transfer the Food Safety and Consumer Protection program and the Lodging Safety and Sanitation program from KDHE to the Department of Agriculture.

The KDHE Food Safety and Consumer Protection program is administered to prevent foodborne illnesses and injury. Kansas has a long history of public health and food safety. During the early part of the last century, the first regulation for oysters was enacted in Kansas, a unique accomplishment for this landlocked prairie state. This activity is an example of the public health focus of Dr. Samuel J. Crumbine, a national pioneer in public health. The responsibility of food safety in restaurants and sanitation inspection in hotels was initiated in 1913 by Dr. Crumbine, Secretary of Health, and administered under the Hotel and Restaurant Commission until 1923. From 1923-1963, food safety and hotel sanitation was the responsibility of the Hotel and Restaurant Board. In 1963, the recognition that food safety and hotel sanitation was a public health and safety responsibility resulted in the oversight of the Kansas Board of Health under the Secretary of Health and was passed to its successor—the Department of Health and Environment in 1974.

Present day food safety includes biological and epidemiological implications that were not contemplated in the era of Dr. Crumbine. However, the context of public health and the eradication of disease persist in the primary objectives and policies developed under the authority of KDHE and are reflected in these two important public health programs. The inspection and regulation of food service establishments (restaurants) continue to target the prevention of foodborne illnesses associated with these establishments, which are the greatest direct risk of illness. This process has three key elements -- identification of the risk (inspection and investigation), intervention (education and correction), and response (progressive compliance). In the business of food safety, the highest risk posed to the everyday health and

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HS Ag & Nat'l Resources
3-11-08
Attachment 7

safety of the public is where there are the most multiple processes in preparing, storing and serving food to the immediate consumer.

Just a little over 3 years ago, the Governor proposed, and the Legislature accepted, a reorganization of food safety responsibilities in the state. The responsibility for food safety in food processing facilities, food vending machines, mobile ice cream vendors, retail grocery stores and the food service located inside these grocery stores was transferred from KDHE to the Department of Agriculture (KDA). This shift complemented the existing authority of KDA, which already had a regulatory presence in grocery stores in its dairy, meat and egg compliance checks. The reorganization also maintained a single point of regulatory contact in these businesses. This reorganization allowed KDHE to focus resources and its public health expertise on the businesses that historically pose the greatest direct risk of illness—food service establishments.

The KDHE now regulates 10,300 food service establishments. They include restaurants, school kitchens, senior citizen kitchens and meal sites, mobile food kitchens, and temporary food service, with these establishments receiving an annual inspection in accordance with statutory expectations. In addition, all schools receive 2 inspections during the school year. During FY07, the program conducted approximately 18,000 inspections in 10,300 establishments.

The goal of the Department has been to enhance the program's inspection and enforcement processes while maintaining high degree of adherence to federally established standards. The program incorporated the formal quality assurance process establishing standards, by which all inspectors are trained and evaluated, and inspection processes and program elements are analyzed, and the Department has received federal recognition for meeting nationally recognized standards in food safety. All inspection staff is held to a high level of professionalism and are credentialed as Certified Food Safety Professionals (CFSP). The lodging program staff is also required to be Registered Environment Sanitarians. Both professional credentials are awarded after rigorous testing through the National Environmental Health Association. In addition, staff must pass specific and periodic testing by the Department's FDA Certified Evaluation Officer.

KDHE has a close relationship with each and every local health department. This is critical in the investigation of foodborne illness. Local health departments can immediately investigate reported illnesses that may become health threats in their community. In addition, the Department contracts with 7 local health agencies to conduct food safety inspections in order to eliminate a duplication of services. Some of these working relationships with local health agencies have existed for over 25 years and have proven to be very successful. Working collaboratively with the food service establishments, KDHE inspectors, epidemiologists and local health officials are able to efficiently collect information that identifies the most likely cause of the illness, initiate steps to limit its impact, and provide public health education as a preventative measure. It is vital to public health that this coordinated effort continue. With that in mind, we are proposing an amendment to 584 that addresses the oversight and coordination of investigations involving human disease associated with food.

