

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates)				
	<b>FY 2013-14</b>		<b>FY 2014-15</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	See Below		See Below	
CASH FUNDS				
FEDERAL FUNDS		See Below		See Below
OTHER FUNDS		See Below		See Below
TOTAL FUNDS	See Below	See Below	See Below	See Below

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

LB 248 amends the Employment Security Law, regarding seasonal employers and unemployment benefits.

Section 48-602 is amended to add the definition of a “seasonal employer” and means an employer that, because of climatic conditions or the seasonal nature of a product or service, customarily operates all or a portion of their business only during a regularly recurring period of less than 26 weeks for all such periods in a calendar year. The seasonal operation must be identifiable as a functionally distinct operation.

Section 48-604, dealing with the meaning of employment under the Act, is amended to include services performed for a seasonal employer only if benefits are allowed pursuant to Section 4 of the bill. Section 4 states that benefits may be paid on the basis of seasonal employment only if the claim is filed within the operating period of seasonal employment. If a claim is filed outside of the operating period of seasonal employment, unemployment benefits may only be paid based on nonseasonal wages. A seasonal employer is to account for wages paid to seasonal workers and report the same to the Department of Labor.

The bill further provides that an employer shall file for a determination by the Commissioner of Labor as to whether the employer is a seasonal employer, the normal seasonal period or periods of the employer, and if the seasonal designation applies to all or a portion of the employer’s business. Until such a determination is made, no employer or employees shall be considered seasonal. If a seasonal determination is made, it becomes effective the first day of the calendar quarter commencing after the date of the determination.

LB 248 also says that if a seasonal employer operates its business or its seasonal operation during a period of 26 weeks or more, than the employer shall lose its seasonal status.

An employee who performs services for the business outside of the designated seasonal period shall not be considered a seasonal employee. A seasonal employee, who loses such status because of employment outside the designated season for the same employer and is not employed thereafter by the employer between any two following designated seasons, may be reemployed by the employer and again be designated as a seasonal employee.

The Nebraska Department of Labor (NDOL) has indicated that LB 248 will place Nebraska’s Unemployment Insurance program out of conformity with U.S. Dept. of Labor requirements. The consequences of being out of conformity include, but are not limited to, loss of the administration funds that support the Nebraska Unemployment Insurance Program. This loss is estimated at \$15,063,537 each fiscal year.

In addition, Federal Unemployment Tax Act (FUTA) tax credits for Nebraska employers would also be lost which would increase their tax liability by \$300 million, paid directly to the federal government. At the present time, employers are eligible for a 5.4% credit against the 6.0% FUTA tax charged. If found to be out of conformity, Nebraska risks losing the eligibility for the tax credit which would then force all employers to pay the federal government at the 6.0% rate. As a result of the lost credit the Unemployment Trust Fund would be reduced by \$15,735,168 each fiscal year.

NDOL also estimates an expenditure of General Funds of \$39.5 million in order to build a custom tracking system for employment and wages for seasonal employees that would allow data to be imported, reviewed, edited, and transferred to other programs as necessary. The reason this is necessary is the federal/state cooperative statistical program that tracks industry employment and wages, the Quarterly Census of Employment and Wages (QCEW), is funded by the Bureau of Labor Statistics (BLS) and includes only those businesses and their employees covered under unemployment insurance laws. The changes outlined in LB 248 would mean seasonal employees would no longer be covered by unemployment insurance and as a result, not included in the QCEW program. BLS software, paperwork, and procedures could not be used to track employment and wages for these seasonal employers. However,

because employees may be eligible if laid off during a seasonal period, employment and wages would need to be tracked in case an employee were deemed to be covered by unemployment insurance. Because BLS (federal) funds would not be allowable to track seasonal employers, procedures would need to be developed specifically for tracking seasonal employment and wages. Because federal funds could not be utilized to build this system, it will require a General Fund appropriation.

NDOL also indicates that QCEW data serves as the universe for many other labor market information programs and surveys. Changing the definitions of what constitutes a covered employer or employee by introducing the seasonal component will have a trickledown effect on these other programs. Adjustments must be made to incorporate seasonal information into some datasets while excluding it from others. The impacts of the change are difficult to judge until more detailed determinations are made, but it is likely that the unemployment rates, industry and occupational wages, and layoff data will be affected. These programs all produce data that is used at the local, state, and federal level for funding allocation, program performance, and legislation; any changes that would cause shifts in the data will need to be reviewed on a case-by-case basis.

