LR 542

Identify General Funded Services, Programs and Obligations that May be Reduced or Eliminated

December 10, 2010

Report of the Agriculture Committee

LEGISLATIVE RESOLUTION 542 Introduced by Senator Heidemann

WHEREAS, the Legislature has enacted budgets during the 2009 regular and special sessions and the 2010 regular session in reaction to a weakened economy and declining revenue to the state General Fund; and

WHEREAS, the budgets enacted for the current budget biennium contained significant reductions to General Fund appropriations and reliance on increased fund transfers and federal fund sources that are one-time sources of support; and WHEREAS, General Fund projections for the next biennium, ending June 30, 2013, anticipate continued fiscal stress, resulting in a shortfall to balancing the budget to the minimum statutory reserve of three percent for the biennium, by at least $650 million; and

WHEREAS, the magnitude of the shortfall demonstrates the inability of state government to sustain current services under current revenue assumptions for the next biennium; and

WHEREAS, removing the obligation of state agencies to perform certain functions and provide certain services will require enabling legislation to be considered by the Legislature during the 2011 session; and

WHEREAS, standing committees of the Legislature and the Executive Board of the Legislative Council, within their subject-matter jurisdiction, control hearing and disposition of enabling legislation that may be required; and WHEREAS, the magnitude of the task of enacting the next biennial budget necessitates collaboration of all members of the Legislature, its standing committees, the executive board, and legislative staff; and

WHEREAS, the Legislature further recognizes that collaboration with the Governor and state agencies will be instrumental to the success of crafting the next biennial budget.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Executive Board of the Legislative Council shall determine the budget review subject-matter jurisdiction of standing committees and the executive board used for purposes of Legislative Rule 8, section 4.
2. That the Speaker of the Legislature is empowered to convene an ad hoc committee consisting of standing committee chairpersons and the chairperson of the executive board, or a designee that is a member of the standing committee or the executive board, to discuss, plan, and oversee a process for standing committees and executive board to review agency programs and services, including drafting enabling legislation to reduce services and obligations of state government that may be considered during the 2011 session.
3. That the standing committees and executive board shall meet and review the programs within the agencies under their subject-matter jurisdiction, as determined by the executive board, to identify services, programs, and obligations that may be reduced or eliminated during the 2011 session.
4. That the ad hoc committee collaborate with the Governor and state agencies to determine what enabling legislation may be necessary for introduction during the 2011 session.
5. That the Legislature respectfully requests that the Governor submit a budget recommendation for the biennium ending June 30, 2013, as set forth in law, and that the Governor not only include necessary appropriations bills, but also any and all enabling legislation the Governor deems necessary to conform agency operations and state aid expenditures to the appropriations set forth in the budget recommendation.

Introduction

The continuing economic recession which began in 2007 has translated into a prolonged period of slower and even negative growth in state revenues and in turn, the resources available to carry out the functions of government. At the conclusion of the 2010 legislative session, it was anticipated that the Legislature will construct the next two year state budget with a structural general fund deficit, the disparity between ongoing state government obligations and projected revenues, of $680 million over the upcoming 2-year budget cycle that begins July 1, 2011. That level of deficit is based on unofficial projections of state revenues over the FY 2011-2013 budget biennium. That deficit may grow as official revenue forecasts are announced by the Economic Forecasting Board. In October, 2010, with the first of a series of three revenue projections for the upcoming biennium, the Economic Forecasting Board established initial revenue estimates that are less optimistic than those upon which the $680 million deficit is based.

LR 542 was adopted by the Legislature during the 2010 legislative session as a proactive approach to resolve this impending budget gap. The resolution authorizes the Speaker and the Executive Board to organize a process engaging the standing and special committees of the Legislature, and the Executive Board, in examining the agencies and programs within their oversight jurisdiction and to identify options for addressing the structural budget imbalance. Given the magnitude of the impending budget shortfall and the uncertain economic outlook, it is anticipated that achieving fiscal stability in both the short and long term will necessarily require adjustments in the scope and nature of governmental functions. It other words, budget solutions will likely entail consideration of options to reduce or even eliminate program obligations, to reallocate resources, to achieve organizational and implementing efficiencies, and to incorporate cost saving innovations in the delivery of programs.

While the present fiscal outlook presents difficult challenges, it also creates an opportunity to reexamine the proper role and scope of government, and to identify and reinforce those core functions of government. This report to the LR 542 Ad Hoc Committee fulfills the Committee's charge with respect to the Department of Agriculture.

LR 542 process:

Following approval of LR 542, the Speaker formed the LR 542 Ad Hoc Committee consisting of the chairs of the standing committees and the Executive Board of the Legislature. The Ad Hoc Committee is assisted by Fiscal Office staff and staff of the various committees. The Ad Hoc Committee met on June 29 to discuss the process, the methodology for allocating general fund reductions to the oversight committees, the nature of the work products that would result from the LR 542 process, and timetables for completion of tasks assigned to the committee, including submission of work products. The Ad Hoc Committee has met by conference call in August, September and on November 15.

The committees are allocated responsibility for identifying general fund reductions by first taking the cumulative projected state general fund shortfall anticipated over the two years of FY2011-12 & FY2012-13 biennium of $680 million, translating this into an annualized amount (i.e. $340 million/year) and converting this annualized amount to a percent of current year (FY10-11) appropriations. This percentage cut is then applied to the general fund appropriation of each general funded agency. The standing committees then are allocated responsibility for the total 10% general fund reduction for all agencies within their jurisdiction.

The Agriculture Committee exercises oversight jurisdiction over the Department of Agriculture, agencies implementing commodity development programs (i.e. Corn Board, Sorghum Board, Dairy Industry Development Board), the Nebraska Brand Committee and the State Fair Board. The committee also exercises subject matter jurisdiction over other wholly or partially general funded programs including the grain laws administered by the Grain Warehouse Division of the Public Service Commission, and the Agricultural Opportunities and Value Added Partnerships program administered by the Rural Development Commission of the Department of Economic Development. Of the agencies within the committee's budget overview jurisdiction, only the Department of Agriculture receives and expends general funds for operations, and thus, the Agriculture Committee has necessarily focused on that agency.