Education is a key component in correcting risky practices; therefore the program has linked its quality assurance with education. This includes both formal and informal presentations

and food safety material distribution. An important communication tool is seen in the food safety Web site located at www.KSFoodSafety.org. This Web site was developed to provide Kansans with a variety of food safety information, guidance, and education. The site also provides the public with access to food establishment inspection results. The site provides a convenient link to other health related sites. An important site featured the "Focus on Food Safety" educational tool developed by the program. This Web site is one of the Department's most often visited public information site with over 750,000 pages visited last year.

As mentioned earlier, the KDHE food safety program turned its focus to high-risk establishments during the past three years. As food safety moved forward in Kansas with the reorganization, it also became clear that not all establishments fit into a simplified reorganization structure. KDHE and KDA responded responsibly with food safety being the driving force by entering into working agreements to improve the process as efficiently as possible.

Since this transfer of responsibilities also includes the Lodging Safety and Sanitation Program, the spotlight must shift briefly from food safety. The Lodging Safety and Sanitation Program is a revitalization of an environmental health and regulatory program whose goal is to ensure safe and sanitary lodging for visitors to Kansas. During the past 2 years, the KDHE has identified an upsurge in unique sanitation and safety issues. A Lodging Advisory Committee was established to make recommendation for updating the Kansas Lodging Regulations. In addition, the Department developed educational materials that focus on bed bugs and specific life safety issues, including swimming pool safety and sanitation, smoke detectors and carbon monoxide detectors. As mentioned, this regulatory program is an environmental health program and inspections focus on items such as general sanitation, swimming pool/hot tub water quality and safety, life safety issues, moisture and mold, etc. The program concentrates on the identification of problems, industry education, and corrections.

As a result of the Governor's reorganization, the Department has successfully focused on the businesses with the highest risk for foodborne illness and has carried out efficient disease investigations. There exists a strong linkage with local health agencies and the Epidemiologists that facilitates these investigations. Finally, both KDHE and KDA are responsibly addressing and updating the working agreements ensuring that the integrity of food safety is maintained.

Thank you for your time. I will be happy answer any questions you may have for me.

SENATE BILL No. 584

By Committee on Agriculture

2-7

10 AN ACT concerning the Kansas department of agriculture; transferring
11 powers and duties of the secretary of the department of health and
12 environment to the secretary of agriculture; amending K.S.A. 36-501,
13 36-502, 36-504, 36-506, 36-507 and 36-510 and K.S.A. 2007 Supp. 36-
14 503, 36-515b and 74-592 and repealing the existing sections.
15

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

17 New Section 1. (a) Except as otherwise provided by this act, on and
18 after ~~July~~ **October** 1, 2008, all of the powers, duties and functions of the
19 department of health and environment concerning food service and lodg-
20 ing are hereby transferred to and conferred and imposed upon, the sec-
21 retary of agriculture.

22 (b) Except as otherwise provided by this act, on and after ~~July Oc-~~
23 **tober** 1, 2008, the secretary of agriculture shall be the successor in every
24 way to the powers, duties and functions of the department of health and
25 environment concerning food service and lodging in which the same were
26 vested prior to ~~July~~ **October** 1, 2008. Every act performed in the exercise
27 of such powers, duties and functions by or under the authority of the
28 secretary of agriculture shall be deemed to have the same force and effect
29 as if performed by the department of health and environment, in which
30 such powers, duties and functions were vested prior to ~~July~~ **October** 1,
31 2008.

32 (c) All rules and regulations of the department of health and envi-
33 ronment concerning food service and lodging in existence on ~~July Oc-~~
34 **tober** 1, 2008, shall continue to be effective and shall be deemed to be
35 duly adopted rules and regulations of the secretary of agriculture until
36 revised, amended, revoked or nullified pursuant to law.

37 (d) All orders and directives of the department of health and envi-
38 ronment concerning food service and lodging in existence on ~~July Oc-~~
39 **tober** 1, 2008, shall continue to be effective and shall be deemed to be
40 orders and directives of the secretary of agriculture until revised,
41 amended or nullified pursuant to law.

42 (e) The division of food safety shall be a continuation of the depart-
43 ment of health and environment concerning food service and lodging.

