

7/10/11

PREPARED BY: Doug Gibbs  
DATE PREPARED: January 27, 2011  
PHONE: 471-0051

LB 288

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	See Below		See Below	
FEDERAL FUNDS	See Below		See Below	
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

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

LB 288 would adopt the Small Business Regulatory Flexibility Act. In general, the Act would require state agencies, when developing rules and regulations, to consider the possible adverse economic impact of those regulations on small business.

Adverse economic impact is defined as a financial impact on a small business that a reasonable owner of a small business would determine negatively affects his or her ability to maintain or promote the growth of the small business.

Small business is defined as an entity, including its affiliates, that is independently owned and operated and employs fewer than 500 full-time employees or has gross annual sales of less than \$6,000,000. Approximately 98 percent of all Nebraska business falls into these categories.

Prior to adoption of any rules or regulations, state agencies are required to solicit public comment by providing notification of the proposed rules or regulations on the agency web site and if the agency has reasonable certainty that a specific small business may be adversely affected they are to provide electronic notification to the small business and post such notification on the agency web site. The agency is then to take into account any comment received regarding potential impact of the rule or regulation and shall consider methods, listed in the bill, to reduce the adverse economic impact on small business.

The bill also provides for judicial review of a rule or regulation by the district court of Lancaster County if a small business is adversely affected or aggrieved by adoption of the rule or regulation. The business may seek this review up to one year after the effective date of the rule or regulation.

As the bill would apply to all state agencies that have rule and regulation making authority, the potential fiscal impact is enterprise wide. A sampling of agencies were asked to respond as to potential fiscal impact and their responses vary.

Department of Education:

If the bill affects any entities that are subject to NDE regulations, it would primarily be limited to private postsecondary career schools, and may also include regulations that affect small private K-12 schools and colleges if they meet the definition of "small business," which is not clear in terms of parochial institutions.

The section of the bill that would most likely affect NDE is the requirement for specific individual electronic notice to entities such as private postsecondary career schools when NDE issues or revises relevant regulations. The Department of Education indicates that there would be little or no fiscal impact to the Department because the Department maintains an e-mail list of these entities and little additional time, effort, or expense would be necessary to send the notifications.

Department of Banking and Finance:

The amount of time required to post notices of proposed rules on the internet, receive information back from the small businesses regarding adverse impacts, and the negotiations required as a result of those responses would cause an impact on staff resources. This would require an additional part-time attorney and administrative assistant. Cost is estimate at \$27,650 for FY11-12 and \$23,650 for FY12-13.

Department of Insurance:

No fiscal impact.

Department of Natural Resources:

The bill does not affect agency operations or budget.

Board of Engineers and Architects:

The Board will be attempting revision of their regulations and rules during FY11-12 and FY12-13. Costs are computed per applicable rule or regulation and are estimated at \$104 per change for each fiscal year.

Department of Environmental Quality:

The Department is unsure of how broad the definition of rule and regulation should be interpreted. For purposes of this estimate, the Department did not include Guidance documents. In addition, the Department assumed 12 of the department's 24 regulatory titles were exempt pursuant to Section 2 of the bill. The Department typically proposes amendments to 4 to 8 titles of regulations annually.

Since several titles of regulations are amended regularly, the Department estimates that the analysis will be conducted on an average of three sets of regulations annually through procurement of contractual services. The Department estimates that each economic analysis would cost \$6,000 and total \$18,000 for each fiscal year of the biennium.

Department of Revenue:

The Department estimates the cost to implement LB 288 will be \$23,931 for FY11-12 and \$24,409 for FY12-13. The cost is for a 0.5 FTE Research Analyst II.

Department of Labor:

The Department of Labor indicates that a large number of their programs would be affected by LB 288. Increased costs resulting from the internal review processes described in the bill could be minimal or could be considerable depending upon the interpretation of the definition of rule or regulation in Section 2 of the bill. LB 288 includes any action by an agency which "implements . . . law or policy" within its definition of rule or regulation. The determination of combined tax rates for the coming year is a ministerial function of the Department. If that ministerial act implementing state law is considered a rule or regulation for purposes of LB 288, it would involve a substantial cost to the Department. There are 47,878 small employers as defined in the bill subject to payment of the combined tax. The analysis requirements in Section 4 and the notice requirements in Section 3 would be considerable if such analysis and notice is required as part of the combined tax rate setting process. The Department's estimate is prepared under the assumption that LB 288 does not apply to the combined rate setting process. Any additional costs resulting from the bill would be paid from the existing federal grant. However, no additional federal funds would be provided to pay those costs so staffing levels in other parts of the unemployment program might have to be adjusted to cover the LB 288 costs.

