

**FISCAL NOTE**  
 LEGISLATIVE FISCAL ANALYST ESTIMATE

| <b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates) |                   |         |                   |         |
|---|-------------------|---------|-------------------|---------|
|   | <b>FY 2018-19</b> |         | <b>FY 2019-20</b> |         |
|   | EXPENDITURES      | REVENUE | EXPENDITURES      | REVENUE |
| GENERAL FUNDS   | 0-1,860,000       |         | 0-1,860,000       |         |
| CASH FUNDS  |                   |         |                   |         |
| FEDERAL FUNDS   |                   |         |                   |         |
| OTHER FUNDS   | 85,800            |         |                   |         |
| TOTAL FUNDS   | 85,800-1,945,800  |         | 0-1,860,000       |         |

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

LB 1072 requires preference be given to purchasing Nebraska products and goods and services from resident bidders over nonresident bidders if the bid submitted is comparable in price and otherwise meets the required specifications.

The Department of Administrative Services' Enterprise Resource Planning System would need to be programmed to track and identify bidders who are residents in order to meet the bill's provisions. The one-time cost estimate to do this is \$85,800. There is no basis to disagree with this estimate.

DAS also identifies a potential cost based on the bill's requirement for resident bidders' preference for "comparable" bids. Currently, the State Purchasing Bureau (SPB) has 735 contracts with a total value of \$6,531,105. If all these contracts have resident bidders who qualify under the bill's provisions, but the bids are 1% higher than nonresident bidders, SPB would incur an additional \$65,531 in the costs associated with contracts. Clearly, not every contract will be bid on by a resident bidder, nor will every bid be 1% higher than the nonresident bidders. This figure is used for illustrative purposes. Furthermore, SPB is not required to bid all service contracts for all agencies. Thus, this amount does not include all contracts within the state.

The Department of Health and Human Services estimates additional costs of \$1,860,000 per year. This estimate is based on the FY17 procurement activity of \$372,000,000. DHHS assumes that 5% of this activity would be impacted by the bill's provisions for preferential treatment for Nebraska goods and services. DHHS then assumes a 10% price preference applied to that figure, resulting in the \$1,860,000 cost per year.

It would appear that the DHHS estimate is excessive. The Legislator's Guide shows the total appropriation for fiscal year 2016-17 for operations (excludes aid) to be \$667 million. Thus, DHHS's estimate of \$370 million in fiscal year 2016-17 for procurement represents 55% of the agency's total operations budget. When the total Salary Limit from LB327 is computed for fiscal year 2016-17, that figure is over \$266 million. Typically, OASDI and retirement costs add 15% on to the cost of salaries. This amount would be around \$40,000,000. If an average of \$10,000 per FTE is applied to the 6,000 DHHS employees, this would account for an additional \$60,000,000 in budget expenditures. Thus, the total for Salaries **and benefits** would be approximately \$366,000,000

Utilizing these assumptions, employee related costs would be approximately \$366 million and the DHHS estimated procurement costs would be \$372 million. This total exceeds the Legislator's Guide figure for operational costs. At this point, we have not accounted for other operational costs such as travel, capital outlay, utilities, office supplies, etc. Therefore, the estimate of \$372 million in procurements appears to be excessive.

In addition, the assumption that the preference to Nebraska vendors would be 10% appears high when compared to the DAS illustration that began at a 1% preference.

In short, DHHS may face higher costs associated with providing a preference to Nebraska vendors, but it is unlikely that the cost will be as high as estimated. It is recognized that due to the variety of undetermined factors (such as the percentage of "preference" provided), the DHHS estimate *could* be accurate. For these reasons, the General Fund line in the table above is placed within a range of possible costs.

It is likely that there would be some increase in the amount paid for contracts due to the preferential provisions. That amount cannot be determined.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE

LB: 1072                      AM:                      AGENCY/POLT. SUB: Department of Administrative Services

REVIEWED BY: Neil Sullivan                      DATE: 1/26/2018                      PHONE: [\(402\) 471-4179](tel:(402)471-4179)

COMMENTS: No basis to disagree with the Department of Administrative Services estimate of fiscal impact from LB 1072. Concur that there will be an enterprise impact.