(f) The department of health and environment shall be the lead agency for public health matters when human illness or disease occurs. The secretary of agriculture and the division of food safety shall cooperate with the department of health and environment in all aspects of illness tracking, cluster identification and outbreak investigations associated with food, retail food stores, food service establishments located inside retail food stores, food manufacturers and processors, food service establishments or lodging establishments following established protocols and procedures. This includes regular and special inspections of establishments, timely notification of potential outbreaks, interview of facility personnel, food and ingredient sample collection and processing, environmental sample collection and processing, records sharing, training, and dissemination of information.



TESTIMONY

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*Laura Givich
Supv. of Food
Section*

**Kansas House Agriculture and Natural Resources Committee
Testimony on Senate Bill 584
Transfer of Powers and Duties Concerning Food Service and Lodging Facilities
Tuesday, March 11, 2008, 3:30 PM, Docking Building 783**

The City of Wichita takes a neutral position regarding Senate Bill 584, which would transfer the powers and duties of the Kansas Department of Health and Environment (KDHE) regarding food service and lodging facilities to the Kansas Department of Agriculture (KDA).

However, as the Kansas Legislature considers this significant change in authority, we also would emphasize the important consumer protection issues that are at stake.

The City of Wichita currently has a contractual relationship with KDHE to conduct inspections at 2,250 restaurant and schools each year (approximately 3,270 inspections in 2007) in Sedgwick County. We also contract with the KDA to conduct inspections at 300 food service facilities within retail establishments each year (approximately 400 inspections in 2007).

While the City of Wichita is supportive of the Legislature's effort to bring greater efficiencies to state government, we also ask that the following consumer interests be protected and preserved throughout the process.

- 1) In its contractual relationship with the City of Wichita, KDHE has taken prompt enforcement action against noncompliant food establishments. These actions are taken by hearing officers and attorneys after working with inspectors. We would expect that the Kansas Department of Agriculture would provide similar staff support to continue this important timely response.
- 2) Similarly, the following enforcement activities that have been provided by KDHE must also be maintained if authority is transferred to the Kansas Department of Agriculture:

- a. Evaluation of each contract program and routine feedback to ensure statewide continuity;
 - b. Routine training and field verification of new inspectors;
 - c. Field standardization for experienced inspectors;
 - d. Specialized training for limiting factors contributing to food-borne illness;
 - e. Periodic food code interpretation updates;
 - f. Biennial meetings of all inspectors; and
 - g. Biennial food safety advisory meetings for industry, regulatory agencies, and research and educational institutions.
- 3) Lodging regulations that were recently updated by KDHE are necessary in light of disease and vector outbreaks. Those public health measures must continue to be enforced. (Cryptosporidium and bedbugs were both issues in Wichita in 2007.)
- 4) Perhaps most importantly of all, the Kansas Department of Agriculture must guarantee the efficient and effective exchange of communication regarding food-borne illness. This crucial public health responsibility cannot be compromised.

All of these activities and safeguards are an absolute necessity to ensure quality food service at the many restaurants that meet the culinary demands of the citizens of Wichita.

If food service oversight is transferred to the Kansas Department of Agriculture, the City of Wichita will be fully cooperative and supportive of the reassignment of inspection and oversight duties.

We will do everything in our power to ensure that there is no compromise of the food service inspections that have earned the respect and confidence of the hundreds of thousands of Wichitans and guests who regularly visit the many quality food service establishments in our community.

Written
Only

March 7, 2008

Representative John Faber
Members of Agriculture & Natural Resources Committee
Kansas State Capitol
300 SW 10th Street, Room 161-W
Topeka, KS 66612

Dear Representative Faber & Committee Members:

Good afternoon Representative John Faber and members of the Agriculture and Natural Resources Committee

My name is Leon F. Vinci, DHA, DARS, RS and I have been responsible for food service safety, lodging and housing code enforcement, general health, hygiene, and sanitation for the past thirty years. I have inspected meat slaughter houses, five star restaurants, mom & pop operations, fairs, itinerant vendors, and, yes, lemonade stands, too.

I write you to oppose SB 584.

In short, the responsibility for food sanitation belongs in Public Health.

It is Public Health that is responsible for: 1) investigating health problems and hazards, 2) educating people regarding health issues, and 3) enforcing laws and regulations to protect health and safety. KDHE takes that charge seriously and helps food establishments keep the risk of food borne illness low through inspections of restaurants and education of restaurant staff across the state using either KDHE staff or county health department staff. Inspections are conducted by public health sanitarians who are trained professionals with college degrees and backgrounds in the sciences. Not only am I a Registered Sanitarian (RS) at both the state and national level, I am a Diplomat of the American Academy of Sanitarians. Further, I am a Food Expert with the National Environmental Health Association (NEHA), and am published in this area.

