

MINUTES

SPECIAL COMMITTEE ON AGRICULTURE

November 12, 2003
Room 313-S—Statehouse

Members Present

Representative Dan Johnson, Chairperson
Senator Derek Schmidt, Vice Chairperson
Senator Tim Huelskamp
Senator Mark Taddiken
Representative Barbara Craft
Representative Mary Compton
Representative Jim Miller
Representative Dan Thimesch
Representative Jerry D. Williams

Members Absent

Senator Christine Downey
Representative Joann Freeborn

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Amy VanHouse, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Judy Swanson, Committee Secretary

Guest List attached

Morning Session

The Committee Chairperson, Representative Dan Johnson, called the Special Committee on Agriculture to order at 9:10 a.m. on November 12, 2003, in Room 313-S of the Statehouse.

Raney Gilliland, Legislative Research Department, reviewed the Committee's charge: Consolidation of Food Safety Functions. Review and study the possibility of consolidation of the food safety functions of the Department of Health and Environment (KDHE) and the Kansas Department of Agriculture (KDA). The study will include the possibility of improving food safety (particularly in light of homeland security concerns) as well as the elimination of any duplication of services.

Upon reviewing the agenda *for today*, staff said conferees have been asked to be thorough in their presentations. A copy of The Performance Audit Report on *Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them* is available from the Division of Legislative Post Audit. Staff noted that SB 124 was the bill in the 2003 Legislative Session that addressed the potential transfer of programs from KDHE to KDA. Staff reviewed changes that would happen if this bill or one similar to it were to pass.

Commander Cindy Kunkel of the US Food and Drug Administration (USFDA) testified that her charge is to help states with their food safety programs. She provided a brochure on retail food program standards ([Attachment 1](#)). She noted that the USFDA does not have a position on which department the Kansas programs should be under.

Laurel Murdie, Legislative Division of Post Audit, reviewed the Performance Audit. Several factors suggest that Kansas' current food safety system needs to be improved. Inefficiencies include:

- Inspectors from more than one agency or program inspect the same business;
- Inspection territories currently overlap even when inspectors are not going to the same business; and
- Some types of establishments are inspected more often than seems necessary, causing inefficient use of inspection staff.

Post Audit staff noted that coordination can be improved in situations where regulatory authority overlaps:

- KDHE and KDA do not routinely share records;
- Overlapping regulatory authority can delay response times; and
- Many inspectors say coordination should be improved.

Post Audit staff also told the Committee members that Kansas food safety inspection requirements are sometimes inconsistent, such as:

- Some high risk establishments are not required to be inspected regularly;
- Kansas laws require similar businesses to be regulated differently; and
- A 2002 change to the licensing laws has resulted in portions of several large food manufacturers being uninspected.

Staff of Post Audit noted that a number of benefits could result from coordinating food safety inspections. She stated that several other states have taken a more coordinated approach to food safety by placing responsibilities within a single state agency. Staff testified that a single agency housing all programs could provide the incentive to regulate similar food businesses and processes more consistently and that communication should improve because information could be shared more easily. It was noted that Kansas could realize significant savings and improvement of food safety if food safety inspections were combined and inspections were changed to a risk-based approach. Post Audit suggested that inspection activities could be grouped into three functional areas: dairy inspection, food processing inspection, and retail sales inspections. Under this scenario,

inspectors assigned to each group would be cross-trained to handle all types of inspections within that group.

The results of the Post Audit review are:

- Continuing to do inspections at the current rate could save the state about \$90,000 per year if there is elimination of duplicate drive time caused by overlap of territories of inspectors from the two agencies.
- Conducting inspections only as often as required by law could generate about \$1.2 million in savings annually, but it could deteriorate the quality of the State's food safety system.
- Conducting inspections under a risk-based approach could generate nearly \$680,000 in savings annually, depending on the number of inspections conducted.

Another observation from the Post Audit report stated that compared to preparedness for other disasters, Kansas is least prepared for bioterrorism threats. However, the report did note that Kansas is developing a bioterrorism preparedness and response plan, but it needs to continue to take steps to ensure that all relevant parties are included in planning efforts.

