

SESSION OF 2004

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 296**

As Amended by House Committee on
Agriculture

Brief*

Sub. for SB 296 would enact provisions of law to follow Executive Reorganization Order No. 32 (ERO 32). ERO 32 proposes to transfer certain food safety programs from the Kansas Department of Health and Environment (KDHE) to the Kansas Department of Agriculture (KDA).

ERO 32 proposes on October 1, 2004 to transfer:

1. all powers, duties, and functions under the Food Service and Lodging Act, K.S.A. 36- 501 et seq., relating to the licensing, inspection, and regulation of mobile retail ice cream vendors and food service establishments located in retail food stores;
2. all powers, duties, and functions under the Food Service and Lodging Act, K.S.A. 36- 501 et seq., relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;
3. all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689 relating to the licensing, inspection, and regulation of retail food stores and food processing plants.

Effective October 1, 2004, the bill would transfer real property, certain officers and employees, and records dealing with the food safety functions being transferred from KDHE to KDA.

In addition, the bill would create the Food Safety Fee Fund where

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

money received by or for fees, charges or penalties would be remitted. Further, the bill would transfer balances of all funds or accounts of KDHE which related to the functions being transferred to the Food Safety Fee Fund on October 1, 2004. The bill would provide that when any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of the transfer of food safety functions that the conflict would be resolved by the Governor, whose decision would be final.

The definition of "retail food store" in current law would be amended to delete a reference to plants registered by KDA since inspection of these facilities will now be the responsibility of that agency. Also, the term "food processing plant" would be modified to clarify that all such plants would be included except for certain honey operations as provided for under current law. A new definition of "food" would be added and defined to mean a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum. This amendment would bring certain food products and substances under regulation by KDA, including products of water and beverage bottlers.

Further, the bill would create within KDA, a division of food safety. The Secretary of Agriculture would be required to appoint a director of the division and the person would be in the classified service of the Kansas Civil Service Act.

The bill also would require that there be ongoing communication and access between the new division of food safety in KDA and the Bureau of Epidemiology at KDHE.

The bill also would require that the Secretary of Agriculture and Secretary of Health and Environment apply consistent standards, policies, protocols, and procedures in the licensing, inspection, and regulation of food service establishments, taking into account the relative risk posed to the public health and food safety.

Also, the bill would require KDA to create a statistically based random selection of not less than 1,000 retail food stores to be inspected and evaluated as a transferred programs baseline. Further, on February 1, 2005, KDA would be required to report to the Legislature the status of the baseline inspection program using 359 randomly selected retail food stores from the 1,000 randomly selected for

inspection and evaluation. In addition, KDA is to report to the House and Senate Committees on Agriculture on the status of the transition not later than January 31, 2005 and January 31, 2006.

The bill would make any person or entity who violates any of the provisions of the act or the rules and regulations adopted under the act subject to a civil penalty in an amount not more than \$1,000 per violation. Every day the violation continues could be deemed a separate violation. If the violation occurs in an intentional or reckless manner then the person or entity could be subject to a Class A nonperson misdemeanor.

Language in the bill would make food offered or exposed for sale which is misbranded or adulterated subject to seizure in place until the final disposition has been determined by sampling and analysis. Authority would be given to the Secretary of KDA or the Secretary's agent or to the county or district attorney to enter any premises at any reasonable time in order to inspect or sample or to investigate complaints of violations of the law.

Further, the bill would authorize the Secretary of Agriculture to contract with the governing body of any county for the enforcement of the rules and regulations established under the bill. Counties would act as agents of the Secretary and any inspection would have the same force and effect as if it were done by the Secretary.

Also, the Secretary of Agriculture would be authorized to deny, suspend, revoke or modify the provisions of any license issued under the bill for certain acts outlined in the bill. These provisions would apply to both licensees and applicants. Appeals from decisions and orders are provided through the Act for Judicial Review and Civil Enforcement of Agency Actions.

The bill also would provide that any person or registration holder aggrieved or in dispute with any action of the Secretary of Agriculture under the Kansas Meat and Poultry Inspection Act be able to make a request to the governing body of the Kansas Association of Meat Processors (KAMP) that a review board be convened. If a majority of the governing body agrees, the review board would be formed, composed of three members – one member designated by KAMP, one member designated by the Secretary of Agriculture, and one member designated by the Office of Administrative Hearings of the Department

of Administration. The review board would determine whether the actions of the Secretary of Agriculture were in accordance with law. Both parties would be required to provide all relevant information and records requested by the review board. The review board would be required to make its determination of approving or disapproving the actions of the Secretary of Agriculture within 30 days of the appointment of the first member of the review board. The costs of the hearing officer designated by the Office of Administrative Hearings would be paid by the non-prevailing party.

Finally, the bill would make the Secretary of Agriculture directly appointed by the Governor, rather than through nominations made by the State Board of Agriculture.

Background

This bill was originally the interim committee bill from the 2003 Special Committee on Agriculture. The 2003 Special Committee on Agriculture had recommended the transfer of food safety programs from KDHE to KDA.

At the hearing on the bill and ERO 32, proponents included representatives of the KDHE, KDA, the Kansas Farm Bureau, and the Kansas Cooperative Council. Written testimony in support of the bill was provided by the Kansas Agricultural Alliance. Testimony was provided by spokespersons from the Kansas Restaurant & Hospitality Association and the Kansas Food Dealers Association. These conferees' position on the bill and ERO was neutral. Appearing in opposition were spokespersons from the Kansas Association of Local Health Departments and the Kansas Public Health Association. Neither of these conferees opposed consolidation as long as it was with the state's public health agency. A private citizen appeared in opposition to the ERO.

The Chairperson of the Senate Agriculture Committee appointed a subcommittee to work on SB 296. The subcommittee made most of the changes to the proposed substitute bill and the full committee adopted a number of additional changes.

The Senate Committee of the Whole amended the bill to eliminate a list of entities which may be subject to the civil penalties provided for under the bill. The list of entities was changed to "entity."

The House Committee on Agriculture amended the bill to require that the Secretary of Agriculture and the Secretary of Health and Environment apply consistent policies, protocols, and procedures in the licensing, inspection, and regulation of food service establishments; to authorize and empower the Secretary of Agriculture to contract with counties for the enforcement of the rules and regulations established under the bill; and to create a review board to mediate disputes between the Secretary of Agriculture and any person or registration holder aggrieved or in dispute with any action of the Secretary of Agriculture under the authority contained in the Kansas Meat and Poultry Inspection Act.

The fiscal note on the original bill states that KDHE indicates that the transfer of all food safety duties to the Department of Agriculture would reduce KDHE expenditures by \$2,939,480 from agency fee funds in FY 2005 and eliminate 33.0 FTE positions and 5.0 unclassified temporary positions. The note also indicates that the transfer would not affect the State General Fund. The fiscal note also states that KDA has not estimated the fiscal effect of the bill, but it is reasonable to assume that the transfer would have no or little net effect on the state budget, meaning that the expenditure and position reductions in KDHE would result in corresponding increases to expenditures and positions in KDA.