For FY 2010-11, the general fund appropriation to the Department of Agriculture is $6,128,426, approximately .2% of the total state government wide general fund budgeted obligation of $3.405 billion. A 10% reduction in the Department's FY 2010-11 general fund appropriation calculates to a target annual general fund obligations reduction of approximately $612,000.

Options List

The primary work product to be derived from the LR 542 process is a list of "options" compiled by each committee that cumulatively achieves a reduction of 10% of general funded obligations for the agencies within their respective oversight jurisdictions. It is envisioned that such options will consist predominantly of interventions that reduce the obligations of state government or that achieve organizational efficiencies in delivery of programs and services. Simply put, the LR 542 process is a planning methodology for identifying means of contracting state government to conform to a persistent and potentially long-term lowered trajectory of state revenues than before the recent economic downturn began. It is also an exercise in transparency across state government, and between state government and the public. The options lists compiled by committees are a means of communicating tangible implications of downsizing state government as a response to economic conditions to better inform public discourse on the role of government and tax and fiscal policies to support that role.

It should be noted that a list of options identified by a committee need not be recommendations of that committee or its members, nor do they indicate legislative actions that will inevitably be taken by the Legislature. In many, if not most cases, the lists will indicate only candidate program eliminations or modifications, revenue reallocations, administrative reassignments, and other actions that may be considered as one element of an overall strategy to reconcile anticipated budget shortfalls. Any items that require statutory change will necessarily require the drafting of a bill and a public hearing before the committee with subject matter jurisdiction, and those committee's will exercise their prerogative regarding the disposition of such legislation.

Agriculture Committee Methodology

LR 542 itself does not prescribe any particular method by which committees are to arrive at a list of options to fulfill the purpose of the resolution. Presumably, meeting the objectives of LR 542 would require committees to first catalogue the various statutory duties and authorities and other implied responsibilities assigned to an agency, and those specific programs and activities that are implemented to fulfill those responsibilities. A subset of such programs may include the administration of state aid or other transfer programs where the primary expenditure associated with the program is the transfer of funds or services to individuals, local governments, or other entities that qualify under statutory criteria. The committees would then apply a methodology to assign a hierarchy to the programs administered by a particular agency. Finally, the committee would determine the extent to which the allocation of general fund support for the various programs is consistent with the committee's hierarchal evaluation. Those programs supported in part or in whole by general funds that fall into the lower hierarchal rankings would be primary candidates for elimination or modification, or perhaps other forms of intervention that continue the program with less reliance on general funds. The Agriculture Committee has generally followed this methodology.

Program Functional Analysis

It is not possible in all cases, nor necessarily useful, to isolate budgetary data that corresponds to each individual statutory act assigned to the Department for implementation. However, examining the Department's budget allocation by budgetary subprogram does provide a suitable proxy, since each subprogram largely isolates budgetary requirements for the Department's efforts for implementing groupings of similar and interrelated laws, and for individual statutes in some cases.[1]

The Agriculture Committee's process begins by assigning one or more of sixteen functional classifications to each of the Department's thirty-four budgetary subprograms. Functional classifications represent the ultimate public service, public policy or public welfare objectives of the underlying statutory authorities the programmatic activities that occur under the subprogram are intended to achieve. The list of functional classifications also includes two additional functional categories -- internal administrative support/service and policy development /agency leadership. Activities or expenditures under these two functional classifications do not directly correspond to or implement identifiable statutory responsibilities. Rather they identify expenditures for general agency operations and agency coordination/leadership/management functions. Excluding these two categories would result in a functional analysis that indicated general fund expenditures under some administrative division subprograms and laboratory programs that did not correspond to any functional category. For a description of each of

[1] In some cases, all costs to implement a programmatic area may be not be captured in the subprogram budget data. For example, costs of maintaining laboratory staff and facilities and performing sample analyses in support of regulatory programs are indicated in laboratory division expenditures. There may also be incidental provision of general administrative support services, e.g. legal services, provided to subprogram activities for which expenditures are accounted for in other subprograms.

Functional Classification of Department of Agriculture Administered Programs/Activities by Budgetary Subdivision

