

**FISCAL NOTE**  
 LEGISLATIVE FISCAL ANALYST ESTIMATE

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b>				
	<b>FY 2023-24</b>		<b>FY 2024-25</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	\$89,005		\$89,005	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
<b>TOTAL FUNDS</b>	<b>\$89,005</b>		<b>\$89,005</b>	

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

LB 366 provides for body-worn camera recordings created when a person died while being apprehended by, or in the custody of, law enforcement officers or detention personnel to be public records under section 84-712.01.

For Nebraska residents, no special service charge or fee shall be charged for copies of blank forms or pages that have all meaningful information redacted. Current statutory provisions allow for actual added cost fee exemptions to cover the actual added cost for records for the first four (4) hours of employees' time. LB 366 changes this to exempt the first eight (8) hours of employees' time. For non-Nebraska residents, the actual added cost used as the basis for calculating fees for records may include a charge for the salary or pay obligation to the public officers or employees, including a charge for the services of an attorney to review the public records.

Section 4 requires proceedings arising under section 84-712.03 to be advanced on the trial docket and heard and decided by the court as soon as reasonably possible.

The Attorney General is unable to estimate the fiscal impact of LB 366 due to the inability to estimate the number and scope of public records requests.

The Nebraska State Patrol (NSP) estimates the need for \$31,805 per year due to the extension from four to eight hours of actual added cost fee exemptions. LB 366's provisions do not allow for expenses related to legal personnel in the case of a resident request. Based on prior years' requests and the associated personnel's hourly wages, NSP estimates \$31,805 per year of additional unrecoverable costs. This estimate appears to be reasonable.

Utilizing similar methodology, the University of Nebraska System estimates additional personnel related costs to be \$57,200 per year. There is no basis to disagree with this estimate.

The City of Omaha estimates the need for 5.0 additional staff personnel and related operating costs to address the requirements of LB 366. This estimate is for a total cost of \$521,367 for fiscal year 2023-24 and \$537,008 for fiscal year 2024-25. There is no basis to disagree with this estimate.

<b>ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY &amp; POLT. SUB. RESPONSE</b>		
<b>LB: 366</b>	<b>AM:</b>	<b>AGENCY/POLT. SUB: Nebraska Attorney General (011)</b>
REVIEWED BY: Joe Wilcox	DATE: 01/18/2023	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Nebraska Attorney General estimate of Potential, but Undeterminable Fiscal Impact to the Agency from LB 366.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
<b>LB: 366</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>Nebraska State Patrol (064)</b>
REVIEWED BY: Joe Wilcox	DATE: 01/25/2023	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Nebraska State Patrol estimate of Potential Fiscal Impact to the Agency from LB 366.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
<b>LB: 366</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>University of Nebraska (051)</b>
REVIEWED BY: Joe Wilcox	DATE: 01/26/2023	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the University of Nebraska estimate of Potential Fiscal Impact to the University from LB 366.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
<b>LB: 366</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>City of Omaha</b>
REVIEWED BY: Joe Wilcox	DATE: 01/22/2023	PHONE: (402) 471-4178
COMMENTS: No basis to dispute the City of Omaha estimate of potential Fiscal Impact to the City from LB 366.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
<b>LB: 366</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>Nebraska Department of Health and Human Services (025)</b>
REVIEWED BY: Joe Wilcox	DATE: 02/28/2023	PHONE: (402) 471-4178
COMMENTS: No basis to dispute the Nebraska Department of Health and Human Services (DHHS) estimate of Potential, but Indeterminate Fiscal Impact to the Agency from LB 366.		

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

**2023**

**LB<sup>(1)</sup> 366**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Attorney General

Prepared by: <sup>(3)</sup> Mike Guinan Date Prepared: <sup>(4)</sup> 1-18-23 Phone: <sup>(5)</sup> 402-471-2687

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

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

Since the fiscal impact to the Attorney General's Office is contingent on the number and scope of public records requests received by the agency, any increased costs cannot be readily quantified at this time.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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

2023

LB<sup>(1)</sup> 366

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Nebraska State Patrol

Prepared by: <sup>(3)</sup> Carol Aversman Date Prepared: <sup>(4)</sup> 01-23-2023 Phone: <sup>(5)</sup> 402-471-4545

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>\$31,805</u>	<u>                    </u>	<u>\$31,805</u>	<u>                    </u>
CASH FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
FEDERAL FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
OTHER FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
TOTAL FUNDS	<u>\$31,805</u>	<u>                    </u>	<u>\$31,805</u>	<u>                    </u>

Explanation of Estimate:

LB 366 provides for public records requests for body worn camera recordings of in-custody deaths, or a death that occurred during an apprehension of an individual by law enforcement. It also changes the provisions for charging fees for public records requests for residents of the State of Nebraska and for non-residents of the State of Nebraska. The bill allows the custodian of the information to charge for expenses incurred for public records requests made by residents that take more than 8 hours to compile. This was changed from the previous provision of 4 hours. It does not allow for the expenses related to legal personnel in the case of a request made by a resident. The bill also allows the custodian to charge for expenses incurred for all hours spent gathering information for a public records request that is made by a non-resident requestor. In this case, the bill does allow for the expenses incurred by legal personnel to be recouped.

