

MEMORANDUM



DATE: March 14, 2006
TO: House Appropriations Subcommittee on Agriculture
FROM: William E. Hamilton
RE: Food and Dairy – Food Safety and Quality Assurance

This memo is a revised version of a memo presented to the subcommittee on February 28, 2006. The current memo reflects additional information provided by the department and differs from the original memo in the discussion of consumer and industry food education programs on page 3, and in reflecting updated FY 2004-05 Licensing and inspection fee revenue on page 3 and in Exhibits A and C. The current memo also references a State Budget Office supplemental appropriation request dated February 23, 2006 received February 28, 2006.

Background – Funding for the Food and Dairy Division of the Michigan Department of Agriculture (MDA) is provided through the *Food Safety and Quality Assurance* line item in the annual Agriculture budget.¹ The mission of the Food and Dairy Division is "to protect public health by ensuring a safe and wholesome food supply, while working to maintain a viable food and dairy industry."²

The Dairy Section of the division is responsible for licensing and inspection of Michigan's 2,271 Grade A dairy farms, and 285 Manufacturing Grade dairy farms, as well as licensing and inspection of milk trucks, milk processing plants, and facilities that produce cheese, butter, and frozen dairy products. This work, performed primarily under the authority of the Grade A Milk Law of 2001 (Public Act 266 of 2001), and the Manufacturing Milk Law of 2001 (Public Act 267 of 2001), helps ensure a safe and wholesome milk supply for Michigan consumers. The department indicates that without adequate inspection and oversight, milk can not be shipped out of state in accordance with the Pasteurized Milk Ordinance – a national standard for dairy-product sanitation developed by the United States Public Health Service (USPHS).

The Food Product Safety Assurance Section is responsible for inspection and oversight of food establishments including food processing plants, as well as retail grocery and convenience stores, distribution centers, markets, and concessions at fairs. This work, performed primarily under the authority of the Food Law of 2000 (PA 92 of 2000), helps prevent sale of adulterated food products, the outbreak of food-borne disease, and fraud and deception in the sale of food products.

The Food Service Sanitation Section licenses approximately 45,000 food service establishments. The section provides training and program oversight for the food service sanitation programs of 45 local health departments. In a cooperative program with the departments of Community Health and Environmental Protection, the section provides triennial accreditation of local food inspection programs through the Michigan Local Public Health Accreditation Program. Authority for department oversight of food service sanitation programs, and authority to delegate authority to local public health departments is provided in the Food Law of 2000.

Funding Issues – In November 2005, the department identified a potential shortfall in funding for Food and Dairy Division operations of approximately \$973,000. The department indicated that the shortfall would result in a reduction in the number of food and dairy inspectors. Among other impacts, the

¹ Prior to April 1997 the current Food and Dairy Division existed as two separate divisions. A department-wide reorganization consolidated the two divisions.

² Source: MDA website. http://www.mi.gov/mda/0,1607,7-125-1572_2875_31948---,00.html.

reduction in the number of food inspectors resulted in a reduction in the frequency of inspection of certain types of food processors and vendors. The department indicated that it could no longer perform most food safety surveillance inspections at low and medium risk facilities.³

In addition, the Food and Dairy Division did not have sufficient resources to perform mandatory inspections of dairy farms and processing plants in accordance with the Pasteurized Milk Ordinance. Dairy farm inspections in Huron, Sanilac, and Tuscola counties were assumed by a dairy cooperative under a Certified Fieldman program.⁴

On November 29, 2005 the subcommittee held a meeting regarding Food and Dairy Division funding issues.

The reasons for the funding shortfall were not immediately apparent. The enacted FY 2005-06 Agriculture budget appropriated \$10.8 million for the *Food Safety and Quality Assurance* line item.⁵ The appropriation was effectively the same as the Executive's budget recommendation, and was nominally higher than the previous fiscal year. In order to determine the source of the current-year funding shortfall, we reviewed Food and Dairy appropriations history from FY 1998-99 through FY 2005-06, including budget development documents, and documents supporting mid-year adjustments made in supplemental appropriations, transfers, and Executive Order reductions. In reviewing these documents, we attempted to identify budgetary decisions which affected the baseline program (i.e. the current service base) – as opposed actions which merely shifted program responsibility within the budget. Our analysis is summarized in Exhibit A. Our review identified the following items:

Economics – Economic increases represent the additional costs required to maintain a program's current service. Typically economic increases represent employee salary and wage increases as negotiated by the Office of State Employer, and computed increases in insurance, retirement, and building occupancy charges. As an example: If the wages of ten employees averaged \$70,000 in year one, the budget would have to appropriate \$700,000 to fully fund them. If year two economic increases averaged 3%, an additional \$21,000 would have to be appropriated to maintain the base of ten employees.

