

LR 212

Examine Utilization of Checkoff Program Authority to Influence Federal Legislation

Staff Report to the Agriculture Committee

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LEGISLATIVE RESOLUTION 212 Introduced by Senator Jerry Johnson

PURPOSE: The purpose of this resolution is to examine the utilization of authority given to various state commodity development programs to make expenditures for the purpose of influencing federal legislation. The goals of this study include:

- (1) Developing an understanding of the types of federal legislative issues and appropriations that are germane to the role and mission of the state commodity promotion programs; and
- (2) Gathering information regarding the extent and manner in which state programs participate in the federal legislative process and the nature and amount of expenditures for that purpose.

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Introduction

There are currently eight commodity promotion programs organized under state statutory authority that provide for programs of research, consumer education, market discovery, and related advocacy activities intended to stimulate markets for Nebraska producers of these commodities¹. In some cases, authorizing statutes expressly preclude the use of checkoff funds to oppose or support candidates for elective office or to influence state legislation, but implicitly authorize expenditures to “influence federal legislation” within specified limitations.

During the 2015 session of the Legislature, discussion arose regarding the purpose for such authority and the manner in which it is utilized. The catalyst for this discussion was the Legislature’s consideration of LB 242 which increased the amount of the promotional assessment collected from dry bean producers and processors to fund promotional activities authorized by the Nebraska Dry Bean Resources Act. Prior to the session, §2-3753 of the Act read in pertinent part:

2-3753. Commission; powers and duties.

“The commission shall have the following powers and duties: . . .

. . . (10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than twenty-five percent of its annual budget to influence federal legislation.”

Similar text is found in the authorizing statutes for the promotional programs for corn, wheat and grain sorghum. The Nebraska Dairy Industry Development Act confines expenditure of state checkoff funds to “qualified programs” and explicitly defines a qualified program to exclude programs for the purpose of influencing legislation. State authorizing statutes for the remaining promotional programs for grapes, potatoes and poultry/eggs are silent with respect to expenditures for the purpose of influencing legislation but contain no express or implied authorization with respect to that particular use.

Decisions made in federal legislative, budgetary and regulatory forums can be relevant to the ability of checkoff programs to fulfill their promotional function. It is apparent that at least in these cases, the Legislature contemplated a value in checkoff funds providing a means for Nebraska producers to have a voice in national trade organizations that represent the views of industry at the federal level and to otherwise represent the interests of Nebraska producers in federal policy making forums. However, some issues at the federal level can be divisive among state agricultural producers. Thus, commodity board expenditures for influencing federal legislation have the potential to alienate groups of producers

The Legislature reached an interim policy decision to amend the Dry Bean Resources Act to limit expenditures to influence federal legislation to 15% of annual budget and to confine participation in

¹ Although each are currently funded by mandatory assessments (only the poultry and egg program assessment is refundable) that are collected from producers when first marketing covered commodities, these programs are often referred to as “checkoff” programs in reference to both private and public predecessor promotional efforts funded by producers who voluntarily designated a portion of their payment be deducted for such purpose by “checking off” a space indicating their desire to do so.

federal legislative forums to those federal issues germane to the purpose and mission of the Dry Bean Commission. It is important to note that LR 212 is not introduced at any suggestion that commodity programs have exercised this expenditure authority irresponsibly. However, the discussion of this authority during debate on LB 242 demonstrated a value for the Agriculture Committee to review this topic in greater detail during the interim with the objective of developing both reference information and policy guidance on the topic to inform relevant legislative discussions in the future.

Senator Johnson has defined the study objectives for LR 212 as follows:

- ⤴ Develop quantitative and qualitative descriptions of commodity board expenditures to influence federal legislation
- ⤴ Identify federal legislative and appropriations topics pertinent to the promotional mission of state checkoff programs
- ⤴ Identify potential political, legal or practical constraints or considerations to commodity board expenditures for influencing federal legislation
- ⤴ Provide any appropriate recommendations regarding the need for, and types of, statutory parameters or checks on exercise of this expenditure authority.

Background: State Commodity Promotion Authorities

State Commodity Promotion Programs

There are currently “checkoff” programs authorized by state law for wheat, corn, grain sorghum, dry beans, milk, poultry and eggs, potatoes and grapes. Nebraska producers also contribute to a number of checkoff programs authorized by federal law and administered by USDA, many of which share revenues collected between federal and designated qualified state promotional entities. The most important of these federal programs in terms of relevance to Nebraska agriculture include programs for beef, pork, and soybeans.

Commodity development programs collecting assessments authorized under state law are briefly summarized here.

Wheat

The Legislature enacted the Nebraska Wheat Resources Act in 1955. The Wheat Division within the Nebraska Department of Agriculture was separated into the Wheat Development, Utilization and Marketing Board in 1981. The Act declares the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of the state by protecting and stabilizing the wheat industry and the economy of areas producing wheat. The Wheat Board is declared the state agency created and vested with this responsibility, and is responsible for formulating the general policies and programs of the State concerning the discovery, promotion and development of markets and industries for utilization of wheat. Since October 12, 2012, the Act has levied 0.4% percent of the net market value of wheat when sold to a first purchasers with authority to increase the levy within a statutory maximum of 0.5% of net market value.

Corn

The Nebraska state corn development program was created in 1978 to promote the production, marketing, and utilization of corn. The Corn Development, Utilization & Marketing Board became a separate state agency in 1986. Prior to that time, it had been housed as a subprogram within the Nebraska Department of Agriculture. The primary intent of the Board is to develop, carry out, and participate in programs of research, education, market development, and promotion on behalf of the corn producers of Nebraska. The Act was amended in 2012 to levy an assessment of 1/2 cent per bushel collected from producers when sold to a first purchasers.

Grain Sorghum

The Grain Sorghum Program was created in 1981 to fund market development, promotion, education, and research programs related to grain sorghum. Effective July 1, 1992, the Nebraska Grain Sorghum Board became a separate agency status. Prior to that time, the Board was included as a subdivision of the Nebraska Department of Agriculture. Foreign and domestic market development activities of the Grain Sorghum Board are conducted through the U.S. Feed Grains Council and the National Grain

Sorghum Producer's Association. Funding for the program is provided by a levy of 1 cent / cwt of grain sorghum sold in the state.

Dairy

Under the federal milk promotion program, a mandatory assessment of 15 cents / cwt is collected from all milk producers for promotional programs under federal law. However, individual states or milk marketing regions may retain and control up to 10 cents / cwt and forward only the difference between the local and federal checkoff directly to the federal program. The Nebraska Dairy Industry Development Act was enacted in 1992 in anticipation of termination of the dairy promotion checkoff of the Nebraska-Western Iowa Federal Milk Order. The regional checkoff was rescinded by rule of the Secretary of Agriculture in December of 1998. The ending of the federal checkoff activated section §2-3958 which imposes a 10 cent / cwt assessment on all milk produced in the state for commercial use. The assessment is collected by the first purchaser of raw milk at the time of sale or delivery and remitted to the Board.

Potatoes

The Nebraska Potato Development Act, first enacted in 1945, vests authority to conduct potato development programs in the Director of Agriculture funded by an assessment against shippers which is set periodically by the Director without a statutory maximum. The Act declares the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of the state by protecting and stabilizing the potato industry and the economy of areas producing potatoes. The Department of Agriculture is declared the state agency vested with this responsibility and a Potato Development Division is created by statute within the Department of Agriculture. The Nebraska Potato Development Act is designated part I of a broader Act which also provides for the Director to set and enforce potato grading standards. The Governor appoints a Potato Development Committee consisting of producers and shippers and chaired by the Director to advise the director on policies and investments of assessments collected.

Poultry and Eggs

The Nebraska Poultry and Egg Resources Act, enacted in 1976, vests authority to conduct development programs for poultry and eggs produced in Nebraska in the Director of Agriculture funded by a refundable assessment not to exceed 5 cents / case of eggs and 3 cents / turkey sold commercially. By statute, the Poultry and Egg Development Division is created within the Department to administer the program. The Poultry and Egg Development, Utilization and Marketing Committee consisting of the directors of Nebraska Poultry Industries, Inc. and other designated ex officio members selected by the committee advise the Director in his duties. The Director, with approval of the Committee, is authorized to "formulate the general policies and program of the State of Nebraska respecting the discovery, promotion and development of markets and industries for the utilization of poultry, eggs, and the products thereof" and to conduct programs of consumer education, research, advertising, promotion and market development.

Dry Beans

In 1987, the Legislature created the Nebraska Dry Bean Commission under the provisions of the Dry Bean Resources Act. The Commission is declared a state agency with primary function, as defined by the Legislature, to adopt and devise a dry bean program consisting of research, education, advertising, publicity and promotion to increase total consumption of dry beans on a state, national and international level. The Commission's activities are funded by a refundable assessment not to exceed 10 cents / cwt (currently 7.5 cents) collected on dry edible beans grown in Nebraska and sold through commercial channels. Two thirds of the tax is paid by the grower and 1/3 by the first purchaser of the crop.