■ primary function □ secondary functi

	Public Health/Food Safety	Livestock Health	Consumer Protection	Ag Promotion, Advocacy & Development	Emergency Planning/Response	Plant Health	Environmental Protection/Enhancement	Federal/Interstate System Integration	Animal Welfare	Economic Regulation	Economic Service	State Aid	Tax Incentive	Policy Development	Internal Administration Support/Services	Public Education/Information	Funding Mix (FY 2010-11 Budgeted) General	Cash	Federal	Revolving
Administration (27)																				
Supervision (27-01)				■	■									■	■	■	$563,280	$2,609		
Finance & Personnel (27-02)															■		$317,225			
Ag Product Grading (27-04)											■							$9,315		
Ag Promotion (27-05)				■							□	□			□	□	$573,825	$48,964	$383,938	
Farm Mediation (27-06)				□				■								□	$70,529		$163,586	
Market News (27-07)											□					■		$24,212		
Ag Suppliers Lease Prot (27-08)										□	■							$18,300		
Building Overhead (27-10)															■		$86,650			
Beginning Farmer (27-12)				□									■	■		□	$44,901			
Ag Statistics (27-20)															■	□				$3,476
Data Center (27-25)															■		$41,672	$5,890		$434,910
Grape & Wine (27-30)				■														$123,418		
Commodity Boards (27-37)															■					$87,595
Weights & Measures (56)																				
Weights & Measures (56)			■							□	□						$741,554	$743,097		
Dairies and Foods (57)																				
Foods (57-06)	■				□			□		□	□						$485,529	$757,186	$69,597	
Dairy (57-10)	■				□			□		□	□						$307,231	$207,841		
Ag Laboratory (61)																				
Feed & Fertilizer Lab (61-02)											□				■			$639,723	$15,677	
Residue Lab (61-03)											□				■			$88,399	$126,140	
Seed Lab (61-04)											□				■		$187,149	$31,105	$250	
Dairy & Food Lab (61-05)					□						□				■		$446,472	$191,428	$86,599	
Animal Industry (63)																				
Administration & Inspection (63-01)	□	■	□		■			■		□	□						$2,099,832	$858,440	$770,423	
Auction Market (63-03)		■	■		□			□		■	□							$600,000		
Commercial Dog $ Cat (63-05)			□						■	□	□						$149,762	$252,014		
Veterinary Incentive (63-07)		□									□	■								
Plant Industry (333)																				
Certification & Inspection (333-01)			□			□	□				■							$143,638		
Feed, Fertilizer & Ag Lime (333-04)	□	□	■			□	□			□	□							$630,226	$198,685	
FIFRA (333-06)	■						■	■		□						□		$271,606	$659,503	
Buffer Strips (333-08)	□						■					■						$696,072		
Entomology (333-12)			□			■	■	■		□	□					□	$162,577	$114,667	$137,705	
Noxious Weeds (333-16)							■					□				□		$490,000		
Riparian Vegetation (333-17)							■					■				■		$2,000,000		
Commodity Development																				
Potato Development (382)				■												□		$69,469		
Poultry Development (387)				■												□		$325,273		
Ag Development (564)				■												■			$209,573	

the functional classifications, please consult the appendix attachment.

The chart on the preceding page establishes a matrix that indicates any of the sixteen functional objectives that are accomplished by programmatic activities funded and conducted under each of the thirty-four subprograms. Dark blue shading in a row next to a subprogram indicates that the corresponding functional objective is a primary purpose of the program overall or one or more activities implemented under that budgetary subprogram. In most cases, this would be the public welfare objective of the Legislature in enacting the underlying statutory authority that the subprogram implements. Light blue shading indicates that the corresponding functional objective is a secondary or incidental benefit of activities implemented by that subprogram.   A subprogram may serve more than one function.

The chart further indicates those functional categories that the Agriculture Committee identifies as priority functions of the Department. The Committee largely agrees with the agency priorities that were articulated by the Director in the Department's briefing session with the Committee on July 22 and in the Department's budget narrative and other forums. These priorities, indicated by the darker orange shading and grouped in the first five functional category columns in the chart, include:

- Public Health/Food Safety
- Livestock Health
- Consumer Protection
- Ag Promotion, Advocacy, and Development
- Emergency/Terrorism Planning and Response

Additionally, the committee would add the functional priorities, protection of plant health, environmental protection/enhancement, and federal system integration. These areas are indicated by the lighter orange shading also falling to the left of the red line on the chart allowing for an easy visual determination of those subprograms with activities that serve the identified functional priorities. The selection of these functional priorities would be consistent with several criteria for identifying fundamental responsibilities of the Department:

- Maintaining public confidence in the safety and quality of food and agricultural products and the integrity of commercial transactions
- Prevention and response to disease, pests, resource degradation, terrorist acts and other threats to the food system and agricultural assets
- Relevance to emerging challenges and opportunities for the agricultural economy
- Fulfillment of responsibilities of the state government to enable industries to participate and compete in interstate commerce
- Governmental functions that facilitate and enhance commerce for which private alternatives are unavailable or would be difficult to replicate
- Enable agricultural economy to maintain market access, to add value to agricultural production, to expand economic opportunities and enhance agriculture's contribution to the state's economy
- Are of general interest and benefit to the entire state or broad segments of the public.

General Fund Allocation Review

The columns to the far right of the chart indicate the sources of funding for programmatic activities for each of the Department's subprograms. Those that utilize general funds are highlighted in yellow. The dollar figures are current year (FY 2011-12) budgeted expenditures attributed to each subprogram reported by the Department in its FY 2011-2013 Biennial Budget Request submission and reflect mid biennium budget actions by the Legislature during the 2010 legislative session. The Department has budgeted general fund allocations to fifteen of the thirty-four subprogram divisions:

Subprogram	ID	Budgeted FY2010-11 General Fund Expenditure
Supervision	27-01	$563,000
Finance and Personnel	27-02	$317,225
Ag Promotion	27-05	$573,825
Farm Mediation	27-06	$70,529
Building Overhead	27-10	$85,650
Beginning Farmer	27-12	$44,901
Data Center	27-25	$41,672
Weights & Measures	56-01	$741,554
Foods	57-06	$485,529
Dairy	57-10	$307,231
Seed Lab	61-04	$187,149
Dairy & Food Lab	61-05	$446,472
Admin & Inspection (BAI)	63-01	$2,099,832
Commercial Dog & Cat	63-05	$149,762
Entomology	333-12	$162,577

Although not included in this report, the Committee was provided a more detailed staff evaluation of each of the Department's subprograms that expend general funds. This evaluation provided a listing of the statutory authorities assigned to the budgetary subprogram, a description of Department activities to implement, an assessment of the extent to which subprogram activities are statutorily prescribed, an assignment and brief rational for the primary and secondary functional classifications (corresponding to the chart) and assessment of foreseeable impacts of elimination of subprogram activities.

