

2/20/11

PREPARED BY: Doug Nichols  
DATE PREPARED: March 8, 2011  
PHONE: 471-0052

LB 652

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				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

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

This bill would change provisions relating to theft penalties.

The Nebraska Department of Correctional Services (NDCS) estimates a savings of up to \$3,465,000. Their response follows:

LB652 changes the penalties for theft. The bill increases the dollar amounts needed for each class of theft:

- A. Theft is a class II misdemeanor when the value is \$500 or less (instead of \$200 or less)
- B. Theft is a Class I Misdemeanor when the value is more than \$500 but less than \$1000 (was more than \$200, but less than \$500).
- C. Theft is a Class IV felony when the value is \$1000 or more but not over \$5,000 (was \$500 or more but not over \$1,500)
- D. Theft is a Class III felony when the value is over \$5,000 (was \$1,500).

The bill also provides that in any sentence for theft under this section, if the defendant has no prior criminal conviction, the court shall order probation and restitution if, in the discretion of the court, restitution is a reasonable possibility and is in the interest of justice. It is the intent of the Legislature that, when appropriate and in the interest of justice, any sentence under this section be served under house arrest or at the Department of Correctional Services Work Ethic Camp

The Nebraska Department of Correctional Services (NDCS) had 236 admissions in 2009 and 269 admissions in 2010 (505 over the two previous years) for Class IV or Class III felony theft. The current maximum sentence for both classes of felony is five years. The average minimum sentence for these admissions is 2.46 years and the average maximum sentence is 4.40 years. (This means the individuals will serve between 1.23 and 2.2 years, assuming no loss of good time). Two hundred eighty of these 505 individuals were first-time offenders (55%).

It is unknown how many of these individuals might have been sentenced to probation under these provisions. If the court kept the sentences the same, there would be no savings. If the court had ordered house arrest for all of these individuals, the savings to the Nebraska Department of Correctional Services (NDCS) would be an estimated \$1,937,250 (\$5,625/yr x 280 x 1.23 yrs) if all were paroled when eligible, or up to \$3,465,000 if they served their full sentence.

DCS current inmate population is 4,599 (1/18/2011 Tuesday Count) The FY10 per diem (cost per day of feeding, clothing, housing, medical, etc) for an individual inmate was \$5,625/yr.

The following table summarizes the fiscal impact estimated by the Supreme Court. Their response follows the table:

	FY2011-2012	FY2012-2013	FY2011-2012	FY2012-2013
ITEMS (see notes for details)	Number of Positions		Expenditures	
12 Probation Officers, 6 Support Position	18.00	18.00	842,020	842,020
1 Supervisor, 1 Drug Technician	2.00	2.00	101,265	101,265
Training	-	-	23,400	0
<b>TOTAL</b>	<b>20.00</b>	<b>20.00</b>	<b>966,685</b>	<b>943,285</b>

Notes:

Additional offenders estimated to be placed on probation = 1,510

Caseload of 125 offenders per Probation officer = 12 additional Probation officers

One support position for every 2 officers = 6 Support Position

One supervisor for every 10 officers = 1 Supervisor

1 Drug Technician = many theft convictions have an underlying substance abuse issue that may be treated as a condition of probation

Training = New probation officers and support staff are required to attend training, which is primarily travel-related.

The Supreme Court's response follows:

LB 652 requires courts to order probation with a condition of restitution for all those convicted of theft with no prior criminal conviction. A strict interpretation of LB 652 would increase General Fund expenditures. The estimated fiscal impact above is based on the following information from Supreme Court data systems:

2,223 First time theft convictions in 2010  
 -713 First time theft offenders placed on probation in 2010  
 1,510 Additional offenders that would be placed on probation

Although the caseload of an individual Probation officer can vary based on many factors, including, for example, the risk to re-offend, this estimate is based on a caseload of 125 offenders/officer. It is also based on current Office of Probation Administration practice to provide one support person for every 2 officers and one supervisor for every 10 officers. A Drug Technician was included to recognize that conviction for theft, in many cases, is related to an underlying substance abuse issue that may be treated as a condition of probation. New probation officers and support staff are currently required to attend several weeks of initial training. The cost of training, which is primarily travel-related, is estimated to be \$23,400. All operating expenses are currently paid by each county.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Joe Wilcox	DATE	3/8/11	PHONE	471-2526
COMMENTS					
SUPREME COURT – No basis to dispute agency analysis relative to Probation Services.					
DEPT. OF CORRECTIONS – No basis to dispute agency analysis. The potential cost savings vary with the possible sentences which may be imposed.					