Although, the KDA was given some responsibility about 3 years ago for meat and dairy inspections (and for grocery stores), it has an entirely separate (and important) mission targeted at promoting Kansas' agricultural interests. In fulfillment of this mission, it even has a Director of Marketing and Research that answers directly to the Secretary of Agriculture and who reports to an Advisory Board composed of agribusiness representatives.

It is important to recognize that there is a disconnect between the economics of food production and the promotion of sanitary food service practice. For instance, KDA has not understood the basics of safety and sanitation since they were charged with food manufacturer and retail store regulations. Recent examples include the Salmonella contamination of peanut butter and the problems with chicken pot pies last year that made several people ill, including our fellow Kansan residents.

KDA's response was only to pass along press releases from the federal agencies. They did not send inspectors out to ensure that contaminated product was taken off the grocery shelves or
HS Ag & Nat'l Resources
3-11-08
Attachment 9

to the owners of stores to educate them about the recall or remind them to remove the products. Although ensuring food safety in grocery stores is a specific responsibility of KDA, they did not seem to see that as their duty to see that it occurred.

KDHE, on the other hand, issued several warnings in the press to consumers to protect us from those food hazards and actively searched for causes in conjunction with other states and the CDC to uncover the sources. KDHE and local health departments sent information to health care providers about the recalled products and inspectors ensured that contaminated products were not used in restaurants or schools. In fact, KDHE worked with other states to determine the source of contamination of the peanut butter and pot pies and communicated those results to KDA. Further, local Health Departments implored KDHE to do something to get contaminated foods off grocery store shelves, but the authority to do so is in the hands of KDA. When KDA was sent those concerns, no action was taken.

Transparency is another important consideration. KDHE has increased its communication with the public by publishing restaurant inspection results and outbreak investigation reports on their websites. They publish the results of restaurant inspections and note whether the inspection was routine or in response to a customer complaint. KDHE or the inspectors in the contracted counties respond to all customer complaints in restaurants and food service establishments.

LODGING

Last year the Legislature funded KDHE to develop regulations and a program for inspecting lodging facilities. This was done with the correct understanding that the cornerstone of the program is protecting the public's health. This is recognized by legislatures across the country with the placement of housing sanitation and lodging issues within the 50 state health departments. KDHE provides education to hotels and other lodging establishments about bedbugs, pools and spas sanitation, and the importance of cleanliness of ice buckets and coffeemakers in rooms. Guidance on these topics and others keep lodging facilities in Kansas healthy for travelers and promotes Kansas as a healthy place to visit.

LOCAL COORDINATION

Local health departments, already facing difficulties in carrying out their functions with very limited resources, do not need two agencies to deal with. KDHE is the lead public health agency in the state and has a strong relationship with local health agencies. Local health departments covering every county work with KDHE on a continual basis and know what to expect in response to food inspections, foodborne illnesses, and outbreak investigations. These are relationships that take years to cultivate and hone.