The State Patrol estimates that these requests take approximately 4 hours of a paralegal’s time to gather the information and 1 hour of an attorney’s time to review. Historically, the Patrol has had 1,700 requests since 2019. Of those requests, approximately 600 were made by residents of the State of Nebraska. Approximately 250 of the 1,700 requests were made by parties that did not disclose their residence. Based on this historical information, the Patrol estimates that approximately 850 requests were made by non-resident requestors (1,700 – 600 – 250 = 850). Over a four-year period, this equates to 212 requests on average made per year by non-resident requestors.

It is important to note that requestors are not required to provide their state of residence. Therefore, the State Patrol will not always be able to assess charges for the expenses that it might incur related to a public records request for a non-resident. It is also important to note that the State Patrol cannot predict how many requests will be received in a given year. The type and number of requests is very dependent upon events that may occur each year. The cost estimates provided are merely an approximation based on the requests received in the last four years.

The cost estimates reflect the wages of a paralegal at \$25.669 per hour for 4 hours of work per request for a total of 212 requests. The estimates also reflect the wages of an attorney at \$47.348 per hour for 1 hour of work per request for a total of 212 requests.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<b>POSITION TITLE</b>	<b>NUMBER OF POSITIONS</b>		<b>2023-24</b>	<b>2024-25</b>
	<b><u>23-24</u></b>	<b><u>24-25</u></b>	<b><u>EXPENDITURES</u></b>	<b><u>EXPENDITURES</u></b>
Paralegal			\$21,767	\$21,767
Attorney III			\$10,038	\$10,038
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			\$31,805	\$31,805

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2023

**LB <sup>(1)</sup> 0366 Change provisions relating to public records and include body-worn camera recordings in certain circumstances**

**FISCAL NOTE**

State Agency OR Political Subdivision Name:<sup>(2)</sup> University of Nebraska System

Prepared by:<sup>(3)</sup> Chris Kabourek Date Prepared:<sup>(4)</sup> 01/25/2023 Phone:<sup>(5)</sup> (402) 472-7102

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

	FY 2023 - 24		FY 2024 - 25	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>57,200.00</u>	<u>0.00</u>	<u>57,200.00</u>	<u>0.00</u>
CASH FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
FEDERAL FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
OTHER FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL FUNDS	<u>57,200.00</u>	<u>0.00</u>	<u>57,200.00</u>	<u>0.00</u>

**Explanation of Estimate:**

The University of Nebraska System estimates that the increase to 8 hours of free response time for public records requests for residents and news media will result in an average of \$200 in additional unrecoverable costs for University and IT staff time per request. Using the number of requests in FY 21-22 as a benchmark, we estimate that this increase would impact approximately 100 records requests per year. Therefore, this additional free response time would result in approximately \$20,000 of additional unrecoverable staff time per year.

Based on the proposed language that prohibits the collection of fees for records where "all meaningful information" is redacted, and the requirement that the records director attest to any estimate under oath, additional attorney time will be needed upfront to review documents before providing any estimate.

Using a total of \$44,000 (0.4 FTE for a new attorney), multiplied by the 30% benefits rate, we estimate \$57,200 in additional annual costs.

This does not consider any increases in the number of public records requests submitted due to the expanded "free" response time, which we anticipate will occur.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023 - 24</u>	<u>2024 - 25</u>
	<u>23 - 24</u>	<u>24 - 25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
<u>Assistant General Counsel</u>	<u>0</u>	<u>0</u>	<u>44,000.00</u>	<u>44,000.00</u>
	<u>0</u>	<u>0</u>		
Benefits.....			<u>13,200.00</u>	<u>13,200.00</u>
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			<u>57,200.00</u>	<u>57,200.00</u>

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

**2023**

**LB<sup>(1)</sup> 366**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> City of Omaha

Prepared by: <sup>(3)</sup> Jeff Roh Date Prepared: <sup>(4)</sup> 1-20-23 Phone: <sup>(5)</sup> 402-444-5451