Grapes

In 2000, the Legislature created the Winery and Grape Producers Promotional Fund to finance programs to support and promote growth of Nebraska's wine industry. The fund consists of revenues from 20 cent / ton excise tax levied on raw grapes sold in commercial channels, a fee of \$20 / 160 gallons of juice produced or received by a winery, and the proceeds of an annual shipping license fee paid by out-of-state craft brewers and farm wineries who direct market to consumers in the state. The fund and promotional program is administratively housed within the Department of Agriculture. A five member Nebraska Grape and Winery Board whose members are appointed by the Governor to represent winery owners and grape growers advise the Department in the carrying out the program. The Department, "at the direction of and in cooperation with the board," is authorized to develop and maintain programs supporting research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, funding for the employment of experts in the fields of viticulture and enology.

Statutory Authority Regarding Influencing Legislation

The appendix to this report contains a collection of the statutory provisions for each state commodity program that articulate overall program objectives and describe permitted expenditures of assessments collected from producers and other program resources. As stated in the introduction, authorization with respect to expenditure of promotional assessments to influence the lawmaking process varies between the eight promotional programs organized under state statute. Generally, however, the extent to which such authority is addressed statutorily falls under the following categories:

Express or Implicit Authority or Prohibition: Authorizing statutes for the wheat, corn, grain sorghum and dry bean programs expressly prohibit the use of checkoff funds to support candidates for public office or to influence state legislation. However, each currently contain text indicating the Legislature contemplated the use of promotional funds to facilitate representation of the interests of Nebraska producers in federal legislative contexts. §2-3622 of the Nebraska Corn Resources Act, §2-3753 of the Dry Bean Resources Act, §2-2321 of the Nebraska Wheat Resources Act, and §2-4011 of the Grain Sorghum Resources Act assign powers and duties to the

governing boards similarly to §2-3622 of the Nebraska Corn Resources Act which reads in pertinent part:

2-3622. Board; duties and responsibilities.

“The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following: . . .

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation;”

Express Prohibition: The dairy program contains no express or implied authority regarding the use of dairy checkoff funds for purposes of influencing legislation, state or federal. §2-3960 which creates the Dairy Industry Development Fund prescribes authorized use of the fund to include *“the administration of the [Act], including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs”* §2-3961 of the Dairy Industry Development Act directs that the Dairy Industry Development shall carry out these purposes by funding “qualified programs as stated in Section 114 of the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended. §2-3949 defines “qualified programs” in pertinent part as follows:

2-3949. Terms, defined.

“Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall:

(a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; . . .

(f) not use program funds for the purpose of influencing governmental policy or action.

No Express Authorization or Prohibition:

Authorizing statutes for the potato, poultry and egg, and grape programs contain no direct statutory instruction regarding the use of checkoff funds collected by promotional programs for the purpose of influencing legislation or governmental policy, state or federal. Like all other programs, statutes do identify both general, and in some cases quite specific, uses of checkoff funds. Any authorization of expenditures to influence the content or fate of legislation would exist only to the extent that such participation is incidental to achieving the underlying purpose of promotional programs and expressly permitted uses of checkoff funds.

Each of the eight state promotion programs contain similar listings of the core program elements of research, market development, consumer education/information and promotion, terms typically associated with promotional efforts which the Legislature contemplated to be funded by checkoff collections. With the exception of the Poultry and Egg Resources Act, which defines “market development”, these terms are not defined in state law. Generally, however, promotional programs

organized under state authority have adopted the terminology of federal research and promotion orders which have been defined by regulations implementing the orders. While there is some variation among federal programs in how these terms are defined, the following definitions from the federal beef promotion order (7 CFR 1260.101 et seq.) are representative of how these terms are generally understood and provide a reference for purposes of this report.

§ 1260.122 Promotion.

Promotion means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

§ 1260.123 Research.

Research means studies relative to the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

§ 1260.124 Consumer information.

Consumer information means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

§ 1260.125 Industry information.

Industry information means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

As defined above, these terms suggest investments in commercial contexts or to advance scientific discovery and its application to increase the appeal, utility, quality and safety of food and industrial products to further support the increased utilization of the promoted commodity in the marketplace. It should be pointed out that federal promotional programs expressly prohibit checkoff revenues to be used “for the purpose of influencing governmental policy or action” except to recommend revisions to the promotional order itself. Thus, it is clear within the federal scheme that the terms, promotion, research, consumer information, industry information (and embedded term “market development”) do not encompass participation in lawmaking or other policy forums. To the extent that the federal example informs interpretation of the types of expenditures contemplated by their use in state law, even absent express prohibition, it is difficult to discern that the use of checkoff funds to representing industry interests in the legislative process or other policy forum is encompassed by those terms.

State statutory provisions and contexts do, however, differ in some aspects from similar federal programs in ways that imply the Legislature’s recognition that some manner of involvement in federal policy forums is incidental to achieving core promotional program objectives. As pointed out above, four state programs for wheat, corn, grain sorghum and dry beans expressly permit up to 25% of their annual budget to be used for the purpose of influencing federal legislation. Apart from this direct authority, state statutes recognize the promotional programs as the agency to formulate general policies, as well as programs, of the state of Nebraska with respect to market development for each commodity respectively.

It is interesting to note that §2-3403 of the Nebraska Poultry and Egg Resources Act which authorizes a state market development program for poultry and egg producers, defines “market development” to include *“the prevention, modification or elimination of trade barriers which obstruct the free flow of poultry, eggs, and the products thereof, to market.”* While achievement of such end could involve non-legislative actions such as direct negotiation with trade officials of other nations, initiating or providing support of legal action to challenge state laws that present interstate commerce restrictions, etc. the definition would not exclude supporting or opposing federal legislative and administrative actions that effect trade and interstate commerce. This interest in minimizing trade barriers articulated in the poultry and egg program would be of inherent interest to all commodity programs.

Finally, there is authority for the programs to cooperate and contract with local, state, or national organizations, public or private, to carry out the purposes of the promotional program. Nebraska’s promotional program expenditures typically include membership in national industry trade associations that serve their membership in many ways such as providing direct marketing services and information, but may also include keeping members abreast of developments in federal policy issues of interest to the industry, providing forums for membership to develop industry positions on such issues and to convey industry perspectives in policy making arenas.

Legislative History of Influencing Provisions

The statutory provisions within the corn, wheat, sorghum and dry bean promotion program authorizations that allow up to 25% of budgeted expenditures to be applied to influence federal legislation have evolved to their present form over time. The history of these provisions for each commodity program are summarized by the table on the following page.

Both the Nebraska Corn Resources Act as originally enacted in 1978 and the Grain Sorghum Resources Act originally enacted in 1981, prohibited checkoff funds from being used to support or oppose candidates for public office or for purposes of influencing legislation (no distinction between state or federal). As originally enacted in 1955, the Wheat Resources Act contained no express restrictions or authorizations regarding the use of checkoff funds for either purpose. In 1981, in the same bill establishing the grain sorghum promotional program, the wheat program was also amended to insert the same restriction on use of checkoff funds to support or oppose candidates or to influence legislation.

The Legislature debated the use of checkoff funding to promote the interests of commodity growers in legislative venues in its consideration of LB 60 in 1985. As introduced, LB 60 would have amended the acts for the five state commodity promotion programs overseen by appointed producer boards then in existence (wheat, corn, grain sorghum, soybeans and & beef²) by removing the express prohibition against using checkoff funds to influence legislation at either the state or federal level.

² Authority for promotional programs for beef and soybeans under state law have since been eliminated. The private associations, the Nebraska Soybean Board and the Nebraska Beef Council, are successor organizations to one-time state agencies, the Nebraska Soybean Board and the Nebraska Beef Board. The Legislature enabled both boards to transition to private associations and both successor private organizations participate in the federal promotional architecture for each commodity as the USDA designated qualified state programs for Nebraska. The federal scheme does not require that the designated promotional organization be governmental entities.