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

LB<sup>(1)</sup> 652 FISCAL NOTE

LEGISLATIVE FISCAL

State Agency OR Political Subdivision Name: <sup>(2)</sup> Supreme Court

Prepared by: <sup>(3)</sup> Eric Asboe

Date Prepared: <sup>(4)</sup> 3/4/11

Phone: <sup>(5)</sup> 1-4138

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2011-2012		FY 2012-2013	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	966,685		943,285	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	966,685		943,285	

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

**Explanation of Estimate:**

LB 652 requires courts to order probation with a condition of restitution for all those convicted of theft with no prior criminal conviction. A strict interpretation of LB 652 would increase General Fund expenditures. The estimated fiscal impact above is based on the following information from Supreme Court data systems:

2,223	First time theft convictions in 2010
-713	First time theft offenders placed on probation in 2010
1,510	Additional offenders that would be placed on probation

Although the caseload of an individual Probation officer can vary based on many factors, including, for example, the risk to re-offend, this estimate is based on a caseload of 125 offenders/officer. It is also based on current Office of Probation Administration practice to provide one support person for every 2 officers and one supervisor for every 10 officers. A Drug Technician was included to recognize that conviction for theft, in many cases, is related to an underlying substance abuse issue that may be treated as a condition of probation. New probation officers and support staff are currently required to attend several weeks of initial training. The cost of training, which is primarily travel-related, is estimated to be \$23,400. All operating expenses are currently paid by each county.

MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2011-2012	2012-2013
	11-12	12-13	EXPENDITURES	EXPENDITURES
12 Probation Officers, 6 Support Position	18	18	842,020	842,020
1 Supervisor, 1 Drug Technician	2	2	101,265	101,265
Benefits.....				
Operating.....				
Travel.....			23,400	
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			966,685	943,285

RECEIVED

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

FEB 23 2011

2011

LB 652 FISCAL NOTE

LEGISLATIVE COUNCIL

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

Prepared by: (3) Kate Morris

Date Prepared: (4) 2/14/2011 Phone: (5) 479-5702

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2011-2012		FY 2012-2013	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	(0- \$3,465,000)	_____	(0- \$3,465,000)	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	(0- \$3,465,000)	_____	(0- \$3,465,000)	_____

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

Explanation of Estimate:

LB652 changes the penalties for theft. The bill increases the dollar amounts needed for each class of theft:

- A. Theft is a class II misdemeanor when the value is \$500 or less (instead of \$200 or less)
- B. Theft is a Class I Misdemeanor when the value is more than \$500 but less than \$1000 (was more than \$200, but less than \$500).
- C. Theft is a Class IV felony when the value is \$1000 or more but not over \$5,000 (was \$500 or more but not over \$1,500)
- D. Theft is a Class III felony when the value is over \$5,000 (was \$1,500).

The bill also provides that in any sentence for theft under this section, if the defendant has no prior criminal conviction, the court shall order probation and restitution if, in the discretion of the court, restitution is a reasonable possibility and is in the interest of justice. It is the intent of the Legislature that, when appropriate and in the interest of justice, any sentence under this section be served under house arrest or at the Department of Correctional Services Work Ethic Camp

The Nebraska Department of Correctional Services (NDCS) had 236 admissions in 2009 and 269 admissions in 2010 (505 over the two previous years) for Class IV or Class III felony theft. The current maximum sentence for both classes of felony is five years. The average minimum sentence for these admissions is 2.46 years and the average maximum sentence is 4.40 years. (This means the individuals will serve between 1.23 and 2.2 years, assuming no loss of good time). Two hundred eighty of these 505 individuals were first-time offenders (55%).

It is unknown how many of these individuals might have been sentenced to probation under these provisions. If the court kept the sentences the same, there would be no savings. If the court had ordered house arrest for all of these individuals, the savings to the Nebraska Department of Correctional Services (NDCS) would be an estimated \$1,937,250 (\$5,625/yr x 280 x 1.23 yrs) if all were paroled when eligible, or up to \$3,465,000 if they served their full sentence.

DCS current inmate population is 4,599 (1/18/2011 Tuesday Count) The FY10 per diem (cost per day of feeding, clothing, housing, medical, etc) for an individual inmate was \$5,625/yr.

**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 .....			_____	_____
Other .....			_____	_____
Capital improvements .....			_____	_____
TOTAL .....			_____	_____