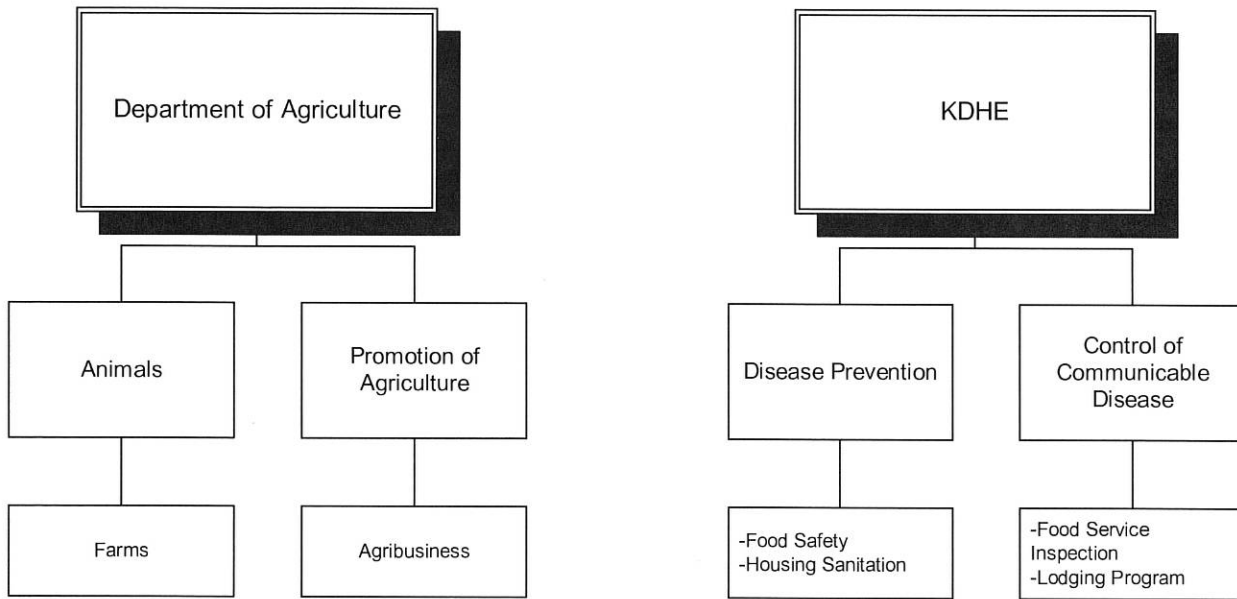
Additional food safety responsibilities should not be transferred to the DOA. If anything, we should make the Kansas Department of Health and Environment responsible for *all* food safety, including meat, poultry, dairy, and egg inspection. Their bottom line is the health of Kansans and we would save money while maintaining or even improving food safety.

Thank you for your attention.

Yours for good food sanitation,

Leon F. Vinci, DHA

CHART SHOWING AGENCY MISSION



STATE STATISTICS:

0: **Lodging** inspections affiliated with Agriculture Agency

45: **Food Sanitation** responsibility in Department of Health

Why does Kansas want to take a step backward with this proposal?

Revised

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Testimony Re: SB 584
House Agriculture and Natural Resources Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
March 11, 2008

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Education Foundation, the association works to represent, educate and promote the rapidly growing industry of hospitality in Kansas.

KRHA is neutral on SB 584 which passed the Senate 37-2. The KRHA believes that the policy decisions as to which agency of state government should regulate the restaurant, lodging, hospitality and food service establishment businesses, should be made by the Legislature in cooperation with the Governor. KRHA believes it would be inappropriate for our industry to express an opinion as to which agency is appropriate to regulate either our food service establishments or our lodging facilities.

It is the responsibility of our members to comply with statutory law and rules and regulations which are adopted by the regulating agency, and to do so in a manner that insures that our businesses operate in a lawful as well as a healthy manner which promotes public safety for the citizens of our state. Although it is occasionally the responsibility of the Association to question various rules and regulations that are implemented to insure that the regulations are reasonable and consistent with the authorizing statute. It is also the responsibility of our Association to monitor and comment upon proposed statutory legislation which could impact on our industries, and to insure, again, that the views of our members are adequately articulated, and to insure that legislation which is enacted promotes the health, welfare, and safety of the public, while still recognizing the rights of our members, and to insure that statutory enactments are reasonable and appropriate, and consistent with law and due process. Lastly, it is certainly the responsibility of our Association to monitor, question, and speak out regarding any fees which are imposed on our industries by the regulating agencies. Such fees should be reasonable, and should recognize the potential impact on the food service and lodging industries. The regulating agencies should be, and will be, monitored by our Association, to insure that they are operating in an efficient manner which is responsive to not only the tax payers of the state, but to the industry members who are regulated.

March 11, 2008

Page 2

Our responsibility and our ability to speak out upon these issues is inherent, and is consistent with the mission and responsibilities of our Association. However, we do not believe it is within the purview of our association to comment regarding which agency of state government is most appropriate to regulate our members, either regarding food service, or lodging.

Therefore, the KRHA stands neutral on SB 584, and looks forward to working with, communicating with, and hopefully creating a partnership with whatever agency of state government the Legislature and the Governor determine should best be utilized to oversee and regulate our membership.

Thank you very much for permitting me to submit written testimony.