The Department's FY 2010-11 general fund allocations within subprograms that do not implement programs whose primary functional purpose fall within the priority functional assignments discussed above include the following:

Subprogram	ID	Budgeted FY2010-11 General Fund Expenditure
Finance & Personnel	27-02	$317,225
Building Overhead	27-10	$85,650
Beginning Farmer	27-12	$44,901
Data Center	27-25	$41,672
Seed Lab	61-04	$187,149
Dairy & Food Lab	61-05	$446,472
Commercial Dog & Cat	63-05	$149,762
		$1,187,181

It would be the preference of the Committee that options to reduce the department's general funded obligations concentrate in these areas where practicable. However, arriving at an options list for purposes of LR 542 by eliminating programmatic obligations in these areas alone is complicated for several reasons. Many of the expenditures are in basic administrative functions that do not necessarily directly correspond to a substantive statutory program within the committee's jurisdiction. In other words, there is not a specific statutory obligation that can be eliminated or modified to eliminate the general fund obligation. Additionally, two of the largest general fund expenditures in subprograms listed above are in the seed and food labs. These expenditures are for staff, equipment and activities that support underlying regulatory programs that do serve priority functions. It would be difficult to reduce general funds expended in these subprograms without greatly impairing the effectiveness of the underlying regulatory program, and assessing these costs to the regulated public would require fee increases which are outside the scope of LR 542.

Thus, it is not possible to meet the general fund reduction target allocated to the committee by the LR 542 process by program eliminations or modifications in these subprogram areas alone, although the committee's option list will have apparent relationship with the priority assessment described above. The Committee's option list includes a combination of items from the Department of Agriculture's proposed FY2011-13 budget modifications and selected staff suggestions. The Committee has largely deferred to the Department to identify internal administrative efficiencies in the delivery of programs and general agency operations and overhead. However, none of the Department's proposed modifications propose a reduction in statutory obligations of the Department. For the most part, the Department has identified efficiencies and economies to carry out existing obligations over the upcoming biennium.

Therefore, the committee's LR 542 options list includes alternatives to supplement the Department's modifications. The committee's options, including endorsed Department modifications, are consistent with reducing general fund support of selected subprogram areas as identified previously, either through program modification or reallocation of resources to fund the programs.

Agriculture Committee LR 542 Options List

Description	Estimate of General Fund Savings Potential
Agency Modifications	
1. Replace remaining general funds in Commercial Dog and Cat Operator Inspection program with LB 910 revenues	Up to $150,000 (annual)
2. Position Downsizing	$309,542 (annual)
3. Defer Laboratory Equipment Purchases	$45,000 (annual)
4. Defer Purchases of Weights & Measures Equipment	$69,938 Annual
5. Reduce Travel Expenditures	$20,000 (annual
6. Eliminate Backtagging Incentive Program	$30,000 (annual)
Ag Committee Options	
7. Reallocate portion of expiring annual transfers from Petroleum Release Remedial Act Fund to EPIC fund to replace general funded share of petroleum flow meter inspection	$200,000 annually (FY 2013-15)
8. Privatize weights and measures scale inspection & certification with only surveillance/auditing level of state inspection modeled upon on Kansas scale regulation model. This option is for committee to undertake examination of feasibility of this approach, with legislation, if any, to be introduced in the 2012 session.	$160,000 (annual) Very speculative. Earliest cost savings could begin is 2nd year of biennium or subsequent biennium
9. Transfer Beginning Farmer general fund administrative costs to the Rural Rehabilitation Trust Fund	$45,000 (annual)
10. Require Department to acquire Cooperator Funding for Nebraska Ag Trade Representative	$80-100,000 (annual)

Option 1: Replace Dog and Cat program general funds with anticipated LB 910 Revenues

Background: Under the Commercial Dog and Cat Operator Inspection Act, the Department of Agriculture licenses pet breeders, pet shops, pounds, kennels, shelters and rescue operations. The Department establishes minimal standards for facilities and operations and monitors compliance with such standards through periodic inspection and inspection response to complaint reports of substandard operations. The Department enforces violations through license discipline including stop movement and license suspension and revocation and administrative fines, and referral for criminal prosecution when observing conditions that may rise to the level of animal cruelty. Dept. inspectors are "law enforcement personnel" under the animal cruelty provisions for purposes of animal cruelty investigation limited to conditions observed while in the course of performing inspection functions.

FY 10-11 General Fund Base: $149,762
Cash Fund Revenues: Annual license fees paid by operators of pet breeding, pet shops, kennels, pet rescue and shelter operations, and pound facilities. (Graduated fee based on size). Beginning July, 2010, $1 fee per pet registration collected by local entities that require licensure of dogs and cats (local entity may retain 3 cents of fee for administrative cost)
Funding Mix: 38.7 % cash -- 61.3% general
Dept. Division: Bureau of Animal Industry
FY 10-11 FTE's Base: 5.52

Potential General Fund Savings**:** Approximately $150,000 annually

Potential FTE reduction: Assuming LB 910 fiscal note revenues, no reduction. Transfer of current general funded FTE to other funding sources

Option Description: LB 910, enacted during the 2010 session of the Legislature, revises the licensing fee schedule for commercial breeders and other pet businesses and operations beginning in October, 2010. Generally, the new fee schedule provides for a more graduated fee scale for larger operations. The fiscal note for the enacted version of LB 910 anticipates new cash revenues of $5000-$10,000 annually as a result of license fee schedule revisions. The $1 pet licensure fee is anticipated to result in $160,000 - $180,000 new revenues. This revenue should replace most or potentially all of the current general fund allocation supporting the program, and thus potentially fully cash fund the program.

New revenue streams will actually begin flowing into the cash fund during FY 10-11 but the time and uncertainty of the amount of revenues derived from $1 fee this fiscal year will delay ability to replace general funds until FY 11-12. The Department of Agriculture's budget request does not request a reduction of general funds currently allocated to the program, but does include replacement of general fund with new LB 910 revenues as a modification.

Policy Considerations:

- This is actually implementing a policy decision by the committee and the Legislature. With enactment of LB 910, it was anticipated that new revenues that will be realized by the bill will enable replacement of general funds beginning in FY 11-12.

- Current law specifies that general funded inspector positions can be temporarily reassigned to livestock health work. Department has utilized Dog and Cat inspectors to assist with Bovine TB response over past year. Loss of general fund support marginally reduces personnel resources available for livestock disease response.

