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PREPARED BY: Doug Nichols  
DATE PREPARED: March 16, 2011  
PHONE: 471-0052

**LB 675**

Revision: 01

Updated to reflect a revised response received from the Nebraska Department of Correctional Services.

# FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS			407,925	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS			407,925	

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

This bill would provide and change penalties and enforcement relating to driving under the influence and the duty to stop at motor vehicle accidents and create an offense relating to certain controlled substances. Drivers with four prior DUI convictions would receive a mandatory minimum 5 years incarceration.

The Nebraska Department of Correctional Services (NDCS) estimates the cost of this bill at \$407,925 in FY2012-13 and \$815,850 in FY2013-14. NDCS notes that the full fiscal impact of this bill does not occur until FY2013-14. The NDCS response follows:

LB675 includes the following provisions that may have an impact on the Nebraska Department of Correctional Services:

Provides that any person providing a sample of bodily fluid (pursuant to Section 60-6,197) containing any amount of a schedule I or schedule II controlled substance commits an offense (a Class I misdemeanor)..

Adds a provision to the duty to stop statutes increasing the penalty from a Class IIIA felony to a Class III felony if the accident resulted the death of any person or serious bodily injury.

Changes the definition of a prior conviction to mean a conviction for a violation within the 20 year period (rather than the current 12 year period) prior to the offense.)

Provides that if such person has four or more prior convictions, in addition to being guilty of a Class III felony, shall serve a mandatory minimum of five years' imprisonment.

Currently the minimum sentence for a Class III felony is one year imprisonment, and the maximum is 20 years imprisonment. There are an average of 49 inmates admitted each year (47 in 2008; 56 in 2009; 44 in 2010) to the Nebraska Department of Correctional Services (NDCS) for Class III DUI felonies. Most of them are for 4<sup>th</sup> offense or higher, but some are other DUI related. The fiscal note assumes 80% of the current Class III DUIs are for 4 or more prior convictions. The average minimum sentence is 2.59 years and the average maximum sentence is 4.5 years. The actual time served (assuming no loss of good time) is 1.3 years minimum and 2.25 yrs maximum. With this bill, the minimum will increase to five years. This will mean an extra 3.7 years minimum served per individual.

The FY10 per Diem (cost per day of feeding, clothing, housing, medical, etc) for an individual inmate was \$15.41 per day or \$5,625/yr.

The cost of the increased minimum number of years served is:

- FY 2011 - FY2012: \$0
- FY 2013 - FY 2013: \$407,925
- FY 2013 – FY 2014: \$815,850

If a person meet the bill's requirements, mandatory minimum of 5 years to be served	5.00
Average number of inmates that meet the bill's requirements	49.00
NDCS assumes 80% of these inmates will come under the bill's provisions	80%
80% of 49 inmates is this number of inmates that could come under the bill's provisions	39.20
Actual time served (after good time) of inmates that come under the bill's provisions:	
Minimum	1.30
Minimum Sentence: The bill requires 5 years mandatory minimum	5.00
Minimum additional time served per inmate (years)	3.70
Minimum total time served all eligible inmates (years)	145.04
The FY10 Per Diem (cost per day of feeding, clothing, housing, medical, etc) for an individual inmate	\$ 5,625
This is the NDCS estimate based on 3.7 years to be served above the 1.3 years for the past 3 years.	\$815,850

The Supreme Court states that this bill could significantly increase judicial workload, and their response follows:

LB 675, as introduced, could significantly increase the number of jury trials. In turn, an increase in jury trials could significantly increase judicial workload and possibly require additional judicial and court staff resources. Currently, there is a jurisdictional limit of \$500 for fines under a city ordinance. By increasing fines for Driving Under the Influence (DUI) above the jurisdictional limit DUI cases would now have to be filed under State statute which would entitle defendants to a jury trial if they request it. This entitlement is not available if filed by a city attorney under a city ordinance. Further information: based on CY 2010 filings, the increase in the number of cases eligible for jury trial in Douglas County would be approximately 3,700 and, in Lancaster County, approximately 1,000. Although the number of cases that would actually go to trial is unknown, it is estimated that the number of defendants requesting a trial will increase.

**LB 675 FISCAL NOTE - REVISED**

State Agency OR Political Subdivision Name: (2) DEPARTMENT OF CORRECTIONAL SERVICES

Prepared by: (3) Robin Spindler Date Prepared: (4) 3/16/2011 Phone: (5) 479-5711

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

	FY 2011-2012		FY 2012-2013	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	0	_____	407,925 *	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
<b>TOTAL FUNDS</b>	<b>\$0</b>	_____	<b>\$407,925</b>	_____

\* Full Fiscal impact occurs in FY 2013 – FY 2014

Explanation of Estimate:

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**MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2011 -2012 EXPENDITURES	2012-2013 EXPENDITURES
	11-12	12-13		
Benefits .....				
Operating Per Diem.....			\$0	\$407,925_*
Travel .....				
Capital outlay .....				
Aid .....				
Other .....				
Capital improvements .....				
TOTAL .....				

\* Full fiscal impact of \$815,850 in FY 2013- FY 2014