

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2016-17		FY 2017-18	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	87,244		43,623	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS	99,400			
TOTAL FUNDS	186,644		43,623	

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

LB 867 changes provisions related to the Administrative Procedure Act.

Section 3 changes the definition of “rule or regulation” in section 84-901. In addition, a definition for “guidance document” is provided. A guidance document lacks the force of law but provides information or direction of general application to the public.

Section 4 requires agencies to make guidance documents available at one public location and on the agency’s web site.

Section 5 provides for emergency situations that an agency determines necessitate the adoption, amendment, or repeal of a rule or regulation.

Section 17 requires the Department of Correctional Services to adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act regarding any procedures or policies used by the department for any situation where an inmate, under the authority of the department, is outside a correctional facility operated by the department unless the safety and security of a correctional institution would be placed at imminent or substantial risk by such publication.

The Nebraska Department of Correctional Services (NDOC) estimates the need to hire one additional FTE (Administrative Assistant III) in fiscal year 2016-17. This position is reduced to half-time in fiscal year 2017-18. Based on the bill’s provisions, the DOC would not be in compliance with rule and regulation standards in regard to any of the “Administrative Regulations” which are currently in force. In order to become compliant, the DOC would need to review all existing administrative policies and revise, redraft, and categorize them according to the bill’s requirements. The estimate for such staffing appears to be reasonable.

The Department of Administrative Services estimates one-time costs totaling \$99,400 to address the bill’s provisions. In order to comply with the bill, DAS would need to create a single-point on the agency website where agency rules and regulations, as well as guidance documents can be viewed by the public. Due to the amount of documents, the need to establish a keyword index, and the structure of DAS as a single agency with multiple divisions, the programming required to become compliant is greater than most agencies will encounter. DAS estimates 700 hours of development time at a cost of \$99,400. There is no basis to disagree with this estimate.

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

2016

LB⁽¹⁾ 867

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Department of Administrative Services (DAS)

Prepared by: ⁽³⁾ Bo Botelho Date Prepared: ⁽⁴⁾ 1/14/2016 Phone: ⁽⁵⁾ 402-471-0972

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2016-17		FY 2017-18	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
REVOLVING FUNDS	99,400	_____	_____	_____
TOTAL FUNDS	<u>99,400</u>	_____	_____	_____

Explanation of Estimate:

LB867 redefines Rules and Regulations and creates a new class of document referred to as a "guidance document". It further requires an Agency to make guidance documents and Rules and Regulations available at one public location and on the Agency's website. It is unclear as to whether the public location and the website could be one in the same, or two distinct locations. The Agency must also publish on its website an index summarizing the subject matter of ALL rules and regulations and guidance documents. The Agency is also to provide an electronic copy of the index to the Legislative Council by December 31st each year. Further the Agency shall include a notice, as described in the bill, with each guidance document and allows any person to request in writing to revise or repeal a guidance document or convert a guidance document into a rule or regulation. The agency has 60 days to respond, and to either revise or repeal said document, initiate a proceeding to consider revising or repealing, initiate the rule promulgation process or deny the request. All decisions made in regard to the request will be made available in one public location and on the Agency website. The bill also includes language regarding an emergency adoption or amending of a rule or regulation and language specific to Department of Corrections.

The bill as written would require the Department of Administrative Services (DAS) to construct a single point on its agency website where all agency rules and regulations as well as "guidance documents" may be located and viewed by the public. It would appear that existing DAS documents would fall under the new definition of "guidance document." DAS would also have to create the process for reviewing and responding to public inquiry regarding any identified "guidance document." This response process will require additional staff time, however as it cannot be ascertained at this time as to whether any such requests would occur or the number of existing documents that would be classified as "guidance documents" the actual impact of this requirement is unknown.

As DAS is comprised of multiple divisions, the bill would require DAS to develop a single access point on its main website for the public to access and view the required documents and notices, as well as submit review requests. This would require both website development and programming.

The estimate provided to DAS is as follows: Guidance documents would be imported into ECM along with any keyword indices DAS can provide/supply, documents would be accessible and searchable via a public portal/website. The estimate includes 700 hours of development time, at \$142/hour, or a total of \$99,400.00.

As this bill impacts multiple divisions within DAS the onetime costs would require additional revolving appropriation and would be paid by the Director's Office with existing funds.