Option 2: Position Downsizing (Dept. Modification)

Potential General Fund Savings**:** $309,542 annually

Option Description: In its proposed modifications, the Department identifies 5 FTE's for elimination. The positions include 2.0 FTE agency administrative support, 1.0 FTE program clerical support, 1.0 FTE laboratory seed analyst, and 1.0 FTE program administrator. These position eliminations largely fall within subprograms identified in the committee's priority analysis and are primarily administrative support positions. The Department indicates that the program administrator position is occupied by an individual nearing retirement. That retirement would enable an opportunity to eliminate a division administrator consolidate administrative duties with 1 fewer administrative position.

Considerations:

- Some of the savings of FTE reductions may be offset in the initial year by increased unemployment costs. The Department indicates that it will attempt to fund these costs from other vacancy savings. Some severance costs may be avoided if terminated employees opt for retirement.

Option 3: Defer Laboratory Equipment Purchases in the Diary and Food Lab

Potential General Fund Savings**:** $45,000 annually

Option Description: The Food and Dairy Lab supports the Dairy and Pure Food Act inspection programs by providing analysis of samples collected through the enforcement and implementation of these acts. Budgeting for the operations of the lab include regular budgeting for anticipated expenditures for laboratory equipment replacement, repair and upgrades. Both the underlying license and inspection fees charged to the regulated industry and annual general fund appropriations requests are calculated to provide for an allocation for lab equipment replacement on a certain schedule. This budgeting process is similar to assessments for building depreciation. The Department explains in its modification description that this option would defer scheduled expenditures until the next biennium.

Considerations:

- Equipment replacement is an inevitable liability, and this option does not eliminate that liability. Deferring regularly scheduled equipment investments may result in increased requests for general funds and cash fund expenditure authority in future years to catch up. The Department indicates that it will apply for federal funds and potential staff turnover may free up funds to avoid necessity to defer equipment purchases

Option 4: Defer Purchases of Weights & Measures Equipment

Potential General Fund Savings**:** $69,938 annually

Option Description: Budgeting for the operations of the lab include regular budgeting for anticipated expenditures for replacement, repair and upgrades to equipment utilized in the regulatory program. Both the underlying license and inspection fees charged to the regulated industry and annual general fund appropriations requests are calculated to provide for an allocation for equipment replacement on a certain schedule. This budgeting process is similar to assessments for building depreciation. The Department explains in its modification description that this option would defer scheduled expenditures until the next biennium.

The Department explains that modification would essentially result in shift in program funding mix for the Weights and Measures program overall. Most major equipment purchases in the program are purchased with cash funds derived from registration and inspection fees charged to the industry. The option would free up cash funds that would otherwise be budgeted to equipment purchase to replace general funds in the underlying inspection program operating costs.

Considerations:

- Equipment replacement is an inevitable liability, and this option does not eliminate that liability. Deferring regularly scheduled equipment investments may result in increased requests for general funds and cash fund expenditure authority in future years to catch up. The Department indicates that potential staff turnover may free up funds to avoid necessity to defer equipment purchases
- This modification would tend to reduce the cash fund balance faster than anticipated and place upward pressure on fees charged to the industry.

Option 5: Reduce Travel Expenditures

Potential General Fund Savings**:** $20,000 annually

Option Description: In its explanation of this modification, the Department would reduce travel expenditures by $20,000.

Option 6: Eliminate Backtagging Incentive Program

Background: As part of the cooperative State/Federal/Industry effort to eradicate brucellosis, federal regulations impose certain brucellosis testing surveillance, recordkeeping and identification requirements for cattle moving in commerce. An element of the brucellosis surveillance effort is the Market Cattle Identification system. At slaughter, all cattle and bison 2 years of age or older are tested, except steers and spayed heifers. At livestock markets, all beef cattle and bison over 24 months of age and all dairy cattle over 20 months of age are tested except steers and spayed heifers. On-farm herd tests must include all cattle and bison over 6 months of age except steers and spayed heifers. Cattle and/or bison that are tested under the MCI program procedures are to be identified with the herd of origin by an official eartag and/or a USDA-approved backtag before or at the first point of concentration in marketing channels. Most livestock markets identify cattle and bison with numbered USDA approved backtags. Backtags, as well as eartags and other identification devices, are collected and sent to the diagnostic laboratory along with the matching blood samples to aid in identifying ownership of test-positive animals.

In concert with the federal requirements, Department regulations require that test eligible cattle moving through a market or dealer concentration point must be backtagged upon arrival, by a representative of the market or dealer, with an official backtag issued by the United States Department of Agriculture, Veterinary Services. When such cattle are leaving the market or concentration point destined for slaughter, the backtag must remain in place and unaltered. When market livestock are leaving the market or concentration point not destined for slaughter, the animals must be tested, identified by eartag or purebred registration tattoo, and the backtag is to be painted yellow. The backtag is to remain in place so long as the animals are moving in commerce. The backtagging of cattle is to be reported to the Bureau within seven days

Dept. Division: Bureau of Animal Industry
FY 10-11 FTE's Base: No specific FTE dedicated to program– the administration of the incentive is a minimal duty carried out by BAI staff

Potential General Fund Savings**:** Approximately $30,000 annually

Potential FTE reduction: None – may marginally free staff time for other duties

Option Description: The backtagging incentive program was established 30 years ago when USDA began requiring backtags placed on market animals going to slaughter. As the backtagging is a critical element to assist disease traceability and eventually to eradicate the disease, the Department initiated the program to encourage compliance by market operators. The Department believes Nebraska is one of only two states to provide the incentive. The incentive was reduced from 15 cents per tag to the current 10 cents as a budget saving measure in the mid 1980's.

Considerations:

- Removal of the incentive does not alter the requirement to apply the tags and record herd owner information. It is assumed enforcement for non-compliance would be the responsibility of USDA
- This expenditure falls within an identified priority function of the Department. It is unknown whether removal of the incentive will increase non-compliance. Increased rates of failure to apply backtags would adversely impact disease traceability capabilities. Records generated by the brucellosis program are important in disease traceability in other programs.