History of Relevant Statutory Restrictions Pertaining to use of Checkoff Funds to Influence Federal Legislation

Wheat	Corn	Grain Sorghum	Dry Beans
<p>1955 -- Wheat program first enacted. As originally enacted, the Act is silent regarding use of checkoff funds to support or oppose candidates or to influence legislation</p> <p>1981 (LB 11) -- inserted §2-2321 prohibiting use of checkoff funds to promote or oppose candidates for public office or to influence legislation</p> <p>1985(LB60) – amended §2-1321 to narrow the prohibition of the use of checkoff funds to influence state legislation only and restrict funds expended to influence federal legislation to 25% of annual budget “</p>	<p>1978 (LB 639)– Corn program first enacted. Section 22 (§2-3622) prohibits use of checkoff funds to support or oppose candidates or to influence legislation</p> <p>1985 (LB 60) – Amends §2-3622 to narrow prohibition to use of checkoff funds to influence state legislation only and to restrict funds expended to influence federal legislation to 25% of annual budget</p>	<p>1981 (LB11) – Sorghum program first enacted. Section 11 (§2-4011) prohibits use of checkoff funds to support or oppose candidates or to influence legislation</p> <p>1986 (LB1016) – Amends §2-4011 to narrow prohibition to use of checkoff funds to influence state legislation only and to restrict funds expended to influence federal legislation to 25% of annual budget</p>	<p>1987 (LB145) – Dry Bean program first enacted. Section 19 (§2-3753) prohibits use of checkoff funds to support or oppose candidates or to influence state legislation. Restricts use of checkoff funds expended to influence federal legislation to 25% of annual budget</p> <p>2015 (LB242) – Amends §2-3753 to limit expenditures to influence federal legislation to 15% of annual budget and to limit lobbying activities to those in support of market development, education and research purposes of the Commission.</p>

LB 60 was debated during a period of severe economic stress in the agricultural economy that began in the early 1980's and lasted much of that decade. The 1985 Farm Bill was a pivotal point in federal farm policy as Congress considered numerous changes to farm price and income supports, loan, conservation, nutrition and other titles to address the farm crisis. It was perceived to be imperative that Nebraska agricultural interests be more engaged in development of the Farm Bill and other agricultural and rural legislation considered by Congress at that time. Generally, supporters argued that the goal of promotional programs is to enhance the economic conditions for producers of the commodity, and that ability to influence governmental programs, investments and policy is increasingly an important element of that.

Reviewing the transcripts of floor debate on LB 60, supporters raised a number of additional practical and policy considerations:

- State checkoff programs typically provide funding to state and national producer organizations and industry trade associations to carry out specific programs of promotion. These entities may themselves engage in lobbying activities and it is difficult to avoid leakage of checkoff funds for lobbying, or to avoid the appearance. Strictly applying the prohibition

on use of checkoff funds for legislative activities could therefore inhibit the options available and ability to carry out promotional activities.

- There is recurring concern that leadership and membership in national producer and industry trade organizations active in influencing legislation on behalf of all producers is often dominated by producers in other states and thus their positions may not always best represent Nebraska producers. Use of checkoff funds would enhance the ability of Nebraska producer interests to be better represented in such groups' deliberations and activities, and would enable Nebraska interests to be represented directly if such groups' positions are in conflict. Additionally, availability of checkoff funding to underwrite travel and other expenses would enable a more representative cross-section of Nebraska producers to be involved in formulating these groups' policies and positions on legislation,
- Nebraska was at a disadvantage with other states that permit checkoff funds to be used to influence legislation.
- Research, education and other activities of promotional programs often result in compiling and sharing information about the commodity, its value and uses, production practices, etc that are often simultaneously relevant to informing government policy discussions. Thus there is inevitably some overlap and difficulty in completely separating non-legislative activities of promotional boards with policy formulation. The restriction on spending to influence legislation thus potentially inserts unnecessary uncertainty about the legitimacy of many types of promotional activities.
- The use of mandatory checkoff funds for engagement in the legislative process was not unprecedented. Prior to 1981, the Wheat Board had no restrictions and regularly provided information to policy makers at both the state and federal level without concern that the board participated improperly.

LB 60 was vigorously opposed during floor debate. Opponents noted that all of the state checkoff programs were funded through mandatory assessments and expressed both philosophical and potential legal concerns with the potential for some producers being put in the position of having to financially support policies promoted and positions on bills that the producer personally disagreed with. It was further suggested that those states that did permit checkoff funds for lobbying purposes were voluntary in that they allowed producers to request refunds of their checkoff if they disagreed with the legislative activity of the promotional program. Additionally, in some states, directors are elected by producers and thus there are political controls directly accountable.

LB 60 failed initially to advance from general file. The advancement vote was reconsidered and ultimately the bill was enacted but with modifications to a) continue to prohibit checkoff boards' financing activities to influence state legislation, and b) limit expenditures to influence federal legislation to 25% of their annual budgets. Additionally, these changes were made only to the corn and wheat programs.

In 1986, the sorghum program's statutory prohibition on influencing legislation was amended to be consistent with the wheat and corn checkoff provisions as enacted by LB 60 the previous year. The following year, the Dry Bean Resources Act was originally enacted with the same restrictions by then common to the wheat, corn and grain sorghum programs. The restriction within the Dry Bean program regarding use of funds to influence federal legislation was amended by LB 242 enacted in 2015 to further limit such expenditure to 15% of the program's annual budget and to further restrict expenditures to only issues germane to program's promotional mission.

Survey Responses

In an effort to gather information regarding the utilization of authority to influence federal legislation, Senator Johnson presented a questionnaire to the chairs of the governing boards of each of the commodity programs for wheat, corn, dry beans and sorghum having specific authorization. In addition to these four programs being distinguished by having this statutory authority, their governing boards are also designated distinct state agencies and exercise authority independent of the Department of Agriculture. A copy of the questionnaire and the cover letter accompanying it are included in the appendix to this report.

A questionnaire was also presented to the Dairy Industry Development Board which is also designated the state agency for carrying out the dairy promotion program. As noted earlier, the Dairy Industry Development Act directs that the Board carry out its duties by funding federally certified “qualified programs” of dairy promotion, but both federal regulations governing certification and the Act itself precludes the Board from directing funds to programs utilize funds for the purpose of influencing governmental policy. The Dairy Board was given the option to return the form uncompleted if the survey and its purpose were inapplicable, which the Chairman of the Board indicated by cover letter accompanying the returned form.

For purposes of the survey, “federal legislation” was defined broadly to include proposed or enacted legislation or resolutions, including budgetary authorizations and appropriations, by the United States Congress, proposed rules or regulations by a federal agency or commission, and actions taken by the executive branch of the federal government.

A synthesis of the responses to each survey question are presented as follows:

Q1: Please list and describe the relevance of any federal programs, one-time, periodically recurring, or ongoing regulatory or policy topics, and budgetary items that the Board views as germane to the purposes and functions assigned to the Board.

Three of the four survey responses listed examples of federal policy issues that the boards consider important to the objectives of the programs they implement. Each survey identified the farm bill (and its implementation), which contain periodic reauthorizations of key farm income support and risk management, nutrition and food assistance, research, food safety and other titles. Responses made specific reference as well to the need for certainty and adequacy of funding levels authorized for two key market programs typically included in farm bill legislation, the Market Access Program (MAP) and the Foreign Market Development (FMD) program, both of which provide federal dollars often matched with funds provided by domestic cooperators, to assist international marketing efforts.

All responses indicated an interest in federal activities relevant to maintaining access to foreign markets, such as free trade agreements and other federal efforts to remove or minimize direct barriers to U.S. exports or trade distorting regulations, and to assure domestic farm programs are compatible with international trade obligations. Each response also pointed specifically to policies affecting the use of biofuels, in particular the Renewable Fuels Standard. Other areas of federal

legislative or regulatory activity mentioned in one or more response included environmental regulation, transportation regulation and infrastructure investment.

Q2: Please indicate by checking the appropriate space any of the activities listed below that have been engaged in or would be contemplated by the Board for the purpose of influencing federal legislation.

This question was asked to elicit the nature of activities and related expenditures of state checkoff funds that fall within the realm of influencing federal legislation. It was anticipated that very few efforts or checkoff funds are expended by the board in direct communication with federal decisionmakers in either the legislative or executive branch, or through the hiring of professional lobbyists, to advocate the Board's perspective on individual bills or regulatory matters. Activities that could fall under the general description of influencing federal legislation were more broadly considered in writing the survey to include indirect actions such as participation through national industry trade organizations that offer forums to develop general and specific policy recommendations and to communicate industry positions to pertinent federal personnel. Other indirect activities include conducting research and compilation of information in the form of reports or studies that help inform federal policy makers consideration of legislation of interest to the Boards.

Each response indicated that the Boards had, or would consider, expenditure of checkoff funds in the following specific activities with respect to federal legislation:

- funding travel expenses of Board members to enable face-to-face meetings with members of Congress or their staff or with officials or staff of the executive branch;
- providing written or oral communications from the Board or its staff to members of Congress or their staff, or to officials or staff of the executive branch;
- Compiling and communicating data and information in the form of reports, studies, assessments, research summaries or other similar documents to help inform federal decisionmakers' consideration of federal legislation

Note 1 – when completing this item, it was intended that the response would list individual report type items provided and for each to indicate whether such informational materials was compiled specifically for purposes of informing consideration of a pending federal policy decision or whether the materials provided were data compiled for other purposes that nonetheless had bearing on the pending policy issue. None of the responses itemized individual reports provided but merely responded “yes”. It is likely that report type documents provided were both completed specifically for consideration on pending policy decisions and other reports initiated for other purposes.