Please complete ALL (5) blanks in the first three lines.

**2018**

**LB<sup>(1)</sup> 1072**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Department of Administrative Services (DAS) – Materiel Division, State Purchasing Bureau (SPB)

Prepared by: <sup>(3)</sup> Doug Wilken Date Prepared: <sup>(4)</sup> 1/22/2018 Phone: <sup>(5)</sup> 402-471-4114

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

|                 | FY 2018-19          |                 | FY 2019-20          |                |
|-----------------|---------------------|-----------------|---------------------|----------------|
|                 | <u>EXPENDITURES</u> | <u>REVENUE</u>  | <u>EXPENDITURES</u> | <u>REVENUE</u> |
| GENERAL FUNDS   | _____               | _____           | _____               | _____          |
| CASH FUNDS      | _____               | _____           | _____               | _____          |
| FEDERAL FUNDS   | _____               | _____           | _____               | _____          |
| REVOLVING FUNDS | <u>\$85,800</u>     | <u>\$85,800</u> | _____               | _____          |
| TOTAL FUNDS     | <u>\$85,800</u>     | <u>\$85,800</u> | <u>0</u>            | <u>0</u>       |

Explanation of Estimate:

LB1072 seeks to grant a preference to purchasing Nebraska goods and services from a resident bidder over a nonresident bidder if the bid submitted by a resident bidder is comparable in price to that of a nonresident bidder and otherwise meets the required specifications. The bill does not specify or define “comparable.” The bill also does not specify, define or describe what type of “preference” or how the “preference” is to be applied. As written, it would be up to the individual agencies to determine what “preference” means and how to apply whatever “preference” the agency deems appropriate. This will result in non-uniform application of “preference” across state government. A non-uniform application of this bill will create the appearance of an arbitrary and capricious standard. This will lead to both confusion and uncertainty among potential vendors, the possibility of litigation, and additional unknown litigation costs.

Any bidding preference, when applied to the awarding of contracts, tends to limit competition, drive up costs, disrupt market conditions, and potentially impede Nebraska companies doing business in other states. This legislation has the potential to add to the costs of the goods and services being purchased, however, actual increases cannot be determined.

An assumption is made that such increase could be anywhere from 1% up to 5%. Based upon this assumption and the amount of contracts in place with SPB, through DAS Materiel – State Purchasing Bureau (SPB), this could cost the State an additional \$65,314 to \$326,569 [735 contracts with a total value of \$6,531,105 x 1% = \$65,314; \$6,531,105 x 5% = \$326,569]. The total number of contracts and values is not reflective of contracts processed by agencies on their own as allowed by statute. SPB is not required to bid all service contracts for all agencies, but may do so upon request of the state agency. Contracts for road or building construction are covered by other statutes and are not processed through SPB.

The table below summarizes the estimated increased costs above by fund type. Though some contracts are for capital expenditures the allocation by fund type for this example is based on a four (4) year average [2014-2017] of operating expenses only.

|                 | FY2018-19                     | FY2018-19                     |
|-----------------|-------------------------------|-------------------------------|
|                 | 1%<br>Expenditure<br>Increase | 5%<br>Expenditure<br>Increase |
| General Funds   | \$16,240                      | \$81,200                      |
| Cash Funds      | \$24,352                      | \$121,758                     |
| Federal Funds   | \$14,104                      | \$70,522                      |
| Revolving Funds | \$10,618                      | \$53,089                      |
| Total Funds     | \$65,314                      | \$326,569                     |

The legislation does not provide how such bidder is to verify whether or not it is a “resident bidder” using the definition in the proposed legislation. It is assumed that the vendor will self-report whether or not they are a resident bidder at the time of the bid submission.

