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LB 126

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See below		See below	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See below		See below	

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

LB 126 would create the Children's Health and Responsible Corporate Marketing Act. The Department of Agriculture would be required to administer, implement and enforce the act and to conduct periodic inspections to determine compliance with the act. Fast food and full-service restaurants, food establishments and convenience stores would be prohibited from marketing or selling packed child's meal items if the items exceeded prescribed calorie, trans fat, sugar and sodium levels and did not include fruits, and if applicable, whole grains.

The Department of Agriculture currently carries out food service inspections and testing, but the emphasis of the program and the nature of food testing is based upon the detection of pathogens and toxins and compliance with the federal Food Emergency Response Network (FERN) program. The provisions of LB 126 would require nutritional testing and analysis of samples taken at establishments selling pre-packaged children's meals, a type of testing that does not currently occur on samples taken in food service inspections. Based upon the detailed information provided by the Department of Agriculture, there is no basis to disagree with the estimate of one-time laboratory equipment and related set-up costs of \$227,000 and ongoing sample collection, laboratory staffing, sample analysis and enforcement costs of \$238,553. The agency's estimated total costs in FY11-12 for laboratory set-up and ongoing costs would be \$465,553 and FY12-13 costs would be \$238,553.

Because LB 126 does not establish fees of any sort for this program, it is estimated that all costs would come from the General Fund. If the estimated 315 establishments that would be regulated under LB 126 were subject to registration, inspection or testing fees that were deposited in a cash fund, the ongoing costs of the program could be offset by the use of cash fund revenue collected under the program.

FISCAL NOTE LB126

Agriculture

JAN 28 2011

LEGISLATIVE FISCAL

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Estimate Provided By State Agency or Political Subdivision

	FY 2011-2012		FY 2012-2013	
	Expenditures	Revenue	Expenditures	Revenue
General Funds	465,553		238,553	
Cash Funds				
Federal Funds				
Other Funds				
Total Funds	465,553		238,553	

Explanation of Estimate:

LB 126 adopts the Children's Health and Responsible Corporate Marketing Act. The intent of the act is to promote the nutritional health of children in Nebraska. The director shall adopt and promulgate rules and regulations to carry out the act and conduct periodic inspections to determine compliance. An administrative fine for violation of the act may be imposed and shall not exceed one thousand dollars. Administrative fines collected shall be remitted on a monthly basis to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sections 16 and 17 of the bill establish statutory requirements which establishments must follow. It is assumed the department will use their existing staff and conduct periodic inspections and review advertisements in conjunction with the current inspections conducted under the Nebraska Pure Food Act to determine compliance. This act requires the department to inspect establishments twice a year. There are currently 315 large chain restaurants registered in Nebraska that could be affected by this bill. In addition, as part of each food service inspection the department will have to determine if there are other types of establishments that could be impacted by this bill. The major cost to enforce the bill will be sample analysis to determine calorie content, trans fats, sodium, etc. The fiscal analysis that follows include incorporating the testing into the department's existing laboratory or to contract with a private laboratory.

The department estimates analyzing approximately 200 samples a year to see if the requirements are being met and to determine compliance. Based on other department regulatory experience, it is assumed there will be a 10% violation rate. Following the FDA guidelines which require 12 sub samples to be analyzed if a violation is found, this will add an additional 240 samples, bring the total number of samples to 440 a year. It is projected a need for an additional 3.5 FTE at the Laboratory, and a .25 FTE of an attorney to promulgate rules and regulations, conduct hearings for violations of the act, and to assist in enforcement. Start-up costs include equipment and expenses associated with International Standards Organization (ISO) 17025 Lab Certification requirements. This test is the principal standard laboratory accreditation used worldwide. A quality management system would be implemented to assure the accuracy and reliability of test results. Additional laboratory space would also be needed for the necessary equipment along with other operating costs. Also included is additional travel cost to conduct followup inspections or to collect additional samples needed to do enforcement. 440 samples would be the optimal number analyzed to fully utilize the FTE's and projected equipment needed to do the testing.

Samples collected would be determined based on need, complaints, and budget available to carry out the program. In checking with private laboratories, testing could run anywhere from \$690 to \$976 a sample, depending on the types of tests required. If the private laboratory is an ISO 17035 certified laboratory, based on 440 samples a year, the cost would be approximately \$300,000 to \$430,000 a year. The bill does not provide for any inspection or permit fees above what is currently collected under the Nebraska Pure Food Act. The amount of enforcement and number of samples collected and analyzed will be dependent on general funds appropriated. For local health departments that contract with the department, there could also be an additional cost to utilize their services.

Major Objects of Expenditure

Position Title	Number of Positions		FY 2011-2012	FY 2012-2013
	FY 2011-2012	FY 2012-2013	Expenditures	Expenditures
Attorney	.25	.25	11,663	11,663
Chemist I, II, & III	3.5	3.5	136,895	136,895
		Benefits	51,995	51,995
		Operating	50,000	30,000
		Travel	8,000	8,000
		Capital outlay	207,000	
		Aid		
		Capital improvements		
		Total	465,553	238,553