Our review of recent appropriations history indicates that economics have not been fully funded; i.e. additional resources were not provided in the budget to cover unavoidable cost increases. In FY 2002-03 economic increases were not funded at all, and in FY 2003-04 and FY 2005-06 economic increases were only partially funded. By not funding economic increases, the department is forced to reduce operating costs to offset the increases, primarily by not filling vacant positions, thus reducing the baseline program.

As noted above, economics were only partially funded in the current fiscal year; additional funding was not provided to support a negotiated 1.5% increase in employee wages and salaries. We estimate the cost of the 1.5% increase to be approximately \$90,000 (based on a Food and Dairy Division salary and wage base of approximately \$6.0 million).

In those fiscal years in which economic increases were funded, or partially funded, funding was provided in part from federal or state-restricted revenue sources, even though there was no assurance that additional revenue from those sources was available. The use of restricted revenue as a fund source is discussed in additional detail below.

³ The department uses a risk-based system (High/Medium/Low risk) in determining frequency of inspections.

⁴ While an industry group has taken over routine dairy inspections in this three-county area, the department is still responsible for major compliance actions, inspection of milk haulers, milk processing plants, and laboratory certification.

⁵ Senate Bill 264 enacted as Public Act 148 of 2005.

Use of Restricted Revenue – Although the state General Fund remains the most significant revenue source supporting the appropriation, funding for the *Food Safety and Quality Assurance* line item has increasingly relied on the use of state-restricted *Licensing and inspection fee* revenue. While current-year General Fund support for the line item is \$322,400 less than FY 2000-01, appropriated *Licensing and inspection fee* revenue is \$746,100 more. However, the appropriation of *Licensing and inspection fee* revenue far exceeds anticipated collections. In FY 2004-05, the appropriation exceeded actual revenue by approximately \$536,000. The department anticipates a larger shortfall in the current fiscal year. See Exhibits A and B.

In addition, starting in FY 2000-01, approximately \$250,000 of the *Licensing and inspection fee* revenue collected each year represents money earmarked for consumer and industry education programs. *Consumer Food Safety Education Fund* revenue comes from a \$3 surcharge on each food establishment license issued. *Industry Food Safety Education Fund* revenue comes from a \$2 surcharge on each food service establishment license issued. Although these two funds are rolled into *Licensing and inspection fee* revenue as a fund source in the budget, they are earmarked in Section 4117 of the Food Law "to provide statewide training and education to consumers on food safety," and "to provide food safety training and education to food service establishment employees and [MDA] employees who enforce this act." These funds were not intended to support department operations. However, in FY 2004-05 the department transferred a total of \$300,000 from consumer and industry food safety education program funds to cover other Food and Dairy Division operating costs.

The Executive FY 2006-07 budget recommendations *Food Safety and Quality Assurance* would reduce *Licensing and inspection fee* revenue as a fund source by \$500,000 – to more closely align with actual revenue – and increase GF/GP support for accordingly. In addition, in a February 23, 2006 letter to the Chairs of the House and Senate Appropriations Committees, the State Budget Office requested an additional \$225,000 GF/GP support for the *Food Safety and Quality Assurance* line. The additional revenue would come from a fund shift in the *Laboratory Services* line.

This revenue source, *Licensing and inspection fees*, is comprised of various license fees established in statute, primarily the Food Law of 2000, and the Grade A Milk Law of 2001. The department can not raise these fees administratively. The Executive has not requested a statutory increase in these fees. A list of various Food and Dairy licensing and inspection fees is shown as Exhibit C.