The Department estimates 2.0 FTE per fiscal year for an Economist and a Research Analyst I at a cost of \$160,002 and \$164,001 respectively.

Conclusion: As can be seen from the sample of agencies, the potential impact varies. It appears the impact to the larger regulatory agencies is significant and their estimates, for the most part, reasonable. Given this is only a sample, it is also reasonable to expect enterprise wide impact to be somewhat higher.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Gary Bush	DATE	1/21/11	PHONE	471-2526
COMMENTS					
DEPT. OF EDUCATION – No basis to disagree.					
BANKING AND FINANCE – Agency's estimate appears to be reasonable.					
DEPT. OF INSURANCE – Concur.					
DEPT. OF NATURAL RESOURCES – No basis to disagree.					
BD. OF EXAMINERS-ENGINEERS & ARCHITECTS – No basis to disagree with agency's estimate.					
DEPT. OF ENVIRONMENTAL QUALITY - No basis to disagree with agency's estimates. Estimates do appear to be reasonable.					

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LEGISLATIVE FISCAL

LB 288 FISCAL NOTE

2011

State Agency OR Political Subdivision Name: Neb. Dept. of Education

Prepared by: Scott Summers Date Prepared: 1/20/11 Phone: 1-7828

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$0		\$0	

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate: If this bill affects any entities that are subject to NDE regulations, it would be limited to primarily to private postsecondary career schools, and may also include regulations that effect small private K-12 schools and colleges if they met the definition of "small business," which is not clear in terms of parochial institutions.

NDE already places notices of all proposed regulations / revisions to regulations on its web site prior to the hearing along with information about submission of comments. The fiscal impact statement required by the APA names these types of institutions as being affected by the regulations when they are promulgated or amended. An additional measure that this bill appears to require of NDE would be that NDE may need to provide specific individual electronic notices of any "adverse economic impact" to entities such as private postsecondary career schools when NDE revises or issues relevant regulations. It is concluded that this would be of little or no fiscal impact on NDE because the program sections maintain e-mail list serves of the entities that are currently licensed under or regulated by these rules, and such a statement could therefore be drafted and sent out without with little additional time, effort or expense.

MAJOR OBJECTS OF EXPENDITURES

Personal Services:	NUMBER OF POSITIONS		2011-12	2012-13
	11-12	12-13	EXPENDITURES	EXPENDITURES
Benefit .....				
Operating .....				
Travel .....				
Capital outlay .....				
Aid .....				
Capital improvements .....				
TOTAL .....				

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JAN 21 2011

LEGISLATIVE

2011

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LB<sup>(1)</sup> 288 FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Department of Banking and Finance

Prepared by: <sup>(3)</sup> Margo Sawyer Date Prepared: <sup>(4)</sup> 1/20/11 Phone: <sup>(5)</sup> 471-4954

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2011-2012</u>		<u>FY 2012-2013</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS	<u>27,650</u>		<u>23,650</u>	
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	<u>27,650</u>		<u>23,650</u>	

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

The amount of time required to post notices of proposed rules on the internet, receive information back from the small businesses regarding adverse impacts, and the negotiations required as a result of those responses would cause an impact on staff resources. This would require an additional part-time attorney and administrative assistant.

MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2011-2012 EXPENDITURES</u>	<u>2012-2013 EXPENDITURES</u>
	<u>11-12</u>	<u>12-13</u>		
Attorney	.25	.25	10,345	10,345
Administrative Assistant	.25	.25	7,205	7,205
Benefits.....			5,100	5,100
Operating.....			5,000	1,000
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			27,650	23,650

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LB<sup>(1)</sup> 288 FISCAL NOTE

JAN 26 2011

LEGISLATIVE FISCAL

State Agency OR Political Subdivision Name: <sup>(2)</sup> Department of Insurance

Prepared by: <sup>(3)</sup> Eric Dunning Date Prepared: <sup>(4)</sup> 01/19/11 Phone: <sup>(5)</sup> 471-4650

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

FY 2011-2012

FY 2012-2013

EXPENDITURES

REVENUE

EXPENDITURES

REVENUE

GENERAL FUNDS

CASH FUNDS

FEDERAL FUNDS

OTHER FUNDS

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

No Fiscal Impact

**MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2011-2012 EXPENDITURES</u>	<u>2012-2013 EXPENDITURES</u>
	<u>11-12</u>	<u>12-13</u>		
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				





**FISCAL NOTE LB288**  
**Environmental Quality**

JAN 25 2011  
 LEGISLATIVE FISCAL

Prepared By	Lamberson, Thomas
Date Prepared	1/24/2011
Prepared Phone	402-471-4235

**Estimate Provided By State Agency or Political Subdivision**

	FY 2011-2012		FY 2012-2013	
	Expenditures	Revenue	Expenditures	Revenue
General Funds	\$6,000		\$6,000	
Cash Funds	\$12,000		\$12,000	
Federal Funds				
Other Funds				
<b>Total Funds</b>	<b>\$18,000</b>		<b>\$18,000</b>	

**Explanation of Estimate:**

LB288 requires the department to analyze the economic impact of regulations on small businesses (less than 500 employees or less than six million dollars of gross annual sales). The analysis is required because of notice provisions of Section 3.