Option 7: Reallocation portion of expiring annual transfers from Petroleum Release Remedial Act Fund to EPIC fund to replace general funded share of petroleum flow meter inspection

Background: By law, any person employing in commerce a scale, pump meter, etc. for determining amount sold/purchased and corresponding cost/value is required to register the device with the Department and submit the device to annual inspection. The Department is obligated to perform annual inspection of all devices utilized to vend product sold by weight, measure or count to determine the accuracy of the device. In effect, the Department provides the service of third party verification of the accuracy of such devices. The Department also performs surveillance/sampling of the accuracy of net quantity labeling of pre-packaged and bulk commodities and the accuracy of price scanning equipment (e.g. assuring bar code scanners accurately record product description & price).

Potential GF savings: $200,000 (annual)

Potential FTE Reduction**:** Transfer FTE salaries to different funding source

Option Description**:** Current law provides for annual transfers of $1.5 million from the Petroleum Release Remedial Action (PRRA) Cash Fund to the Ethanol Production Incentive Cash Fund (EPIC). Under current law, the last scheduled transfer is July 1, 2011. The PRRA is composed of petroleum product storage tank registration fees and a special gas tax excise of .9¢/gal on gasoline and .3¢ / gal on diesel fuel. The fund is used to provide state aid for investigation and environmental clean up response to leaking underground tanks.

While the actual liability of the PRRA tax / gal tax falls at the wholesaler/marketer level, the incidence is passed down the chain to the retail level. The incident of this industry exaction would roughly correspond to the incident of the annual device registration and inspection fees paid to the Weights & Measures program. A current W&M cost of inspection of petroleum product flow meters is approximately $490,000 of which $201,000 is currently supported by general funds.

This alternative would replicate action by the State of Virginia to fully cash fund its petroleum product flow meter inspection under its W&M program, in agreement with petroleum marketers in that state, by dedicating .1¢ of gasoline/diesel excise tax to replace general funding. The version proposed here would not increase total costs to the industry or raise the fuel excise tax. It would redirect a portion of an expiring transfer out of the PRRA funds derived from existing excise tax to support costs of the flow meter inspection program. This idea is an alternative to fully cash funding W&M inspection program (i.e. raising fees sufficiently to replace general funded portion of inspection), which would result in an increase of W&M fees paid by petroleum marketers of 70%.

Policy considerations:

- Although would not result in any net overall cost to petroleum marketing industry, would be a reallocation of funds from intended purpose of PRRA cash fund. Depending on PRRA liabilities, could result in less revenues to meet PRRA fund liabilities. I have information by DEQ projecting PRRA fund liabilities. However, even with this reallocation, the PRRA would retain $1.3 million additional revenues annually than is currently the case with the annual transfers to EPIC.
- Would result in regulated industry funding entirely cost of its W&M inspection program. It has generally been considered good policy that regulatory agency not be entirely dependent on regulated industry for necessary revenues – public sharing in costs enhances agency's ability to carry out W&M inspection independently and objectively.

Option 8. Explore feasibility of adopting Kansas approach to commercial scale weights and measures regulation.

Background**:** The state of Kansas partially provides weights and measures regulation through a hybrid govt. /private inspection system. Kansas law requires weighing devices to be annually certified, but actual inspection and certification is provided by private sector inspectors who are licensed by the state of Kansas. Typically, the inspectors are employees of companies that provide sales and service for weighing equipment to Kansas businesses, and annual scale certification is often provided for, and included, in the service charges associated with, a scale sales/service contract. The Kansas Department of Agriculture's Weights & Measures Division essentially performs only an auditing function with a small staff that performs random surveillance/sampling of roughly 20% of known scales annually. Its website claims that it routinely observes a compliance rate of privately inspected scales comparable with other states that annually inspect all devices with government personnel. Kansas W&M staff also inspects devices as part of investigations of reported inaccurate or fraudulently calibrated scales. Nebraska has about 13,000 registered scales. Kansas does not require registration of devices, so the number of regulated scales is based on certifier reports. The Kansas W&M administrator verbally estimated about 17,000 scales. Kansas has 2 supervisors, one for small scales (under 2000 lb capacity) and one for large. Kansas also employs 6 small scale field inspectors who also perform packaging and labeling inspection and price scanning equipment verification at retail locations, and 2 field inspectors devoted to large scale inspections.

Potential GF savings: up to $160,000 (annual)

Potential FTE Reduction: Uncertain – assumes ability to carry out program with smaller staff

Option Description: Adopting a similar approach in Nebraska would theoretically achieve as much as 80% cost savings in inspection activity if the state were to perform only a surveillance level of inspection activity testing 20% of devices annually. Currently, the state inspects 100% of devices and a 20% inspection rate could thus theoretically be carried out with 1/5 of the current inspection personnel and related inspection expenses including travel. Kansas does not require registration of devices, and determines non-compliance with annual certification through inspection reports filed by private inspectors, complaints and other sources of information.

FY 2009-10 actual cost of the inspection program applied to scales is $594,000, with $243,000 from general funds. 20% surveillance rate theoretically results in cost of approximately $120,000. Current registration fees paid by scale owners totals about $52,000, leaving a cost of $68,000 to be funded by general funds. Theoretical general funds savings would be about $175,000.