The recommendations made in Post Audit's report are:

- To ensure that Kansas' food safety inspection resources are used in the most efficient manner, the Legislature should pass SB 124 or a bill similar to it, transferring responsibility for all food safety related inspections into a single agency, whether it is KDHE or KDA.
- If the decision is made to place programs within KDA, that department should establish a system for regularly communicating with KDHE's Bureau of Epidemiology and Disease Prevention.
- The food safety inspection program should become risk-based, whether or not the programs are combined into one agency.
- If the state's food-safety inspection programs are not combined into one agency, there should be additional steps taken to improve communication and coordination, including entering into a memorandum of understanding to reassign duties so that there would be responsibilities within the functional areas of: dairy inspections, food processing inspections, and retail establishment inspections.
- KDHE officials should develop an efficient system for extracting information from the agency's licensing and enforcement databases.

Committee discussion ensued concerning the Post Audit report. Ms. Murdie clarified how Post Audit came up with the numbers for its risk-based recommendations. Representative Thimesch indicated that training of inspectors is a big issue with him. The Committee members were told that the data systems, including hardware, are not included into the cost of a consolidation. It was noted that there are a few instances of food-borne illnesses in Kansas and that nothing says a more efficient department will lower the food-safety risk in Kansas.

The Committee recessed from 10:35-10:45 a.m.

Lesla Roberts, Director of the Bureau of Consumer Health, KDHE, gave a review of food safety programs administered by KDHE (Attachment 2). She reviewed the risk-assessment codes used by KDHE. She stated that it is difficult to know about food-borne illnesses because most people recuperate. The Committee was told that in transportation, any accident involving food is inspected for contamination or adulteration. Ms. Roberts also indicated that KDHE has the power to embargo products when needed. She discussed the duties and responsibilities of KDHE with the Committee. She stated that KDHE does not license hospitals, nursing homes, and schools. She noted that senior citizen centers with kitchens come under her agency's purview. Three-vat sinks are an issue in some areas, but KDHE is making exceptions and alternatives are being made. Representative Williams said inspectors are not consistent throughout the state. Ms. Roberts stated that a risk-based assessment is being used, but that does not determine the number of times a facility is inspected. She also noted that the risk-assessment codes that KDHE are using are not regulatory codes, only internal guidelines. Ms. Roberts did not know if these codes were available to the public. She told the members of the Committee food sampling is only done after a complaint is issued, and is rarely done. She also stated that KDHE's position is that it differs on some of the recommendations made by the Post Audit Committee. She stated that her agency is looking at how it can do a better job in the future. Food safety and security are both being addressed in the inspection system. She noted that the agency could make improvements in emergency preparedness. The Committee was told that the Governor's Office has not taken a position or stand on this issue. The Committee was told that KDHE has a contract with the Department of Education for schools that they want inspected. School cafeterias are not all inspected as far as she knew. She told the Committee that interaction among USDA, KDA, and Animal Health Department occurs mainly in regard to bio-terrorism. Ms. Roberts also noted that food-borne illnesses occur primarily in restaurants.

(In a letter to Chairperson Johnson and Vice Chairperson Schmidt dated November 14, 2003, Ms. Roberts clarified KDHE's inspection of school cafeterias. The referenced contract with the Department of Education only deals with the summer meal site programs. Schools are licensed food service establishments and are under the regulatory authority of KDHE. Of the 1,454 schools licensed (908 full service kitchens and 946 satellite sites), 1,305 inspections were conducted in fiscal year 2002 and 1,699 in fiscal year 2003.)

Secretary of Agriculture Adrian Polansky and Assistant Secretary of Agriculture Greg Foley reviewed food safety programs administered by the Kansas Department of Agriculture (Attachment 3). Following their testimony, the Committee discussed inspection regulations. Mr. Polansky said they are making progress on applying regulations consistently across the state. He said there may be a problem with the issue of grouping all proposed inspections, since it might jeopardize some Federal funds. The Secretary told the Committee that cross training of inspectors would be possible; however, weights and measures is so different that cross training those inspectors would not be feasible. He also stated that the grain inspection services do not really involve food safety. The Secretary noted that they are more for the quality of the grain and determining whether elevators have the proper amount in storage.

The Committee recessed from 12:15-12:45 p.m. for lunch. Kansas State University provided lunch, and Chairman Johnson made note of appreciation to KSU for its generosity.

Afternoon Session

Harry Watts, Managing Director of Kansas Farm Bureau Governmental Relations, presented Janet McPherson's February 11, 2003, comments to the Committee (Attachment 4). He felt there

would be changes made in Farm Bureau's existing policy statement next week, and he will have his staff forward those changes to Committee members when they are made.