Note 2 – The three responses indicating this activity also indicated that at least some report projects were initiated or provided at the request of congressional offices or federal agencies.

Note 3 – The questionnaire did not ask whether expenditures for this activity were for work initiated and completed by the board. It is possible some or all state promotion board expenditures for this activity include funding contributed cooperative to industry trade associations to underwrite work on behalf of the industry nationwide.

- Paying subscription charge or membership fee in any trade association or other organization serving the industry that has as its purpose or among its functions to influence federal legislation on behalf of its membership or the industry in general
- Funding expenses of members of the Board or its staff to travel to and attend and participate in forums sponsored by nation trade associations, industry caucuses, or other similar event or organization for policy discussion and formulation of industry positions regarding federal legislation.

Note 4 – The questionnaire asked respondents to indicate whether trade associations or other sponsors of industry forums directly communicate industry policies or positions on federal legislation to members of Congress or administrative officials, and if so, do such organizations employ or hire lobbyists for that purpose. Two of the three responses to this item simply answered “yes.”

Generally, it is common practice that commodity boards are contributing members of national industry marketing organizations e.g. U.S. Grains Council or commodity trade associations, e.g. National Sorghum Producers Association. Some of these groups may maintain staff that participate in legislative or regulatory forums on behalf of the industry or growers and to generally communicate the industry position on specific issues.

Q3: For each of the previous 5 complete fiscal years, please provide:

- 1. an itemized summary of expenditures by the Board that may be categorized as expenditures for the purpose of influencing federal legislation;**
- 2. information to indicate expenditures for purpose of influencing federal legislation as a percentage of budgeted expenditures**
- 3. a description of any expenditures not included above that you would describe as general policy communication or formulation but not necessarily directly related to pending federal legislation**

The Corn Board and the Wheat Board provided a table itemizing expenditures for the purpose of policy development/influencing legislation for each of the fiscal years FY10-11 through FY14-15 and the total of such expenditures as a percentage of total expenditures by the board. The Sorghum Board also provided a table indicating a total for expenditures in the category and the total as a percentage of the Board’s total expenditures. Expenditures were not itemized but the Board provided detailed spreadsheets that include itemized expenditures. The Dry Bean Commission indicated no expenditures in this category.



	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
NeCGA Corn Congress	\$ 24,240.71	\$ 20,154.21	\$ 27,888.67	\$ 17,955.46	\$ 23,432.51
NeCGA WDC Leadership	\$ 48,786.49	\$ 23,261.24	\$ 31,344.42	\$ 36,807.85	\$ 43,903.89
NCB Leadership Mission				\$ 9,248.57	\$ 14,493.00
Farm Bill			\$ 3,813.26	\$ 409.00	
EPA RFS Hearing				\$ 1,570.80	
RFS Outreach				\$ 18,086.10	
WRDA Flyin				\$ 1,732.36	
ACE Flyin					\$ 1,674.49
EPA Rally for Rural America					\$ 1,660.85
Total	\$ 73,027.20	\$ 43,415.45	\$ 63,046.35	\$ 85,810.14	\$ 85,164.74
Actual Expenditures	\$ 3,632,692.00	\$ 3,736,332.00	\$ 4,395,165.00	\$ 6,615,453.00	\$ 7,426,297.00
% of actual	2.0%	1.2%	1.4%	1.3%	1.1%

Nebraska Wheat Board

	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Whiteside & Associates	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800	\$ 4,800
National Association of Wheat Growers	\$ 47,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 48,000
Nebraska Wheat Growers Assoc.-Wheat Issues Monitoring	\$ 30,000	\$ 21,000	\$ 20,000	\$ 30,000	\$ 12,000
Total	\$ 81,800	\$ 75,800	\$ 74,800	\$ 84,800	\$ 64,800
Total Budget	\$ 1,320,426	\$ 1,142,786	\$ 1,193,983	\$ 1,261,605	\$ 1,714,737
Percent of Total Budget	6.19%	6.76%	7.19%	6.72%	3.78%

Nebraska Grain Sorghum Board

Fiscal Year	Annual Budget	Direct Expenses	Contractual	Total	% of budget
2010 - 11	101,473	3,743.94	5000	8,743.94	8.6%
2011 - 12	94,770	3625	5000	8,625.00	9.1%
2012 - 13	61,815	4,399	5000	9,399.00	15.2%
2013 - 14	60,840	3,531.91	5000	8,531.91	14.0%
2014 - 15	45,931	2356	0	2,356.00	5.1%

Q4: Please provide a description of the Board's policies and considerations regarding the appropriateness of expenditures for the purpose of influencing federal legislation.

The Wheat Board and Corn Board indicate that the Boards have specific policy with regarding governmental affairs activities. Both indicated that their policy states that the primary means of engagement is through membership within or cooperation with existing producer or industry organizations whereby the Board provides input to such organizations. Both Board's policies

reserve the option to take action independent of such industry groups if the board believes such groups are unable to represent the interest of Nebraska producers.

The Wheat Board and the Corn Board similarly articulated general principles guiding when engagement by the board in policy arenas, directly or indirectly, is warranted. The Wheat Board written policy states that the Wheat Board “*should remain committed to developing and maintaining federal regulations that will increase net farm income*” and “*remain committed to the elimination of foreign tariff and non-tariff barriers that prevent the exportation of the maximum volume of U.S. wheat.*” The Corn Board response states “*the board educates and / or influences federal policy when it believes that proposed legislation enhances and/or interferes in the efficient production of corn (enhancing profitability and viability), commerce (transportation) of corn or value added products or the market development, promotion, education or research of corn or value added products.*”

The Sorghum Board indicated that it has no specific board policy, but its expenditures for that purpose are either an incidental portion of the Board’s administrative costs or a contractual expenditure with the National Sorghum Producers Association to support NSPA efforts to represent sorghum producers on federal legislative and regulatory issues.

The Dry Bean Commission states in response to this question that the Commission is in the process of updating rules and regulation but historically, the Commission has not used checkoff funds to influence legislation. The Commission did not indicate in question 2 that it paid membership dues to any national dry bean producer or trade association, or other similar organization that serves to represent producers or the dry bean industry in federal policymaking forums.

Q5: Do any third-party entities receiving contracted expenditures of checkoff funds routinely participate in or have as an organizational purpose to influence federal legislation? If so, please provide a description of the Board’s policy regarding utilization of checkoff funds by third-party contracting entities for this purpose.

This question is intended to elicit policies or procedures utilized by the Boards to prevent leakage of checkoff funds directed to contracted third parties for non-legislative purposes to be utilized by such entities to enhance their own government relations activities or capabilities. Many of the specific promotional projects funded through checkoff assessments are performed by third parties who contract with the Board, and some groups receiving checkoff dollars may be organizations that have among their organizational purpose to advocate governmental policy at either or both the state and federal level, and to support or oppose candidates or ballot initiatives on behalf of their membership.

The responses by the Corn Board and Wheat Board provide describe some checks on contractors regarding diversion of funds from being expended for non-checkoff purposes, including:

- Contractual terms that limit use of funds to specified scope of work and that expressly prohibit funds from being used to support or oppose candidates for elective office or to influence state legislation

- Contractors receiving checkoff funds may deposit and expend checkoff funds into segregated accounts
- The Wheat Board states that funds are paid to contractors on a cost-reimbursement basis, i.e. funds are only transferred for actual costs incurred only after the contractor presents evidence of the cost for reimbursement

Three respondents indicated that the scope of some contractor work funded by checkoff funds may be for governmental relations. As suggested by responses to earlier questions, these contracts are typically contributions to support the activities of national grower or industry trade organizations.

Policy Considerations

This report is not intended to advocate for or against any specific changes in statutory language governing checkoff programs' engagement in federal legislative forums. However, it is hoped that the points discussed in this section might help guide relevant discussions as they might occur on future legislation affecting commodity programs in general or legislation specific to the authority of commodity programs to utilize checkoff funds to influence legislation.

Checkoff Programs are Government Speech

Much of the constitutional uncertainty that stimulated discussion regarding the appropriate role of commodity programs in funding activities to influence legislation as the Legislature considered LB 242 last session results from the perception that checkoff programs are primarily, if not exclusively, organized for the private commercial benefit of producers of a commodity. This perception is reinforced by frequent rhetorical emphasis that the checkoff programs are grower initiated, governed and funded. Under this perception, government's role is perceived as merely one of facilitating the association of producers for the private commercial purpose of engaging in collective commodity development.