Addition Program Responsibilities – At the time the Food Law was enacted, the department indicated that it would need 10 additional FTE positions to implement and administer the act.⁶ While the FY 2000-01 enacted budget did authorize an additional 10 FTE positions (from 112 to 122), the actual number of filled positions in the division increased by only 3 (from 108 to 111). In subsequent fiscal years the FTE authorization was reduced to 107. The actual division head count is currently 95 (Administration 2, Dairy Program 25, Food Safety Program 64, Food Service 4). Both the current FTE authorization and the actual head count are less than prior to enactment of the Food Law.⁷

The Food Law of 2000 established new responsibilities for the department, such as food establishment plan review, the cost of which were not fully covered by licensing fees. The department believes that recently enacted amendments to the Agricultural Processing Act of 1998 may bring additional requests

⁶ See House Legislative Analysis of Enrolled House Bill 5196 dated 8/4/2000.

⁷ At the time the Food Law of 2000 was enacted, \$2.0 million (GF/GP) was appropriated in FY 1999-2000 supplemental appropriations bill (Senate Bill 968, enacted as Public Act 291 of 2000) to fund an electronic inspection reporting system. This appropriation was carried forward as a work project. However, \$750,000 was subsequently transferred out of the work project by Section 221 of the FY 2001-02 Agriculture appropriations act (Senate Bill 230, enacted as Public Act 53 of 2001) to provide a grant to the Turkey Grower's Co-operative. As a result, the department was unable to purchase all elements of the proposed system. The department indicates that computer hardware needed for the system is in need of replacement.

for investigation and plan review of agricultural processing plants.⁸ The Food and Dairy Division is also assuming additional program responsibilities with regard to bio-terrorism threats, food industry vulnerability assessments, and emergency preparedness.

Establishing a Program Service Baseline – Our spreadsheet analysis of *Food Safety and Quality Assurance* appropriations (Exhibit A) starts with FY 1998-99. However, in our above analysis of restricted fund revenue, and in Exhibit B, we use the 2000-01 fiscal year as a baseline for comparison with current year appropriations. FY 2000-01 was subsequent to enactment of the Food Law of 2000, yet was prior to the most significant budget reductions resulting from declines in state General Fund revenue.

An alternative funding baseline would be the amount necessary to support Food and Dairy Division programs at levels established by independent performance measures. For the Food Product Safety Assurance Section the independent measure would be the Model Food Code. The Model Food Code is a national standard established by the U. S. Food and Drug Administration; the 1999 Model Food Code was incorporated by reference in Michigan's Food Law of 2000. Among other things, the 1999 Model Food Code established recommended inspection frequencies. The department has indicated that at the time the Food Law was adopted in 2000, the division did not have enough employees to perform inspections at the frequencies recommended by the 1999 Model Food Code.⁹ The department has also indicated that it is currently not in compliance with the standards of the 1999 Model Food Code.¹⁰

For the Dairy Section, the minimum program baseline would be determined by the requirements of the Pasteurized Milk Ordinance.

The department indicates that at current funding levels, it will be unable to meet Voluntary National Retail Food Regulatory Program Standards, standards established by the Food Safety Training and Education Alliance for Retail, Food Service, Vending, Institutions, and Regulators (FSTEA). The FSTEA is an organization comprised of government, industry, academic, and consumer groups organized in 1997 to promote food safety training and education at the retail level. The department indicates that the Federal Food and Drug Administration intends to link program grant funding to programs that meet these standards.

The department has also indicated that it may not meet its own minimum food safety accreditation standards, standards it requires local health departments to meet.

Conclusion

The current-year funding shortfalls for the department's Food and Dairy Division in the *Food Safety and Quality Assurance* line item appear to be due to three primary factors: 1) failure to fund or fully fund economic increases over the last five or six fiscal years; 2) use of restricted *Licensing and inspection fee* revenue as a budgetary fund source beyond amounts the department could reasonably collect; 3) failure to provide additional funding for increased program responsibilities.

While additional program responsibilities may be unique to the Food and Dairy Division, other departmental operating programs have experienced similar budgetary issues with regard to unfunded economic increases and the replacement of General Fund support with restricted funds. Exhibit D shows appropriations history of the entire department. Exhibit E shows how economic increases have been funded for the entire department for the last five fiscal years.

⁸ Public Act 282 of 2005 (Senate Bill 668), and Public Act 283 of 2005 (Senate Bill 669) amended the Agricultural Processing Act of 1998 (Public Act 381 of 1998, MCL 289.821 et seq.). These bills establish a "right to process."

⁹ The department believes that Michigan should adopt the 2005 Model Food Code.

¹⁰ Department testimony at House Appropriations Subcommittee on Agriculture meeting, February 28, 2006