Policy considerations:

- Societal confidence in the accuracy of such devices enable individual consumer and business calculation of value and is essential to the ability of Nebraska businesses to profitably price product and to freely participate in interstate and international commerce.
- The estimated cost savings are very speculative. Even if it were likely that a surveillance level of inspection could be performed with fewer staff and inspection expenses, it will be necessary for the Department to maintain equipment and lab standards to meet NIST inspection quality, and still respond to complaints. We wouldn't necessarily be able to reduce equipment costs by the same 80%. Staff would still be responsible for complaint inspection
- There may be private sector alternatives for verification of accuracy, and societal/economic incentives for vendors to employ accurate devices. However, the level of societal confidence and marketplace discipline achieved by the system of third party verification provided by government would be difficult to replicate.
- Private sector alternatives may be more costly to some device owners and more prone to inaccuracy and potential conflicts of interest. Adoption of a Kansas system loses benefit of third party verification since Kansas business rely on annual inspection & certification by those who sell equipment and service scales.
- State policy has always recognized public interest in W&M program that justifies public sharing in the cost.
- It is possible that Nebraska scale inspectors also perform package and labeling, and code reading equipment at retail locations. Reduction in staff would entail a corresponding reduction in surveillance inspection of this aspect of weights and measures regulation.
- It is likely that adoption of the Kansas model would require a transition period. The Department will need time to write new rules and regulations, develop forms, inform the regulated population, and develop a private certifier licensure program. It would take some time to be sure there is a corp of licensed certifiers available to provide certification services once state inspection is no longer provided. Transition to a private program would therefore likely not translate into budget savings during the upcoming biennium.

Option9: Fund Beginning Farmer general fund costs with Rural Rehabilitation Trust Fund

Background: The Beginning Farmer Tax Credit Act was created in 1999 through the enactment of LB 630. Under the Act, owners of agricultural property may qualify for a refundable income tax credit by entering rental arrangements with qualified beginning farmers. The incentive to asset owners is in the form of a refundable state income tax credit equal to 10% of the gross rental value of cash rent and 15% of the cash equivalent of share-rent arrangements, when renting assets to a qualified beginning farmer. The Act further authorizes a refundable tax credit to eligible beginning farmers for the cost of a financial management course needed to qualify as a beginning farmer and allows certified beginning farmers to claim a limited personal property tax exemption for equipment used in their operations.

The Act creates the Beginning Farmer Board that reviews and approves applications for certification as a beginning farmer and approves rental agreements as qualifying for the income tax credit available to landowners. The Board is also charged with promulgating regulations further defining eligibility requirements and governing the process of application and review. By statute, the Board is directed to meet at least twice annually, and is required to publish an annual report. Under the program, the Department provides staffing and other administrative services to facilitate the board in carrying out its functions. Major program costs include providing part time managerial and clerical FTE, costs of publications and travel and other expenditures to promote the program in various forums.

Potential General Fund Savings**:** Approximately $45,000 annually

Potential FTE reduction: No reduction. Transfer of current general funded FTE in Beginning Farmer Program to other funding source. There is currently .51 FTE funded from the Rural Rehabilitation Trust funding source that coordinate other programs currently supported from the Trust.

Option Description: The Ag Development Division administers the assets of the Rural Rehabilitation Funds. The Federal Emergency Relief Act of 1933 and the Federal Emergency Relief Act of 1935 authorized monies to be given to states for relief activities, including funding earmarked for agricultural relief efforts. To utilize and administer these funds, USDA authorized state chartered Rural Rehabilitation Corporations to be formed in the states with certain authorities including to make and secure loans, and to purchase, develop and sell land assets. Over time, Rural Rehab Corporations acquired land and financial asset portfolios. In the ensuring years, state corporations began transferring management of their assets back to USDA. In 1950, Congress passed the Rural Rehabilitation Corporation Trust Liquidation Act, which directed the Secretary of Agriculture to liquidate the corporation trust assets. Nebraska and virtually all states entered new trust agreements with USDA, generally limiting USDA to use of the funds from the liquidated assets for insured operating and farm ownership loans and other rural rehabilitation purposes permitted by each state corporation charter.

During the 1960s, interest grew in transferring control of corporation assets back to the states and some legal activity occurred to reassert state control. This activity culminated in 1973 with adoption of a model trust agreement, allowing states who requested it the right to administer their own assets. USDA and the corporations signed agreements ensuring that the corporation funds are used in compliance with use agreements and the corporation's articles of incorporation; that the corporation complete reports on their use of assets on a yearly basis; and that corporations do not exceed annual expenditures for administrative expenses of more than percent (3%) of the value of the trust.

Under the new agreements, most state rural rehabilitation corporations have been succeeded by state agencies, typically state departments of agriculture. In 1951, Nebraska dissolved its Rural Rehabilitation Corporation and assigned the Director of Agriculture as agent of Nebraska's Rehab Corporation funds. While states are free to exhaust the fund, Nebraska has maintained the principle invested with the Nebraska State Investment Council in a special long-term fund. The Department currently utilizes only the interest earnings to sponsor educational and informational conferences and seminars for individuals involved in agriculture. The programs sponsored place an emphasis on leadership development.

The annual report submitted by the State of Nebraska for FY09-11 places the current value of trust assets at $2.9 million. For FY 09-10, the Department reports fund earnings of $184,700, expended as follows:

- $29,381 for administrative salary and expense
- $106,000 in programming. Primary expenditures include sponsorship of the Nebraska Agricultural Youth Institute (NAYI) and Urban Youth Farm Tour, Ag in the Classroom,
- $12,000 in grant awards

Combined, these expenditures totaled $148,518 leaving unused interest earnings of $36,182 that were reinvested to build the fund balance.

Considerations:

- Funding for the Beginning Farmer program position and expenses would likely be a permissible use of the Rural Rehabilitation Trust Funds provided the additional expenditure for administration of the beginning farmer program did not cause the state to exceed the 3% administrative expenditure limit. The current fund value of $2.9 million would permit expenses for administration of programs up to approximately $87,000 which in addition to the current administrative expenditures of approximately $30,000 would be sufficient to absorb the $45,000 beginning farmer expenses.
- I have visited with the national trust administrator of USDA's Farm Service Agency, Mr. Mike Hinton, and described Nebraska's beginning farmer program and the associated administrative expense. While he gave initial verbal indication that administration expenses of the beginning farmer program would likely be a permissible use of the fund provided it did not cause Nebraska to exceed the administrative limitation, he cautioned that he could not give approval until reviewing a proposal to amend the existing use agreement.
- Under current management, the Department has attempted to retain a portion of interest earning to build the principle in the trust. The addition of beginning farmer administrative expenses would likely absorb any remaining excess earnings for the foreseeable future that can be returned to build the trust value and result in stagnant value of the trust and lower future potential annual earnings. Additionally, adding this expenditure may reduce resources available to fund other programs. The

Committee may wish to consider whether the beginning farmer program necessarily is of higher priority than existing expenditures that may be displaced.