In addition, Section 3 or LB288 requires that the department provide notice to any small business if that the small business may be adversely affected by the proposed rules or regulation. The fiscal impact of providing notice is uncertain.

The department is unclear about how broad the definition of rule and regulation should be interpreted. For purposes of this fiscal note the department did not include Guidance Documents. In addition the department assumed 12 of the department's 24 regulatory titles were exempted pursuant to Section 2. The department typically proposes amendments to 4 to 8 titles of regulation annually.

Since several titles of regulations are amended regularly, the department estimates that the analysis will be conducted on an average of three sets of regulations annually through procurement of contractual services. The department estimates each economic analysis would cost \$6,000 dollars.

The department estimates the cost would 33% funded by General Funds and 67% Cash Funds.

**Major Objects of Expenditure**

Position Title	Number of Positions		FY 2011-2012	FY 2012-2013
	FY 2011-2012	FY 2012-2013	Expenditures	Expenditures
		Benefits		
		Operating	\$18,000	\$18,000
		Travel		
		Capital outlay		
		Aid		
		Capital improvements		
		<b>Total</b>	<b>\$18,000</b>	<b>\$18,000</b>

# FISCAL NOTE

## LB288

### Nebraska Department of Labor

Prepared By	Ward, Debbie Kay
Date Prepared	1/28/2011
Prepared Phone	402-471-2492

#### Estimate Provided By State Agency or Political Subdivision

	FY 2011-2012		FY 2012-2013	
	Expenditures	Revenue	Expenditures	Revenue
General Funds	160,002		164,001	
Cash Funds				
Federal Funds				
Other Funds				
<b>Total Funds</b>	<b>160,002</b>		<b>164,001</b>	

#### Explanation of Estimate:

Explanation of Estimate:

LB 288 requires that prior to the adoption of any rule or regulation that may impact a small business adversely a public comment for small businesses to limit the adverse economic impact.

One-time costs are estimated as being minimal.

#### Existing Programs:

State Cash Fund and General Fund Programs.

These programs would include the wage and hour; child labor; contractor registration; farm labor contractor; and boiler, amusement ride, and elevator inspection programs. These programs do not routinely promulgate regulations and those regulations issued are primarily technical updates to construction codes to bring the Nebraska code into line with national standards. Increased costs resulting from the internal review processes described in sections 1-5 of LB 288 are expected to be minimal and would be absorbed by the programs.

#### Federally Funded Programs Administered by the State.

These programs would include the unemployment insurance, employment service, job training and OSHA 21(d) programs. Increased costs resulting from the internal review processes described in sections 1-5 of LB 288 could be minimal or could be considerable depending upon the interpretation the definition of rule or regulation in section 2 of LB 288. The definition of rule or regulation in section 2 is not limited to rules and regulations promulgated under the Administrative Procedure Act (APA). The fiscal impact of LB 288 on the implementation of the types of rules and regulations by the Department covered by the APA will be minimal. However, LB 288 includes any action by an agency which "implements..law or policy" within its definition of a rule or regulation. The determination of combined tax rates for the coming year is a ministerial function of the Department. If that ministerial act implementing state law is considered a rule or regulation for purposes of LB 288, it would involve a substantial cost to the Department. There are 47,878 small employers as defined in LB 288 subject to the payment of combined tax. The analysis requirements in section 4 and the notice requirements in section 3 would be considerable if such analysis and notice is required as a part of the combined tax rate setting process. This fiscal note is prepared under the assumption that LB 288 does not apply to the combined rate setting process. Any additional costs resulting from LB 288 would be paid for from the existing federal grant. However, no additional federal funds would be provided to pay those costs so staffing levels in other parts of the unemployment program might have to be adjusted to cover the LB 288 costs.

#### Major Objects of Expenditure

Position Title	Number of Positions		FY 2011-2012	FY 2012-2013
	FY 2011-2012	FY 2012-2013	Expenditures	Expenditures
Economist	1	1	44,482	45,594
Research Analyst I	1	1	31,140	31,918
		Benefits	31,165	31,944
		Operating	53,215	54,545
		Travel		
		Capital outlay		
		Aid		
		Capital improvements		
		<b>Total</b>	<b>160,002</b>	<b>164,001</b>