Prior to a pivotal U.S. Supreme Court ruling in 2005, a series of federal district and circuit court decisions following the Supreme Court's ruling in United States v. United Foods, Inc., 533 U.S. 405 (2001) had generally advanced that conclusion. These cases held that promotional programs funded by mandatory assessments paid by producers were similar to mandatory membership in private, non-governmental entities like a bar association or a labor union. The Supreme Court has found expenditure of mandatory dues for political involvement or policy advocacy of such organizations to be subservient to its membership's 1st Amendment protections from compelled speech and compelled subsidy of speech and to be confined to issues germane to the public policy objectives for compelling membership.³ Thus, these cases found that requiring producers to contribute to these programs through mandatory assessments were a form of compelled subsidy of private associational speech for which expenditure of the funds for political expression is restrained by 1st Amendment protections similar to those that apply to unions and bar associations.⁴ .

However, in 2005, the U.S. Supreme Court reached an entirely different conclusion in Johanns v. Livestock Marketing Association, 544 U.S. 550, holding that the federal beef checkoff program⁵, funded by mandatory, non-refundable assessments against beef producers, did not violate objecting producers' 1st Amendment protections. The key dispositive question in Johanns v LMA, which had not been raised in previous Supreme Court and lower federal court rulings, was whether promotional programs are a form of government speech. That in turn is relevant to whether mandatory assessments collected from producers for commodity promotion organized under statutory and governmental direction was a compelled subsidy of private commercial speech or an exaction for

³ Abood v. Detroit Bd. of Education, 431 U.S. 209 (1977); Keller v. State Bar of California, 496 U.S. 1 (1990)

⁴ Agriculture Committee interim study report, *LR274: Examine Implications of 1st Amendment Court Decisions for State Commodity Development Programs* (Dec. 2004) provides a more complete discussion of this topic prior to Johanns v. LMA

⁵ Beef Promotion and Research Act of 1985 ("the Act"), 7 U.S.C. §§ 2901-11, and the Beef Promotion and Research Order promulgated thereunder, 7 C.F.R. §§ 1260.101-1260.640.

governmental speech. For numerous reasons relating to the public purposes served and the degree of governmental oversight, conditions generally replicated in state commodity programs, the Supreme Court found that the federal beef checkoff program was a form of governmental speech.

Johanns distinguished producers' contribution to checkoff programs from the dues or other form of assessments paid for mandatory membership in private associations such as a state bar or labor union where there is substantial precedent establishing 1st amendment restriction on speech or other activities such mandatory assessments can be used for. Quoting the court, "*Our compelled subsidy cases have consistently respected the principle that compelled support of a private association is fundamentally different from compelled support of government.*" The Supreme Court found that the government must exercise sufficient control over the commercial expression to be deemed ultimately responsible and that there must be a compelling public purpose for the government led promotional program.

"Some of our cases have justified compelled funding of government speech by pointing out that government speech is subject to democratic accountability. . . . Here, the beef advertisements are subject to political safeguards more than adequate to set them apart from private messages. The program is authorized and the basic message prescribed by federal statute, and specific requirements for the promotions' content are imposed by federal regulations promulgated after notice and comment. . . . And Congress, of course, retains oversight authority, not to mention the ability to reform the program at any time. No more is required." Johanns v. LMA, supra at 554

It is possible to conceive and articulate substantial governmental interests in organizing the association of producers for collective commodity development and promotion. For starters, checkoff programs benefit the larger public by marshalling resources for advancing widely held goals for food and nutritional research, nutritional education and advocacy, and finding renewable alternatives for energy and other consumer and industrial needs. Through their checkoff programs, producers have accelerated development of value-added industry that provide new employment and contribute to the tax base. The Nebraska Supreme Court ruled in State v. Gaylen, 221 Neb. that a state authorized beef checkoff program, (superceded by the federal beef program) funded by mandatory assessments, was a public purpose.⁶

Further, the Supreme Court specifically rejected the argument that a commodity program does not qualify as government speech because it is funded by a targeted assessment paid only by producers.

"The compelled-subsidy analysis is altogether unaffected by whether the funds for the promotions are raised by general taxes or through a targeted assessment. Citizens may challenge compelled support of private speech, but have no First Amendment right not to fund government speech. And that is no less true when the funding is achieved through targeted assessments devoted exclusively to the program to which the assessed citizens object." Johanns v. LMA, supra at 554

⁶Quoting the Nebraska Supreme Court: "*It appears to us that the promotion of the beef industry in this state is indeed a public purpose, and imposing an excise tax on all cattle sold in order to promote the industry is a reasonable and distinct classification*"

Authority to influence legislation is a potentially distinguishing factor

The structural factors considered relevant by the court in Johanns vs. LMA to conclude that the federal beef program is government speech are arguably replicated, and in some aspects even more well defined, in each of the state promotional programs. (see appendix) However, those state programs having authority to influence federal legislation are distinguishable from the federal beef promotional program at issue in Johanns in that the federal beef order expressly precludes the use of beef checkoff assessments to influence legislation.

There is ample authority to support the proposition that recognition of checkoff programs as an exercise of government speech affords such programs immunity presumed for other types of government speech against most 1st Amendment “compelled subsidy” objection of growers. Johannsv. LMA quotes Board of Regents v. Southworth for the general principle that compelled funding of government speech does not in itself raise first amendment concerns:

"Compelled support of government"--even those programs of government one does not approve--is of course perfectly constitutional, as every taxpayer must attest. And some government programs involve, or entirely consist of, advocating a position. "The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties. Within this broader principle it seems inevitable that funds raised by the government will be spent for speech and other expression to advocate and defend its own policies." Johanns v. LMA, supra at 551 (quoting Board of Regents of the University of Wisconsin v. Southworth, 529 U.S. 217 (2000) at 229)

In Johanns, the Supreme Court acknowledged that in each of its previous cases invalidating involuntary exactions to subsidize political speech, “*the speech was, or was presumed to be, that of an entity other than the government itself.*” As a result there is little caselaw directly on point to confirm the permissibility of use of compelled subsidy to fund government speech when the form of the speech is political advocacy to influence policy decisions reached by legislatures or other governmental entities.

On the presumption that checkoff programs are government speech, the extent commodity promotion programs should adhere to restrictions that apply to private associations regarding use of compulsory assessments to pay for lobbying and policy promotion is a policy question for the Legislature, but not necessarily a constitutional mandate.

The Legislature has in fact partially imposed some of such restrictions by disallowing checkoff funds to be used to support or oppose candidates for public office or to influence state legislation. In the case of the Dry Bean Commission, the Legislature last session imposed the restriction that checkoff funds can only be used to influence legislation germane to the associational purposes of the dry bean program (discussion of what is germane to follow). In other cases, the Legislature has declined to impose a restriction that applies to private associations that advocacy activities may only be paid from funds contributed voluntarily. After removal of the refundability feature from the dry bean program last session, only the poultry and egg program currently authorizes producers to request refunds of assessments paid. Prior to Johanns, the prospect that courts might deem checkoff programs as private associational speech may have ultimately necessitated that all checkoffs be

refundable to avoid conflict with producers' 1st Amendment protections from "compelled subsidy" of private speech. This may have been particularly true of those that engaged in political speech of influencing legislation and policy advocacy

State commodity board influencing activities appear to be predominantly in forms other than direct lobbying of lawmakers for support or opposition on specific federal legislation

Page 15 of this report provides a 5-year itemized expenditure reported by the Corn, Wheat and Sorghum Boards that each of the boards identified in response to the survey as expenditures to influence federal legislation. Such expenditures appear to be predominantly in the form of:

- membership fees in national producer or industry trade associations that, as part of their organizational purpose, provide membership services that include monitoring and analyzing legislative and regulatory developments and communicating the views and positions of the associations membership to congressional and administrative audiences on policy topics generally and specific legislative or regulatory proposals by participating in hearings, submitting written comment and information, or direct communication with members of Congress and their staffs or agency personnel.
- Reimbursing costs of travel by board members or other Nebraska producer delegates to attend policy development forums in Washington, D.C. sponsored by national producer or industry trade associations. Examples include the Corn Congress and the Commodity Classic, which are national conventions of producers where sessions are devoted to discussion and formulation of positions on ongoing policy topics or pending federal legislative or regulatory proposals. Convention activities may include interactive sessions with members of Congress and executive branch officials, and state delegations of producers typically arrange to meet with members of Congress and their staffs while attending such conventions.

As indicated, the commodity boards may occasionally help underwrite travel to and participation by its own members or staff or other Nebraska producers in field hearings conducted by congressional committees or federal agencies or other events related to legislative or regulatory topics or proposals of particular interest to Nebraska producers.