Option 10. Require Department to acquire Cooperator Funding for Nebraska Ag Trade Representative.

Background: The Department created the position of Nebraska Agricultural Trade Representative. Although the position fulfills duties under the Agricultural Products Marketing Act and other various statutory authorities, the position is not created by statute. The position reports directly to the Director and is responsible for carrying out the Department's international trade promotion initiatives. The Department does not currently receive any defined or regular cooperator funding. The Department has, for example, received one-time cooperator funding grants from the Nebraska Wheat Board and the Nebraska Beef Council to help underwrite certain export market promotion activities carried out by the position. However, the Department does not seek or utilize cooperator funding for the base salary and expenses of maintaining this position. The position is intended to complement export market development activities Nebraska agriculture participates in. For example, commodity boards typically are subscribing members of organizations such as the Meat Export Federation, the U.S. Grains Council and other organization that provide export promotion services.

Potential GF savings: $80-100,000 (annual)

Potential FTE Reduction**:** Transfer FTE salaries to different funding source

Option Description: This option suggests that the Department seek half of the approximately $200,000 annual base costs of the position (salary, supplies, travel, etc.) from cooperator funding from entities that benefit from the activities performed by the position.

Considerations:

- Although the position benefits the agricultural sector generally, its work directly necessarily benefits the segment of the agricultural community participating in export markets. Essentially, the Department would seek to fund the position in part through subscription by commodity board, exporting businesses, ag trade groups. The willingness of such entities to support the position by subscription is a measure of the value of the position to exporting interests.
- Significant reliance on cooperator funding would erode the independence of the position and potentially create perception of serving private sector priorities in conflict with overall public welfare priorities.

Description of functional classifications used in this report

Public Health/Food Safety: Programs and activities that have as a purpose or benefit to mitigate and minimize risks to public health, including food borne illnesses, environmental contaminants and diseases of livestock that can have human health implications.

Livestock Health: Programs and activities that have as a purpose or benefit to mitigate and minimize disease and other health risks to the state's livestock assets and economic well-being of the livestock industry, and to contain and eliminate incidences of livestock disease.

Consumer Protection: Programs and activities that have as a purpose or benefit to safeguard consumer interests in commercial transactions. These include enforcement of industry observance of standards and procedures that help assure the integrity of commercial activity, that assure the quality and accurate representation of commercial products in the marketplace, and that provide avenues of intervention in response to substandard business practices.

Ag Promotion, Advocacy & Development: Programs and activities that have as a purpose to identify, facilitate, and expand marketing opportunities for agricultural products, to add value to agricultural production, to expand economic opportunities in agricultural production and processing, enhance agriculture's contribution to the state's economy and to recruit individuals to farming and agricultural careers. This classification also includes activities to represent agricultural interests in budgetary, legislative and other forums, information dissemination and educational activities to develop agricultural leaders and to present an agricultural perspective on policy issues.

Emergency Planning & Response: Programs and activities that have as a purpose to identify threats to public health and safety, the food supply and agricultural assets from acts of terrorism and other events and those planning activities and investments to increase preparation and capacity to respond effectively to such emergencies.

Environmental Protection/Enhancement: Programs whose objective is to avoid or mitigate degradation of land and water resources by agricultural activities and to preserve and expand environmental services of rural and agricultural lands.

Federal/Interstate System Integration: Regulatory and other responsibilities performed by state government to conform to federal law or interstate agreements governing the movement of agricultural products in interstate commerce and to enable Nebraska's agricultural sector to participate freely in interstate commerce. Includes state-federal cooperative programs for livestock and plant health initiatives and farm welfare and actions to qualify for federal funding.

Animal Welfare: Those programs whose purpose is to enforce or promote standards of care, minimum facility standards and other aspects of animal husbandry primarily for the humane benefit of animals.

Economic Regulation: Programs that directly or indirectly regulate entry by, and enforce rules of competition and minimum standards for, private sector participation in an economic activity for the primary purpose of regulating supply of a good or service or enhancing economic viability of the activity, as well as to protect responsible businesses and the public from unfair competition by substandard actors in the marketplace.

Economic Service: Programs and activities that provide certification and other non-regulatory services to the private sector to enhance value and marketability of products and services, primarily for the private commercial benefit of the entity seeking the service. Many regulatory programs designed primarily to safeguard public welfare interests in regulated economic activity may incidentally benefit private commercial interests as a quasi certification of minimum quality and regulatory compliance.

State Aid: Grants and other transfer programs where the primary expenditure and purpose of the program is the transfer of funds or services to individuals, local governments, or other entities that qualify under statutory criteria as mechanism to achieve underlying social welfare objectives.

Tax Incentive: Programs whose primary purpose and expenditure is in qualifying or verifying eligibility of individuals or entities for tax abatement benefits as a mechanism to achieve underlying social welfare objective.

Policy Development: Programs and activities that has as a function to generate ideas and to conceive and promote plans, concepts, legislative and budget initiatives, etc., participation in policy making forums, to prioritize use of resources, as well as to provide overall organizational structure, leadership and direction to the agency and its staff. .

Internal Administrative Support/Services: Those activities and expenditures not directly implementing substantive programs but that are necessary to the day-to-day functioning of an agency and its internal operations. These include budgeting, legal, technology, payroll, human resources, purchasing and other similar services.

Public Education/Information: Programs and activities that serve to generate and disseminate information to increase public understanding and awareness of issues, problems, and opportunities.