Sally Finney, Executive Director of the Kansas Public Health Association (KPHA), testified in opposition to the consolidation of food safety inspections from KDHE to KDA because her organization thought it would be a conflict of interest and that food safety is a core public health function ([Attachment 5](#)). In response to a question from the Committee, Ms. Finney stated that KPHA does not advocate taking the current programs from the KDA and giving them to the KDHE. In response, it was noted that the Department of Education did not want to meet with the Senate Agriculture Committee last session when there were hearings on SB 124.

Dennis Carpenter, President/CEO of the Kansas Restaurant and Hospitality Association, testified his organization felt it was inappropriate to determine who should be the industry regulator ([Attachment 6](#)). His organization does not have any position on the transfer of programs from one department to another.

Jim Sheehan, Executive Director of the Kansas Food Dealers Association, testified his organization would appreciate anything that could be done that would lower the cost to his membership and to the state for inspections ([Attachment 7](#)). He testified that his organization's members are supportive of the state's inspection programs, and would not want the integrity of those programs to be compromised.

Committee discussion followed.

Based on what was heard, the Committee decided it wanted to pursue the introduction of a bill similar to 2003 SB 124. Senator Schmidt said it was important that the Committee does something, and stated that it would be useful to have a new bill rather than reworking SB 124. He noted that transfer of the programs from the Department of Education should not be a part of the new bill. Committee members discussed several other issues which could be put into a new bill. The potential inclusion of a task force was discussed. Several Committee members stated that they believed that cost savings should not be the only reason for consolidation of programs.

The following general recommendations were made by the Committee.

- Divide food safety inspections functions into the three recommended areas—dairy inspections; food processing inspections; and retail sales inspections.
- The issue of some areas being inspected too many times and some not being inspected at all needs to be addressed (this was an issue raised in the report from Legislative Post Audit).
- The pasteurized juice issue should be addressed, and juice processing facilities should be inspected just as milk processing facilities.
- Conflicts between industry and regulators should be addressed by having a mediator.
- Reorganization and transfer of programs should be a year or more away so that needed changes could be made.
- Assuming that the transfer of programs is made to the Department of Agriculture, it is extremely important that communication be kept open with the KDHE and especially the Bureau of Epidemiology within KDHE.

- The agency name should be changed to the Department of Agriculture and Food Safety.
- The Legislature should make certain that certain food processing plants are completely inspected (some are no longer fully inspected due to a statutory change in 2002 which redefined "food processing plant").

Mr. Gilliland reviewed the Committee recommendations:

- A new piece of legislation should be introduced to the 2004 Legislature.
- The first portion of the bill would transfer food safety programs from KDHE to a newly named Department of Agriculture and Food Safety.
- The second major component of the bill would be the formation of a working group composed of:
 - Secretary of Health and Environment;
 - Secretary of Agriculture;
 - Industry officials;
 - Kansas State University officials;
 - Legislative representatives;
 - Livestock Commissioner;
 - Federal Food and Drug Administration officials;
 - Food Safety Inspection Service (USDA) officials;
 - Kansas Restaurant and Hospitality Association;
 - Kansas Public Health Association;
 - Local health departments; and
 - Others as deemed necessary by the Secretaries.

The following is a list of items which the working group would be working on during its meetings:

- Proposing necessary statutory changes;
- Insuring agency cooperation;
- Developing a risk-based assessment system;
- Identifying changes needed;

- Recommending action on the issue of bio-terrorism in food security;
- Making recommendations for a mediator between regulators and regulatees;
- Reporting to Legislature by February 1, 2005; and
- The working group would sunset on June 30, 2005.

The third component of the bill would make necessary statutory changes to bring all "food processing plants" back under state licensing and inspection. This action would correct the 2002 legislative action.

The final major component of the bill would require communication between the newly named Department of Agriculture and Food Safety and the Bureau of Epidemiology and Disease Prevention in KDHE. The Committee believes this ongoing communication is imperative. Ongoing communication with the Bureau of Epidemiology should be required by statute.

The Committee recommends that the new bill should be assigned to the Senate first.

Staff indicated that the proposed bill would be drawn up as soon as possible and that it would be mailed to Committee members for their review. Staff stated that a trailer bill will probably not be ready until after the 2004 Session starts. Likewise, a Committee Report would be written and transmitted to Committee members.

Senator Schmidt moved that the Committee introduce a bill as described, and that the bill be assigned to the Senate first. Representative Miller seconded the motion. The motion carried.

Chairman Johnson said that the minutes of this meeting would be sent via mail for approval. The meeting adjourned at 2:20 p.m.

Prepared by Raney Gilliland

Approved by Committee on:

December 15, 2003

(date)