

1/26/12

PREPARED BY: Kathy Tenopir
DATE PREPARED: January 26, 2012
PHONE: 471-0058

LB 973

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2012-13		FY 2013-14	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS	\$88,781		\$3,000	
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$88,781		\$3,000	

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

LB973 relates to the following retirement plans: MUD; first class city police officers; first class city fire fighters; county employees; judges; county, municipality, or other political subdivision deferred compensation; school employees; Omaha school employees, State Patrol; state employees; state employee deferred compensation.

LB973 provides an exception to the prohibition on the attachment of public pension benefits. Pursuant to the provisions of LB973, the public employee or beneficiary's benefits may be attached to satisfy civil damages if the employee or beneficiary has been convicted of or pleads no contest to a felony and a civil judgment has been entered. The court may exempt amounts necessary for the support of the member or beneficiaries. If the conviction is reversed all benefits paid shall be forfeited to the member.

The Nebraska Public Employee Retirement System (NPERS) estimates one-time programming costs of \$85,781 since the computer system is not currently programmed to allow the type of payments required by LB973. The Office of the Chief Information Officer (OCIO) supplied the estimate. For the defined benefit plans, NPERS is indicating that an actuarial analysis would be necessary to determine the monthly benefit offset to the pension payment equal to the value of the judgment. NPERS estimate includes \$3,000 for annual actuarial calculation costs. There is no basis to disagree with NPERS estimate.

It would appear that the other public retirement systems included in LB973 would experience similar costs.

The Omaha School Employees' Retirement System (OSERS) indicates the fiscal impact cannot be determined. OSERS also notes some technical concerns.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Gary Bush	DATE	1/20/12	PHONE	471-2526
COMMENTS					
NEBRASKA PUBLIC EMPLOYEE RETIREMENT SYSTEM: No basis to disagree with agency's estimate. OMAHA SCHOOL EMPLOYEES' RETIREMENT SYSTEM: No basis to disagree with estimate of impact.					

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LEGISLATIVE FISCAL

2012

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

LB⁽¹⁾ 973 FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Nebraska Public Employee Retirement Systems

Prepared by: ⁽³⁾ Randy Gerke Date Prepared: ⁽⁴⁾ 1/20/2012 Phone: ⁽⁵⁾ 402-471-9495

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2012-2013</u>		<u>FY 2013-2014</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	\$88,781	_____	\$3,000	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	\$88,781	_____	\$3,000	_____

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

Explanation of Estimate:

LB 973 is difficult to estimate. As it is written, it is difficult to determine who or by what method civil damage payments will be made. This situation will be different for each Defined Benefit plan, the Defined Contribution plans and the Cash Balance plans. The method will also be different depending if the member is active, inactive or receiving a benefit. It is also difficult to estimate how often this may occur. Our estimates include programming charges of \$85,781. (OCIO Programmer @ \$76.25/hour for 1125 hours) The plans currently do not allow for civil damages to be paid from retirement accounts (non-retired members) or retirement benefits (retired members taking an annuity). Our computer system is not programmed to allow these payments. The computer system is also not programmed to make direct benefit payments to multiple parties. Please note that the hours to program this equal 1 programmer approximately 6 months full time programming. Depending on how this is designed, there may also be additional E1 costs?

The defined benefit plan benefits are calculated using service credit and three highest year salaries. The bill would award damages as a fixed dollar amount from an account balance for those members who are not retired. This would require actuarial factors to determine the monthly benefit offset to the pension payment equal to the value of the damages paid. Provided this does not happen often, it would be cost effective to allow the actuary to calculate this. The estimate includes \$3,000 for annual actuarial calculation costs. It is difficult to know how often this will occur in the defined benefit plans, however we are including an estimate of this happening 6 times per year @ \$500 per occurrence. This would be an annual cost. The actuary has said there would not be any actuarial cost to the plans using this calculation.

The record keeper has stated that for payments from the defined contribution plans that would come from active or deferred member accounts there would be minimal costs. The Cash Balance plans will need to be changed in statute to allow for multiple payments in this situation.

MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2012-2013 EXPENDITURES</u>	<u>2013-2014 EXPENDITURES</u>
	<u>12-13</u>	<u>13-14</u>		
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	\$88,781	\$3,000
Travel.....	_____	_____	_____	_____

Capital outlay.....
Aid.....
Capital improvements.....
TOTAL.....

_____	_____
_____	_____
_____	_____
_____	_____
<u>\$88,781</u>	<u>\$3,000</u>

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LEGISLATIVE FISCAL

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LB⁽¹⁾ 973 FISCAL NOTE

State Agency OR Political Subdivision Name: (2) Omaha School Employees' Retirement System

Prepared by: (3) Michael Smith Date Prepared: (4) 1-19-2012 Phone: (5) 402-557-2105

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2012-2013		FY 2013-2014	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See comments		See comments	
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:
Fiscal impact is uncertain based on the comments below.

MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2012-2013	2013-2014
	12-13	13-14	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

A distribution from the Retirement System will be a taxable distribution under the federal tax laws regardless of who the distribution is paid to, and Omaha School Employees' Retirement System (OSERS), as the payer of the distribution will be responsible for withholding and depositing appropriate federal and state income taxes. There is nothing in the proposed bill language which acknowledges or approves the withholding of taxes from the payment that is ordered by the court. This could create direct liability to OSERS - either to the recipient (for any taxes withheld and paid by OSERS without authorization by the statute or the court order) or to the IRS or State of Nebraska for any taxes that were not withheld from such payments.

Given the myriad circumstances that might be affected by this new assignment of benefits, OSERS needs the same protections that are in place for assignments under a Qualified Domestic Relations Order to assure that the Retirement System's liability to the member and any spouse or beneficiary is not increased by such court-ordered payments from the Retirement System. (Neb. Rev. Stat. 79-9,104(3): (3) A member's interest and benefits under the retirement system shall be reduced, either at termination of employment, retirement, disability, or death, by the actuarial value of the benefit assigned or paid to the member's spouse, former spouse, or other dependents under a qualified domestic relations order, as determined by the plan actuary on the basis of the actuarial assumptions then recommended by the actuary pursuant to section 79-984.)

The bill language now states: "If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member." This language leaves unstated who is to return such amount,

which leaves open the possibility the Retirement System will be required to restore any such annuity or other benefit.

The payment of such annuities or benefits prior to the member's retirement per the court order could be viewed as violating the qualification rule under Internal Revenue Code 401(a) that prohibits in-service distributions of benefits from a qualified pension plan. The payment being made to satisfy the member's indebtedness under the award of civil damages could be considered a distribution to the member and possibly violate this rule. Tax disqualification of the Retirement System would have a significant fiscal impact on the Plan.