There may also be some indirect overlap between government affairs activities of commodity boards and the core marketing development activities, i.e. promotion, research and consumer and industry information. Information generated through promotional board expenditures in the form of research, assessments, compilation of production and economic data, etc. may be pertinent to and help inform federal decisionmaker's consideration of either specific legislation or broader policy issues in general. While not directly influencing federal legislation as that term is commonly understood, and whether created for that purpose or not, such information may often serve policy advocacy purposes.

Decisions made on a variety of federal issues can be germane to the market development mission of state commodity boards, but what is "germane" is difficult to precisely define

Because of the state's very large surplus of farm production in commodity crops in relation to its population and in-state consumption, a large share of Nebraska market development opportunities are reliant on the ability to supply national and international markets for both raw and processed commodities. It is not difficult to recognize a relevant nexus of federal policy areas such as transportation regulations and infrastructure investments, funding for research and federal marketing assistant programs, eliminating trade barriers and trade agreements, renewable fuel mandates, and other areas of federal law to the ability of commodity promotion programs to fulfill their mission. Thus there is an inherent interest in state promotional programs coordinating Nebraska producers' investments in market development with federal policies and programs. Expenditures to influence federal decisionmaking in these policy areas that may have the effect of enhancing or devaluing that investment could be considered germane to the role and mission of promotional programs.

The fact that the Legislature has expressly authorized expenditure of checkoff funds for purposes of influencing legislation may in and of itself suggest that the Legislature recognizes that the public policy objectives for compelling association of producers under the promotional programs are not entirely confined to collective marketing activities in commercial contexts only. This may also suggest that what legislative issues commodity boards are authorized to utilize checkoff funds to influence are broader than just those directly relating to marketing activities. Transcripts of floor debate of LB 60 in 1985 discussed earlier indicate Senators envisioned a need to enhance the capacity for the interests of Nebraska producers to be represented in formulation of policy, design and funding of diverse federal programs such as those relating to farm income and price supports, risk management, nutrition programs, and regulatory matters. Survey responses indicate that promotional boards may interpret their associational purpose more broadly to include to promote and protect the viability and profitability of producers in such contexts.

Last session, the Legislature placed a new criteria within the Dry Bean Resources Act that limits authority of the program to expenditures for *"federal lobbying activity supporting the underlying objective of the dry bean program relating to market development, education and research"*. It is certainly understood that use of checkoff funds to weigh in on issues such as abortion, health care policy, etc. are clearly not germane to the associational purpose of checkoff programs. We are unaware of any expenditures for influencing federal legislation being expended in clearly non-germane areas of policy. It is less certain where a germaness restriction draws the line on policy issues directly relevant to production agriculture or of intense interest to producers's commercial interests even though not marketing issues per se. The fact that the new restriction specifically pertains only to the "lobbying" aspect of influencing federal legislation may preclude use of checkoff funds to directly or publicly advocate federal policymakers' support or opposition to a specific legislative bill, but not preclude checkoff expenditures for softer forms of influencing expenditures, such as supplying information, data, assessments that may be relevant to and help information policymakers' consideration of specific legislative proposals.

Appendix

Statutory Provisions Regarding Program Objectives and Permitted Expenditures of Commodity Promotion Program

Note: Some statutes may be excerpted to exclude text not relevant to the purposes of LR 212

Nebraska Corn Resources Act (§§2-3601to2-3635):

2-3602. Intent and purpose of act.

It is declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the corn industry and the economy of the areas producing corn. The Corn Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, it is declared to be in the interest of the public welfare of the state that the producers of corn be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of the Nebraska Corn Resources Act to provide the authorization and to prescribe the necessary procedures whereby corn producers in this state may finance programs to achieve the activities expressed in the act.

2-3622. Board; duties and responsibilities.

The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following:

(1) To develop and direct any corn development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the corn commodity program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the corn commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayment of fees according to rules and regulations adopted and promulgated by the board.

2-3633. Nebraska Corn Development, Utilization, and Marketing Fund; created; use; investment.

The Nebraska Corn Development, Utilization, and Marketing Fund is created. All fees collected pursuant to the Nebraska Corn Resources Act and any repayments relating to the fund, including license fees or royalties, shall be credited to the fund for the uses and purposes of the act and its enforcement. Such fund shall be expended solely for the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3634. Board; cooperate with University of Nebraska and other organizations; purpose.

The board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections [2-3601](#) to [2-3635](#).

Nebraska Wheat Resources Act (§§2-2301 to 2-2321):

2-2309. Declaration of policy; board; powers and duties.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the wheat industry and the economy of the areas producing wheat. The Nebraska Wheat Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, such board shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary; .

(5) Conduct, in addition to the things enumerated, any other program for the development, utilization, and marketing of wheat grown in the State of Nebraska. Such programs may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(7) Employ personnel and contract for services which are necessary for the proper operation of the program.

2-2317. Nebraska Wheat Development, Utilization, and Marketing Fund; created; use; investment.

The Nebraska Wheat Development, Utilization, and Marketing Fund is created. All taxes collected by the board pursuant to the Nebraska Wheat Resources Act and any repayments relating to the fund, including license fees or royalties, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to carry out the act. The board shall at each regular meeting review and approve all expenditures made since its last regular meeting. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-2318. Board; restriction on authority; cooperate with University of Nebraska and other organizations.

The Nebraska Wheat Development, Utilization, and Marketing Board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the Department of Agriculture, University of Nebraska Institute of Agriculture and Natural Resources, or other proper local, state, or national organizations, public or private, in carrying out the Nebraska Wheat Resources Act.

2-2321. Board; use of funds; restriction.

No funds collected by the board shall be expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation.

Dry Bean Resources Act (§§2-3735 to 2-3765):

2-3736. Purpose of act.

The Legislature finds and declares that it is in the public welfare of the State of Nebraska that growers and processors of dry beans be permitted and encouraged to develop, carry out, and participate in programs of research, education, and promotion of dry beans and bean products. It is the purpose of the Dry Bean Resources Act to provide the authorization and the necessary procedures by which dry bean growers and processors in this state may finance programs to achieve the purposes expressed in this section.

2-3753. Commission; powers and duties.

The commission shall have the following powers and duties:

(1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program; . . .

(4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program; . . .

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program; . . .

(10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than fifteen percent of its annual budget to influence federal legislation. The purpose of such expenditures for federal lobbying activity shall be limited to activity supporting the underlying objectives of the dry bean program relating to market development, education, and research;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

2-3761. Commission; contracts authorized.

The commission may contract with the proper local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund, to which fund shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act, including license fees, royalties, or any repayments relating to the fund. The fund shall be expended for the administration of such act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3764. Commission; cooperate with University of Nebraska and other organizations; purpose.

The commission shall not set up research or development units or agencies of its own but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Nebraska Grain Sorghum Resources Act (§§2-4001 to 2-4020):

2-4003. Intent and purpose of act.

It is declared to be in the interest of the public welfare that the producers of grain sorghum be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of sections [2-4001](#) to [2-4020](#) to provide the authorization

and to prescribe the necessary procedures whereby grain sorghum producers in this state may finance programs to achieve the purposes expressed in this section.

2-4007. Board; responsibility; powers.

The board shall be responsible for the administration of all subsequent appointments and may adopt rules and regulations to carry out such responsibility. The composition of the board as defined by section [2-4004](#) shall continue until such time as the board determines that the districts and at-large membership as defined by such section are incompatible with an equitable representation of producers of grain sorghum due to changing geographic distribution of grain sorghum production in the state, changing marketing patterns, or availability of qualified individuals to serve as board members. The board may, from time to time as appropriate, by rule and regulation, redesignate districts and the number of at-large members to provide for an equitable representation of producers of grain sorghum, except that the number of appointed members of the board shall be either seven or five and the number of districts shall be no greater than six nor fewer than three.

2-4011. Board; duties and responsibilities.

The duties and responsibilities of the board shall be to implement and carry out the grain sorghum program and to the extent applicable shall include the following:

(1) To develop and direct any grain sorghum development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the grain sorghum commodity program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the grain sorghum commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(7) To authorize the expenditure of funds and contracting for expenditures to conduct proper activities of the program; . . .

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation; . . .

2-4018. Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment.

The State Treasurer shall establish in the state treasury a fund to be known as the Grain Sorghum Development, Utilization, and Marketing Fund, to which fund shall be credited all fees collected by the board pursuant to the Grain Sorghum Resources Act. Such fund shall be expended solely for the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-4019. Board; cooperate with University of Nebraska and other organizations; purpose.

The board shall not set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources, and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections [2-4001](#) to [2-4020](#).

Dairy Industry Development Act (§§2-3948 to 2-3963):

2-3949. Terms, defined.