Based on language in LB 248 referring to weeks of employment occurring after October 1, 2013, the NDOL believes they will need the tracking system described above in place within one year. Such a system would normally require two and one-half years to construct but the development timeframe if LB 248 is enacted would be compressed to one year. Therefore, the NDOL estimates they will require an additional 273.2 FTE to do all the work necessary to build the new custom tracking system and comply with the provisions of LB 248.

The fiscal impact breakdown provided by the NDOL is as follows:

For FY2013-14:

\$39,546,202 General Fund expenditure - to build the custom tracking system  
 \$21,565,503 –Salary  
 \$ 6,506,300 –Benefits  
 \$ 8,675,067 –Operating  
 \$ 2,677,166 –Capital Outlay  
 (\$15,063,537) Federal Fund revenue – loss of Unemployment Insurance administrative funds due to non-conformity  
 (\$15,735,168) Other Funds – reduction of the Unemployment Trust Fund (state’s fund in federal account)

Total Expenditure = \$39,546,202 General Fund  
 Total Revenue = (\$30,798,705) Federal Fund and Unemployment Trust Fund

For FY2014-15:

\$1,756,547 General Fund expenditure – new custom tracking system  
 \$ 977,429 –Salary  
 \$ 293,228 –Benefits  
 \$ 485,890 –Operating  
 (\$15,063,537) Federal Fund revenue – loss of Unemployment Insurance administrative funds due to non-conformity  
 (\$15,735,705) Other Funds – reduction of the Unemployment Trust Fund (state’s fund in federal account)

Total Expenditure = \$ 1,756,547 General Fund  
 Total Revenue = (\$ 30,798,705) Federal Fund and Unemployment Trust Fund

Based on the explanation provided by the Nebraska Department of Labor, we have no basis to disagree with their estimate of fiscal impact and cost.

ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES		
LB: 248	AM:	AGENCY/POLT. SUB: Dept. of Labor
REVIEWED BY: Gary Bush	DATE: January 31, 2013	PHONE: 471-4161
COMMENTS: The agency estimate for FY2014 appears to be the cost to re-write three different programs to implement the bill by October 1, 2013. Adding so many short-term positions and accomplishing the intent of the bill in the timeframe provided is not possible. The estimate for FY2015 appears to be the on-going costs after the programs have been re-written and appears to be reasonable. Agree with agency’s estimate that employer taxes for Unemployment Insurance would likely increase.		

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**2013**

**LB<sup>(1)</sup> 248 FISCAL NOTE**

Nebraska Department of Labor

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

Prepared by: <sup>(3)</sup> Debbie Kay Ward

Date Prepared: <sup>(4)</sup> 1/28/2013

Phone: <sup>(5)</sup> 402-471-2492

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

	<u>FY 2013-14</u>		<u>FY 2014-15</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$39,546,202		\$1,585,484	
CASH FUNDS				
FEDERAL FUNDS		(15,063,537)		(15,063,537)
OTHER FUNDS		(15,735,168)		(15,735,168)
<b>TOTAL FUNDS</b>	<u>\$39,546,202</u>	<u>(30,798,705)</u>	<u>\$1,585,484</u>	<u>(30,798,705)</u>

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

**Explanation of Estimate:** LB 248 will place Nebraska's Unemployment Insurance program out of conformity. The consequences include, but are not limited to, a loss of the administrative funds that support the administration of the Nebraska Unemployment Insurance Program, estimated at \$15 million for 2012. Federal Unemployment Tax Act (FUTA) tax credits for Nebraska employers would also be lost which would increase their tax liability by \$300 million paid directly to the federal government. Presently employers are eligible for a 5.4% credit against the 6.0% FUTA tax charged. If found to be out of conformity the state risks losing the eligibility for tax credit which will force all employers to pay the federal government at the rate of 6.0%.

