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PREPARED BY: Doug Gibbs
DATE PREPARED: March 03, 2011
PHONE: 402-471-0051

LB 674

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	\$236,374		\$241,101	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$236,374		\$241,101	

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

LB 674 provides duties for the Department of Labor in regards to the electronic monitoring of employees by employers.

The bill defines electronic monitoring as the collection of information conducted on the employer's premises concerning the employee's activities or communications by means other than direct observation. These methods include the use of a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic, or photooptical systems. It does not include the collection of information for security purposes in common areas on the employer's premises that are open for use to the public or in areas where prohibited under state or federal law.

LB 674 requires an employer to give prior notice to employees before engaging in electronic monitoring, except in cases where the employer has reasonable grounds to believe the employee is violating the law, violating the legal rights of another employee, may be creating a hostile work environment and the electronic monitoring may produce evidence of misconduct.

In order to meet the prior notice requirement the employer is to post a notice concerning the type of electronic monitoring which the employer intends to engage in. The notice shall contain language stating that the employee may contact the Department of Labor if the employee believes they are being improperly monitored.

For violations of the notification requirement, if the Labor Commissioner finds, after notice and hearing, that the employer has violated the law, the employer shall be assessed a fine of \$100 for a first offense and a \$500 fine for each second and subsequent offense.

The bill provides that this language does not apply to criminal investigations, although information obtained through electronic monitoring in the course of such an investigation may be used in disciplinary proceedings. Information not obtained in a criminal investigation may only be used in a disciplinary proceeding within ten days of acquisition. Violations of this section of the bill may result in a \$1,000 fine for a first offense and \$5,000 for a second and subsequent offense.

The Department of Labor estimates LB 674 will require one additional Labor Law Specialist and Staff Assistant I in the Labor Standards Division to administer the bill. They also include a half-time attorney to review and prosecute violations. The Department indicates that it is not administratively feasible to hire a half-time attorney and that an outside hearing officer would have to be contracted with to conduct hearings.

There is no basis to disagree with the Department of Labor's estimate of cost.

The University of Nebraska has indicated they believe the requirements of the bill to be overly broad which makes it difficult for them to determine the total impact. The University provides several examples of what they believe are problems with the bill regarding posting of notification, the use of computer management tools to detect improper usage, and use of the telephone system. The University estimates the cost to be significant although they do not provide an amount.

We disagree with the University estimate and believe their interpretation of the bill too broad; for example, their concerns regarding computer use and telephone monitoring seem to go beyond usage by employees to usage by students and the public, individuals who would not be subject to the requirements of LB 674. Monitoring of their systems for improper or illegal usage by non-employees is beyond the scope of LB 674 and not subject to the bill's requirements.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Gary Bush	2/10/11	PHONE 471-2526
<p>COMMENTS</p> <p>DEPT. OF LABOR – Agency's estimate of impact appears to be reasonable.</p> <p>UNIVERSITY OF NEBRASKA -- No basis to disagree with the estimate of impact.</p>			

FISCAL NOTE LB674

Nebraska Department of Labor

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LEGISLATIVE BUREAU

Prepared By	Ward, Debbie Kay
Date Prepared	2/9/2011
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	236374		241101	
Cash Funds				
Federal Funds				
Other Funds				
Total Funds	236374		241101	

Explanation of Estimate:

LB 674 provides that the Department of Labor will monitor, enforce, prosecute violations and conduct hearings in regard to the prohibitions on electronic monitoring of employees. The Department of Labor currently received a few hundred calls on this issue each year which it declines to take up due to a lack of statutory authority. It is expected that the passage of the bill will increase the number of complaints. Complaints will need to be taken, investigated, followed and hearings conducted when violations are believed to have occurred. It is estimated that the caseload will require one additional Labor Law Specialist and Staff Assistant I in the Labor Standards division to administer the LB 164 provisions. In addition, it is estimated that it will take a half time attorney to review and prosecute possible and actual violations. It is not administratively feasible to hire an experienced attorney at less than one-half time. An outside hearing officer would have to be contracted to conduct the hearings. All costs would be paid from the General Fund.

Major Objects of Expenditure

Position Title	Number of Positions		FY 2011-2012	FY 2012-2013
	FY 2011-2012	FY 2012-2013	Expenditures	Expenditures
Legal	1.5	1.5	84114	85796
Staff Asst. I	1.0	1.0	33105	33767
		Benefits	41027	41847
		Operating	78128	79691
		Travel		
		Capital outlay		
		Aid		
		Capital improvements		
		Total	236374	241101

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LB⁽¹⁾ 674 FISCAL NOTE

LEGISLATIVE FISCAL

State Agency OR Political Subdivision Name: University of Nebraska
(2)

Prepared by: (3) Michael Justus Date Prepared: (4) February 4, 2011 Phone: (5) 472-2191

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				
TOTAL FUNDS				

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

Explanation of Estimate:

The definition of Electronic monitoring provided in the bill "the collection of information on an employer's premises or property owned by the employer concerning employees' activities or communications by any means other than direct observation..." is overly broad and makes it difficult to determine the total impact. For example, the University uses swipe cards for access to most of its facilities, some to common areas (late night dorm entry), and some to private offices or labs which would not. Having to post signs identifying specific instances would be problematic and would essentially require posting for the entire system. Likewise, computer management tools, currently used to determine system efficiency and proper operation, also include sufficient detail to identify inappropriate usage by users, thus requiring notification of anyone using most University computer systems or networks. Does "conspicuous space" then include an electronic notification? How do we notify a telephone user that we are collecting the number they dial?

We are uncertain of the cost because it is unclear the level of disclosure required. We believe the impact would be significant.

MAJOR OBJECTS OF EXPENDITURE

Personal Services:

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