Further, the State’s ERP (Enterprise Resource Planning) system that is in place at the time the bill is enacted would need to be programmed to track and identify bidders who are a resident bidder in order to meet with the new definition presented in the legislative proposal. This cost is estimated to be:

Cost for system configuration includes: \$85,800

System setup

Security

Testing

Package Builds

Documentation

(Based on 3 months (520 hrs. x hourly rate \$165 = \$85,800)

These additional one-time costs would result in the need for additional revolving appropriation and an increased DAS Materiel Purchasing Assessment for FY18-19. The FY18-19 Purchasing Assessment has already been published and could require addition appropriation for other programs across the Enterprise.

The table below summarizes the estimated impact by fund type of the increased statewide DAS Materiel – Purchasing Assessment. The allocation by fund type is based on a four (4) year average [2014-2017] of operating expenses.

|                 | FY2018-19    |
|-----------------|--------------|
|                 | Expenditures |
| General Funds   | \$21,334     |
| Cash Funds      | \$31,990     |
| Federal Funds   | \$18,528     |
| Revolving Funds | \$13,948     |
| Total Funds     | \$85,800     |

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

| <u>POSITION TITLE</u>     | <u>NUMBER OF POSITIONS</u> |              | <u>2018-19</u><br><u>EXPENDITURES</u> | <u>2019-20</u><br><u>EXPENDITURES</u> |
|---------------------------|----------------------------|--------------|---------------------------------------|---------------------------------------|
|                           | <u>18-19</u>               | <u>19-20</u> |                                       |                                       |
| Benefits.....             |                            |              |                                       |                                       |
| Operating.....            |                            |              | \$85,800                              |                                       |
| Travel.....               |                            |              |                                       |                                       |
| Capital outlay.....       |                            |              |                                       |                                       |
| Aid.....                  |                            |              |                                       |                                       |
| Capital improvements..... |                            |              |                                       |                                       |
| TOTAL.....                |                            |              | \$85,800                              | 0                                     |

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

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) Mike Michalski

Date Prepared 1-31-18

Phone: (5) 471-6719

|                      | <u>FY 2018-2019</u> |                | <u>FY 2019-2020</u> |                |
|----------------------|---------------------|----------------|---------------------|----------------|
|                      | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u> |
| <b>GENERAL FUNDS</b> | \$1,860,000         |                | \$1,860,000         |                |
| <b>CASH FUNDS</b>    |                     |                |                     |                |
| <b>FEDERAL FUNDS</b> |                     |                |                     |                |
| <b>OTHER FUNDS</b>   |                     |                |                     |                |
| <b>TOTAL FUNDS</b>   | \$1,860,000         |                | \$1,860,000         |                |

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

**Explanation of Estimate:**

LB1072 does not allow for the exception of federal funds, which would limit the utilization of federal dollars, as some federal granting agencies and programs do not allow for geographical preference. Therefore, the Department of Health and Human Services (DHHS) would need to absorb the costs associated with awarding contracts to Nebraska vendors.

Fiscal impact includes the following assumptions:

- FY17 procurement activity used as baseline of annual expenditures (\$372 million)
- 5% of procurement activity would be directly impacted and result in a 10% increase in costs

Additionally, the Department of Administrative Services (DAS) may need to create a new program or methodology for managing this process, which could result in additional assessments to DHHS. DHHS would need to request additional appropriation/funding to pay for the increase in costs to award contracts and any assessment fees from DAS.

**MAJOR OBJECTS OF EXPENDITURE**

| PERSONAL SERVICES:        | NUMBER OF POSITIONS |       | 2018-2019   | 2019-2020    |
|---------------------------|---------------------|-------|-------------|--------------|
|                           | POSITION TITLE      | 18-19 | 19-20       | EXPENDITURES |
| Benefits.....             |                     |       |             |              |
| Operating.....            |                     |       | \$1,860,000 | \$1,860,000  |
| Travel.....               |                     |       |             |              |
| Capital Outlay.....       |                     |       |             |              |
| Aid.....                  |                     |       |             |              |
| Capital Improvements..... |                     |       |             |              |
| <b>TOTAL.....</b>         |                     |       | \$1,860,000 | \$1,860,000  |