For purposes of the Dairy Industry Development Act:

(8) Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall: (a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; (b) except for programs operated under the laws of the

United States or any state, have been active and ongoing before November 29, 1983; (c) be financed primarily by producers, either individually or through cooperative associations; (d) not use any private brand or trade name in advertising and promotion of dairy products unless the National Dairy Promotion and Research Board established pursuant to 7 C.F.R. 1150.131 and the United States Secretary of Agriculture concur that such requirement should not apply; (e) certify to the United States Secretary of Agriculture that any request from a producer for a refund under the program will be honored by forwarding that portion of such refund equal to the amount of credit that otherwise would be applicable to the program pursuant to 7 C.F.R. 1150.152(c) to either the National Dairy Promotion and Research Board or a qualified program designated by the producer; and (f) not use program funds for the purpose of influencing governmental policy or action.

2-3950. Legislative findings.

The Legislature declares it to be in the public interest that producers in Nebraska be permitted and encouraged to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of milk in a balanced diet. It is the purpose of the Dairy Industry Development Act to provide the authorization and to prescribe the necessary procedures by which the dairy industry in Nebraska may finance programs to achieve the purposes expressed in this section. The Nebraska Dairy Industry Development Board shall be the agency of the State of Nebraska for such purpose.

2-3957. Board; powers and duties.

The board shall:

- (1) Arrange or contract for administrative and audit services which are necessary for the proper operation of the Dairy Industry Development Act;
- (2) Procure and evaluate data and information necessary for the appropriate distribution of funds collected;
- (3) Direct the distribution of funds collected;
- (7) Authorize the expenditure of funds to conduct activities provided for by the act;
- (12) Accept remittances or credits and apply for and accept advances, grants, contributions, and any other forms of assistance from the federal government, the state, or any public or private source for administering the act and execute contracts or agreements in connection therewith;
- (13) When necessary, appoint committees and advisory committees, the membership of which reflects the different funding regions of the United States and of the State of Nebraska in which milk is produced and delegate to such committees the authority reasonably necessary to administer the act under the direction of the board and within the policies determined by the board; and
- (14) Exercise all incidental powers useful or necessary to carry out the act.

2-3960. Nebraska Dairy Industry Development Fund; created; use; investment.

The Nebraska Dairy Industry Development Fund is hereby created. Money in the fund shall be used for the administration of the Dairy Industry Development Act, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3961. Use of funds; limitations.

The board shall not set up programs or agencies of its own but shall fund active, ongoing, qualified programs as stated in section 114 of the Dairy Production Stabilization Act of 1983, Public Law [98-180](#), as amended, and the regulations promulgated pursuant thereto. Funds may be used by qualified programs to jointly sponsor projects with any private or public organization to meet the objectives of the Dairy Industry Development Act.

Nebraska Potato Development Act (§§2-1801 to 2-1811):

2-1804. Statement of policy; department; powers and duties.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by conserving, developing, and promoting the state's potato industry. The Department of Agriculture shall be the agency of the State of Nebraska for such purpose. In connection therewith and in furtherance thereof, such department shall have the power, among other things, to: (1) Adopt and devise a program of education to promote better practices and methods in the production, storage, grading, and transportation of potatoes grown within the state; (2) disseminate information to landowners and to producers and shippers of potatoes that will enable them to increase the yield and improve the quality of potatoes; (3) undertake, at such times and in such manner as the department shall determine, an active advertising campaign to acquaint the general public with the high quality and the desirability of the use of potatoes grown in the State of Nebraska; (4) encourage and foster research designed to determine new and better methods of improving the yield and quality of Nebraska potatoes and of converting potatoes to various commercial and industrial uses; (5) enter into such contracts as may be necessary in carrying out the purposes of the Nebraska Potato Development Act and the Nebraska Potato Inspection Act; (6) pay inspection and grading fees prescribed by the Nebraska Potato Inspection Act; and (7) conduct, in addition to the things enumerated, any other work for the improvement of Nebraska potatoes.

2-1808. Nebraska Potato Development Fund; creation; disbursement; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Potato Development Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Potato Development Act and its enforcement, all taxes, penalties and fees collected by the Department of Agriculture. After appropriation, the Director of Administrative Services, upon receipt of proper vouchers approved by the director of the department, shall issue his or her warrants on such funds and the State Treasurer shall pay the same out of the money credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Nebraska Poultry & Egg Resources Act (§§2-3401 to 2-3416):

2-3403. Terms, defined.

For purposes of the Nebraska Poultry and Egg Resources Act, unless the context otherwise requires: . . .

. . . (12) Market development shall mean research and educational programs which are directed toward (a) better and more efficient production, marketing, and utilization of poultry, eggs, and the products thereof produced for resale, (b) better methods, to include, but not be limited to, public relations and other promotion techniques, for the maintenance of present markets and for the development of new or larger domestic or foreign markets and for the sale of poultry, eggs, and the products thereof, and (c) the prevention, modification, or elimination of trade barriers which obstruct the free flow of poultry, eggs, and the products thereof to market;

2-3407. Department; powers.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the poultry and egg industry and the economy of the areas producing poultry and eggs. The department shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such policy and purpose, such department, only upon the approval of a majority of the committee, may:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of poultry, eggs, and the products thereof;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, regional, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Poultry and Egg Resources Act and to enter into such agreements as may be necessary;

(5) Conduct, in addition, any other program that would enhance the image of poultry, eggs, and the products thereof. Such programs may include, but not be limited to, consumer education, research, information, advertising, promotion, and market development of poultry, eggs, and the products thereof; .

(8) Develop a biennial budget with fiscal year estimates of requirements to conduct the affairs of the division;

2-3413. Nebraska Poultry and Egg Development, Utilization, and Marketing Fund; created; administration; department; accept funds.

(1) The State Treasurer is hereby directed to establish in the treasury of the State of Nebraska a fund to be known as the Nebraska Poultry and Egg Development, Utilization, and Marketing Fund, to which shall be credited all fees collected by the department pursuant to the Nebraska Poultry and Egg Resources Act. After appropriation, the Director of Administrative Services shall, upon receipt of proper vouchers approved by the director, issue warrants on such fund including refund payments authorized by section [2-3409](#) and the State Treasurer shall pay the warrants out of the money credited to such fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department may accept grants, contributions, or other funds from any private or federal, state, or other public source to be used to administer the Nebraska Poultry and Egg Resources Act and to conduct programs under such act.

2-3415. Committee; research or development; limitation on authority.

The Poultry and Egg Development, Utilization, and Marketing Committee shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, regional, or national organizations, public or private, in carrying out the purposes of sections [2-3401](#) to [2-3416](#).

Wine & grape promotion (§§53-301 to 53-305):

53-303. Board; powers and duties.

The duties and responsibilities of the Nebraska Grape and Winery Board include, but are not limited to, the following:

(3) To authorize and approve the Department of Agriculture's expenditure of funds collected pursuant to section [53-304](#);

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. . . . Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) of section [53-123.15](#) and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section [2-5603](#) and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section [2-5604](#). Any money in the fund available for investment shall

be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Survey Cover Letter Template

June 4, 2015

[Name], Chairman
c/o [Commodity] Board
P. O. Box
City, State Zip

Dear :

You may be aware that during the recently completed legislative session, I introduced LR 212, an interim study resolution which directs the Agriculture Committee to review the utilization of statutory authority common to state authorized commodity promotion programs that permits expenditures to influence federal legislation. Within the Nebraska [Commodity] Resources Act, this authority is found at [statutory citation] which reads in pertinent part:

[Sample] 2-3622 –“*The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following: (10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation”*

In the course of the Legislature’s consideration of LB 242 this session, both in Committee and during floor debate, questions arose regarding of the purpose for this authority, the level of promotional program investment for this purpose, and the types of expenditures by which this authority may be exercised. As you recall, the Legislature reached an interim policy decision to amend the Dry Bean Resources Act to limit expenditures to influence federal legislation to 15% of annual budget and to confine any lobbying activity to those federal issues germane to the purpose and mission of the Dry Bean Commission. It was further contemplated that the Agriculture Committee would review this topic in greater detail during the interim with the objective of developing both reference information and policy guidance on the topic to inform relevant legislative discussions in the future.

As part of the Committee’s inquiry pursuant to LR 212, I am presenting the attached questionnaire to each of the state promotional programs. I am hopeful that you in your capacity as Chairman of the [Commodity] Board, in consultation with your staff and any other relevant resource, could give thoughtful consideration to the questions asked and provide a written response to my office no

Name
June 4, 2015

Page 2 of 2

later than August 14. Your response need not be confined to the questions posed. Please free to offer any additional information or comment that you believe would be helpful to the Committee's understanding of the topic addressed by LR 212.