The Quarterly Census of Employment and Wages (QCEW) is a federal/state cooperative statistical program that tracks industry employment and wages. Funding is provided by the Bureau of Labor Statistics to administer the QCEW program, which includes only those businesses and their employees covered under unemployment insurance laws. LB248 identifies seasonal employers and stipulates the circumstances under which these employers are covered by unemployment insurance. Changes outlined in this bill would mean seasonal employers would no longer be covered by unemployment insurance and thus not included in the QCEW program. Bureau of Labor Statistics software, paperwork, and procedures could not be used to track employment and wages for these seasonal employers. However, because employees may be eligible if laid off during a seasonal period, employment and wages would need to be tracked in case an employee were deemed to be covered by unemployment insurance.

To facilitate the tracking of employment and wages for seasonal employers, a custom system would need to be built that would allow data to be imported, reviewed and edited, and transferred to other programs as necessary. Staff would be required to handle the administration functions for this dataset that are currently being done by the QCEW unit for covered employment. Because BLS funds would not be allowable to track seasonal employers procedures would need to be developed specifically for tracking seasonal employment and wages.

Quarterly Census of Employment and Wage data serve as the universe for many other labor market information programs and surveys. Changing the definitions of what constitutes a covered employer or employee by introducing the seasonal component will have a trickledown effect on these other programs. Adjustments must be made to incorporate seasonal information into some datasets while others must exclude it. The impacts of this change would be difficult to judge until more detailed determinations are made, but it is likely that the unemployment rates, industry and occupational wages, and layoff data would all be affected. These programs all produce data that is used at the local, state, and federal level for funding allocation, program performance, and legislation; any changes that would cause shifts in the data would need to be reviewed on a case-by-case basis.

**MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2013-14</u>	<u>2014-15</u>
	<u>13-14</u>	<u>14-15</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Business Systems Analyst Coordinator	1		\$173,191	
Business Systems Analyst	1		\$125,595	
Tax Administrator	0.2		\$42,514	
Tax Field Manager	0.3		\$121,413	

Tax Manager	0.3		\$52,263	
Tax Field Supervisor	0.3		\$82,835	
UI Program Supervisor	0.3		\$93,905	
Accountant III	0.8		\$97,418	
Accountant II	0.8		\$99,476	
Accountant I - Collection	1.0		\$68,327	
Accountant I - Status	0.6		\$20,064	
Accountant I - Field	0.3		\$22,453	
UI Field Representative	1.7		\$156,213	
Benefits Administrator	0.3		\$5,593	
Program Analyst	0.5		\$5,095	
UI Program Supervisor	3.0		\$53,742	
UI Team Supervisor	3.0		\$32,744	
Program Resource Specialist	2.0		\$20,079	
Adjudicator	21.0		\$180,980	
Claims Specialist	6.0		\$45,194	
Administrative Services Director	1.0		\$43,720	
IT Manager	1.0		\$45,999	
IT Supervisor	19.0		\$2,127,510	
IT Database Analyst Lead	9.0		\$1,293,962	
IT Database Developer Lead	27.0		\$2,094,218	
IT Database Analyst Sr.	31.5		\$3,961,440	
IT Application Developer Sr.	106.5		\$6,840,820	
Business Analyst	12.5		\$1,113,500	
Project Manager	11.0		\$749,320	
IT Infrastructure Support Analyst Sr.	7.5		\$471,600	
Research Administrator	0.2		\$51,074	
Research Supervisor	0.2		\$36,627	
Research Analyst II	0.5		\$69,651	
Research Analyst I	1.4		\$134,974	
Staff Assistant I	0.5		\$54,565	
Claims Specialist			\$17,480	\$17,480
Adjudicator			\$43,509	\$43,509
ALJ			\$74,452	\$74,452
Accountant II			\$535,787	\$535,787
Accountant I			\$64,435	\$64,435
UI Program Supervisor			\$241,766	\$241,766
<b>Salaries Subtotal</b>			<b>\$21,565,503</b>	<b>\$977,429</b>
<b>Benefits</b> .....			<b>\$6,506,300</b>	<b>\$293,228</b>
<b>Operating</b> .....			<b>\$8,675,067</b>	<b>\$485,890</b>
<b>Travel</b> .....				
<b>Capital outlay</b> .....			<b>\$2,677,166</b>	
<b>Aid</b> .....				
<b>Capital improvements</b> .....				
<b>TOTAL</b> .....			<b>\$39,424,036</b>	<b>\$1,756,547</b>