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

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>596,366.85</u>	<u>                    </u>	<u>612,007.86</u>	<u>                    </u>
CASH FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
FEDERAL FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
OTHER FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
TOTAL FUNDS	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**Explanation of Estimate:**

There would be an additional four Dream Unit staff that would be needed to fulfill copy requests. There would be one Sergeant needed to redact, review, and supervise. Additional workstations, computers, disk media, disk publisher, and other supplies would also be needed.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
4 DREAM Unit Staff	<u>4</u>	<u>4</u>	<u>364,026.20</u>	<u>374,946.99</u>
1 Sergeant	<u>1</u>	<u>1</u>	<u>157,340.65</u>	<u>162,060.87</u>
Benefits.....			<u>                    </u>	<u>                    </u>
Operating.....			<u>                    </u>	<u>                    </u>
Travel.....			<u>                    </u>	<u>                    </u>
Capital outlay.....			<u>                    </u>	<u>                    </u>
Aid.....			<u>                    </u>	<u>                    </u>
Capital improvements.....			<u>                    </u>	<u>                    </u>
TOTAL.....			<u>521,366.85</u>	<u>537,007.86</u>

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

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

Prepared by: (3) John Meals

Date Prepared 2-27shsh-2023

Phone: (5) 471-6719

	<u>FY 2023-2024</u>		<u>FY 2024-2025</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
<b>GENERAL FUNDS</b>				
<b>CASH FUNDS</b>				
<b>FEDERAL FUNDS</b>				
<b>OTHER FUNDS</b>				
<b>TOTAL FUNDS</b>	See below		See below	

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

**Explanation of Estimate:**

LB 366 amends Nebraska Public Records Law in a number of ways. First, the bill designates certain recordings created by body worn cameras as public record subject to disclosure. Second, the bill differentiates between resident requestors and those who are non-resident requestors. Third, the bill changes what costs are recoverable to the State when producing public records. Finally, the bill imposes other obligations on the State, to include devoting additional staff time to ensure compliance and attesting under oath to cost estimates. This bill would impact the agency by **increasing the amount of staff time by an indeterminable number of hours** to process and respond to records requests, while potentially **reducing costs that could be charged to a requestor**.

The public records request process is almost entirely done via electronic means. In order for the Public Records staff (PR) to evaluate whether a requestor is a resident or non-resident, they would have to immediately ask a requestor for their home address, or at least query in which state the requestor resides. This would **add to staff time in processing requests** and would delay completion of the time and cost estimate, which must be given to the requestor within four business days or lose the opportunity to recover. A delay beyond the four days would eliminate the agency's ability to recover any costs associated with the request.

In addition, this bill **changes what costs are recoverable** when responding to public record requests. First, the bill increases the number of cumulative hours which may not be charged to resident requestors, increasing from four to eight, which the agency cannot recoup from resident requestors. It also perpetuates the exemption of the "first" staff hours. As a practical matter, the Department of Health and Human Services (DHHS) cannot track which hours are the first expended in a public records request.

Second, this bill expands the scope of **employees whose work cannot be included in the hours charged** resident requestors. Currently, the agency cannot charge a requestor for the work of an attorney reviewing records for possible confidential information. The bill would expand that prohibition to "any other person" performing such a review. The program must review public records before they are produced so as to protect against releasing information that is confidential or protected under state and federal law. For certain larger requests, this review can take up many hours of staff time. **Not being able to charge for non-attorney review would result in no recovery for this necessary work.**

Third, this bill **prohibits a service charge or fee** for copies of forms provided to resident requestors where all "meaningful information" has been redacted. But redactions are made where information is confidential or privileged under state or federal law, and without regard to what data is being requested. The agency's time and cost estimate is prepared and communicated to the requestor long before the redaction of responsive documents takes place.

Fourth, the agency would be allowed to **waive or reduce a fee** if doing so would be in the public interest. PR does not know when receiving a request if it is a commercial request, unless expressly stated. As this information could potentially factor into the calculation of the cost estimate or impact the program's decision to charge a requestor at all, PR would need to **ask each requestor for this information** prior to providing an accurate time and cost estimate, still within the already tight four-day deadline.

Finally, the bill proposes that all cost estimates be in writing and attested to by the "custodian of public records." As the custodian, they have no firsthand knowledge of the estimate they receive from the programs, and it is improper to ask them



to attest under oath that the estimate is correct. In addition, this would also **add to staff time as well as the potential for additional resources in providing notarial services to the program.**

**MAJOR OBJECTS OF EXPENDITURE**

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS		2023-2024 EXPENDITURES	2024-2025 EXPENDITURES
	23-24	24-25		
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
<b>TOTAL.....</b>				