I want to assure you that LR 212 is not motivated by any inference that commodity programs have exercised expenditure authority for purpose of any engagement in the federal legislative process irresponsibly or that such expenditure is inherently inconsistent with the role and mission of state commodity promotion programs. However, it is intended that the introduction of LR 212 will provide a forum to increase transparency and understanding on this topic, and better inform future discussion in order to avoid policy proposals that impose unnecessary or counter productive constraints.

Thank you for your assistance with this study project. Please contact me or Rick Leonard of my staff if you have any questions or require clarification on any point.

Respectfully,

Senator Jerry Johnson, Chair
Agriculture Committee of the Legislature

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cc: Staff

Questionnaire Presented to State Commodity Promotion Boards

This questionnaire is presented to assist the Agriculture Committee's inquiry pursuant to interim study resolution LR 212. Please return responses to Senator Jerry Johnson, 1022 State Capitol Building on or before August 14. Chairman Johnson requests that your response to this questionnaire be provided in both written and electronic format in a document separate from any cover letter. Please copy and paste the questions into a new document and insert written response below each question, attaching any additional materials necessary. Responses may be submitted by e-mail attachment to rleonard@leg.ne.gov. Also, please provide contact information for the person preparing the response or who would otherwise be designated as the individual to contact with questions regarding information provided in the response.

For purposes of this questionnaire, the term "federal legislation" includes, but is not limited to, proposed or enacted legislation or resolutions, including budgetary authorizations and appropriations, by the United States Congress, proposed rules or regulations by a federal agency or commission, and actions taken by the Executive Branch of the federal government.

1. Please list and describe the relevance of any federal programs, one-time, periodically recurring, or ongoing regulatory or policy topics, and budgetary items that the Board views as germane to the purposes and functions assigned to the Board.
2. Please indicate by checking the appropriate space any of the activities listed below that have been engaged in or would be contemplated by the Board for the purpose of influencing federal legislation. In the space below each checked item, please provide a description of the activity:

_____ Fund travel and other expenses of board members or its staff to enable face-to-face meetings with members of Congress or its staff, or with officials or staff in the executive branch of the federal government, regarding federal legislation

_____ Provide written or oral communication by the Board or its staff with members of Congress or its staff or with officials or staff in the executive branch of the federal government, regarding federal legislation

_____ Employ lobbyists, either directly by the Board itself or as contribution to collective efforts with other state promotional programs or industry organizations to employ lobbyists, to represent the Board or the industry regarding specific pending federal legislation.

_____ Compilation and communication of information in the form of reports, studies, assessments, research summaries or other similar documents prepared by the Board staff or prepared by contracted third parties with funding provided by the Board to inform decision makers at the federal level regarding pending federal legislation.

If you check this item, please indicate:

- 1) if any materials have been compiled at the initiative of the Board specifically for the purpose of informing federal decision makers'

consideration of pending federal legislation, or were materials compiled for other reasons but having relevance to informing the consideration of federal legislation;

- 2) If any materials were compiled in response to a request of any office of a member of Congress or at the request of officials or staff in the executive branch of the federal government

_____ A. Paying any subscription charge or membership fee in any trade association or other organization serving the industry that has as its purpose or among its functions to influence federal legislation on behalf of its members or the industry in general.

_____ B. Funding expenses of members of the Board or its staff to travel to attend and participate in forums of national trade associations, industry caucuses, or other similar event or organization for policy discussion and formulation of industry positions regarding federal legislation.

If you check either of items A & B above, or both, do any of the trade associations or other sponsors of forums participated in by the Board, directly communicate with members of Congress or their staff or with officials or staff in the executive branch of the federal government, regarding federal legislation? Do any of these organizations employ a lobbyist for this purpose?

_____ Other (please describe)

3. For each of the previous 5 complete fiscal years, please provide:
 4. an itemized summary of expenditures by the Board that may be categorized as expenditures for the purpose of influencing federal legislation;
 5. Information to indicate expenditures for purpose of influencing federal legislation as a percentage of budgeted expenditures
 6. A description of any expenditures not included above that you would describe as general policy communication or formulation but not necessarily directly related to pending federal legislation
4. Please provide a description of the Board's policies and considerations regarding the appropriateness of expenditures for the purpose of influencing federal legislation.
5. Do any third-party entities receiving contracted expenditures of checkoff funds routinely participate in or have as an organizational purpose to influence federal legislation? If so, please provide a description of the Board's policy regarding utilization of checkoff funds by third-party contracting entities for this purpose.

Comparison of Elements of State Commodity Programs to Elements of the Federal Beef Program the U.S. Supreme Court in *Johanns v. LMA Found* Relevant to Finding the Beef Program to be Government Speech

Supreme Court Observed Element of Federal Beef Program	Comparable Element of State Commodity Programs	Comment
<p>Federal Promotion and Research Act directs Secretary of Agriculture to implement congressionally articulated policy promoting the marketing and consumption of beef, through a Beef Promotional and Research Order.</p> <p>The Secretary is directed to appoint a Cattlemen’s Beef Promotion and Research Board (Beef Board) to govern the program. Beef Board membership includes members appointed by Sec. of Agriculture from names submitted by industry nominating organizations. The Beef Board sets overall policy and priorities for investment of beef checkoff funds.</p> <p>Promotional campaigns are designed, and day-to-day management of the program are vested in the Beef Promotion Operating Committee (Operating Committee), a public corporation consisting of 20 members, half of membership consists of members of the National Beef Board appointed by the Secretary of Agriculture and half appointed by state beef councils. All members of Operating committee are subject to removal by the Secretary. The Operating Committee sets the overall budget and determines and administers specific expenditures subject to approval by the Beef Board and Secretary</p>	<p>State commodity programs for wheat, corn, dry beans, milk and sorghum are governed by Boards consisting of producers appointed by the Governor and in some cases a minority of members appointed by the board itself. All members are subject to removal by the Governor.</p> <p>Each of these are designated state agencies and are vested with authority to formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of the respective commodities grown within the State of Nebraska. The state commodity boards, essentially carry out the functions delegated to</p>	<p>The federal beef promotion scheme vests responsibilities in the Secretary of Agriculture, but much of the direct governance and day-to-day administration of the program is delegated to quasi governmental or private actors whose activities are subject to oversight by the Secretary of Agriculture.</p> <p>In contrast, governance and day-to-day operation of state authorized commodity promotion programs are carried out directly by a sovereign actor, i.e. the respective commodity boards that are themselves state agencies. Under the state programs, the commodity boards, essentially perform the functions delegated to the Beef Board and the Operating Committee under the federal program</p>
<p><i>“Here, the beef advertisements are subject to political safeguards more than adequate to set them apart from private messages. The program is authorized and the basic message prescribed by federal statute, and specific requirements for the promotions’ content are imposed by federal regulations promulgated after notice and comment. The Secretary of Agriculture, a politically accountable official, oversees the program, appoints and dismisses the key personnel, and</i></p>	<p>State legislative enactments similarly articulate a public welfare interest in advancing economic success of commodity production and generally authorize the Boards to carry out programs of market discovery, research, promotion and education, and to influence legislation.</p> <p>The Legislature retains authority to revise the authorities of the commodity boards and articulate permittee and</p>	<p>Respondents in <i>Johanns</i> contend that speech whose content is effectively controlled by a nongovernmental entity—i.e. the Operating Committee—cannot be considered “government speech.” The court dismissed that argument, concluding that the dispositive issue was whether the speech itself was controlled by the government, not whether private actors were utilized to assist in formulating and disseminating the message.</p>

<p><i>retains absolute veto power over the advertisements' content, right down to the wording. And Congress, of course, retains oversight authority, not to mention the ability to reform the program at any time. No more is required."</i></p> <p><i>When, as here, the government sets the overall message to be communicated and approves every word that is disseminated, it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources in developing specific messages."</i></p>	<p>unpermitted use of funds. Also, at the state level, cash funds that serve as repositories of checkoff assessments are state funds and authority to expend funds is subject to the Legislature's appropriations process.</p>	<p>The court found that structural elements in place for generating the promotional speech that afforded government control of content were sufficient to attribute the speech to the government. These elements include that the checkoff programs are initiated by and consistent with purposes and limitations dictated by legislative enactment, is subject to oversight and review by sovereign authority, and that Congress retains authority to change the content and scope of the messages.</p> <p>Since operation of the program is vested directly in and carried out exclusively by a state agency, whose membership is set by statute and accountable by appointment to the governor, not delegated to a quasi governmental entity as is the case with the federal beef checkoff, state commodity programs in this sense arguably more directly satisfies the element of government involvement and control, and is the literal speaker</p> <p>Note: Eligibility to serve on the governing boards is limited to a subsection of the public under the federal beef program and state commodity programs. Members are not elected in either case, either by the general public or by fellow industry participants. The absence of direct electoral accountability to industry participants or to the general public was not material to the Johans court determination that the beef program was government speech. .</p>
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