If the bill requires a second location, it is assumed this would be a physical location, DAS will create a paper file to be located at its offices in Lincoln NE.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2016-17</u>	<u>2017-18</u>
	<u>16-17</u>	<u>17-18</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....				
Operating.....			99,400	
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			99,400	

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

2016

LB⁽¹⁾ 867

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾

Nebraska Department of Correctional Services

Prepared by: ⁽³⁾ Brendon Polt

Date Prepared: ⁽⁴⁾ 1/26/2016

Phone: ⁽⁵⁾ (402) 479-5702

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2016-17</u>		<u>FY 2017-18</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>\$87,244</u>	<u> </u>	<u>\$43,623</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>\$87,244</u>	<u> </u>	<u>\$43,623</u>	<u> </u>

Explanation of Estimate: **Indeterminate fiscal impact.**

LB867 would require state agencies to undertake a thorough review of all existing administrative policies and revise, redraft, and categorize them according to the definitions provided in Section 3 of LB867, which amends the Administrative Procedures Act.

The fiscal impact to the Department of Correctional Services (DCS) would be contingent to a large degree upon the amount of time it would be provided to come into compliance with the provisions of the bill. To comply, DCS would be required to comprehensively review its Administrative Regulations (ARs), Operational Memorandums (OMs), Post Orders, and Policy Directives. It would identify and then redraft any necessary changes for consistency with the definitions in LB867, redrafting them into Rules and Regulations, Guidance Documents, and Internal Procedures. It would then promulgate changes that require doing so and perform other related administrative tasks.

The cost involved in undertaking this process would depend upon the timeframe in which the Department is expected to come into compliance, which the bill does not specify. DCS currently requires that each of its ARs be annually reviewed by the head of each program, unit, Division, or facility to which the AR primarily applies, that originated the AR, or is otherwise assigned its review and update. If DCS were provided a full year to make the regulatory changes called for under LB867, significant legal and other temporary costs could be averted by modifying existing review protocols to produce the results sought by the bill.

The Department projects that to comply with LB867, it would need to devote one new administrative assistant III with experience with the State's Administrative Procedures Act to coordinate and administer related necessary Department activities and correspondence. This fiscal impact estimate also includes a provision for operating costs. It is the intent of the Department that the FTE shown in this estimate would be a temporary employee, hired through the Department of Administrative Services Specialized Office Services (SOS) program. This estimate includes funding for services of the temporary AAIII for all of FY16-17 and one-half of FY17-18. The FY16-17 salary is calculated as the FY15-16 minimum permanent rate increased by the negotiated 2.4% state employee salary increase. It is also intended that the FY17-18 rate would include the negotiated salary increase.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2016-17</u>	<u>2017-18</u>
	<u>16-17</u>	<u>17-18</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Admin. Assist. III (plus salary increase intended FY17-18)	1	0.5	\$42,978	\$21,489
Benefits.....			\$12,893	\$6,447
Operating.....			\$31,374	\$15,687
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL			\$87,244	\$43,623

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

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

Prepared by: (3) Pat Weber

Date Prepared:(4) 1-12-16

Phone: (5) 471-6351

	<u>FY 2016-2017</u>		<u>FY 2017-2018</u>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$0	\$0	\$0	\$0

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

Explanation of Estimate:

There is no Fiscal Impact to the Department of Health and Human Services.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:	POSITION TITLE	NUMBER OF POSITIONS		2016-2017	2017-2018
		16-17	17--18	EXPENDITURES	EXPENDITURES
Benefits.....					
Operating.....					
Travel.....					
Capital Outlay.....					
Aid.....					
Capital Improvements.....					
TOTAL.....				\$0	\$0

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

2016

LB⁽¹⁾ 867

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾

Nebraska Secretary of State

Prepared by: ⁽³⁾ Joyce Woofter

Date Prepared: ⁽⁴⁾ 1-19-16

Phone: ⁽⁵⁾ 402-471-2384

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2016-17</u>		<u>FY 2017-18</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	(540)	(250)	(540)	(250)
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB867 removes the requirement that the Secretary of State distribute copies of all modifications and amendments to agency rules and regulations to each county law library and to the Nebraska Publications Clearinghouse. This would save a minimal amount of both printing and postage costs.

LB867 also repeals provisions to maintain a subscriber list to receive notices of public hearings on adoptions, amendments and repeals of agency rules and regulations, and assess the costs to the subscriber. This will cause a minimal loss of revenue in the Administration Cash Fund.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2016-17 EXPENDITURES</u>	<u>2017-18 EXPENDITURES</u>
	<u>16-17</u>	<u>17-18</u>		
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	(540)	(540)
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	(540)	(540)

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

2016

LB⁽¹⁾ 867

FISCAL NOTE

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

Prepared by: ⁽³⁾ Michael Justus Date Prepared: ⁽⁴⁾ Jan 12, 2016 Phone: ⁽⁵⁾ 402-472-2191

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2016-17</u>		<u>FY 2017-18</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:

LB 867 deals with changes to the Administrative Procedures Act and does not apply to the University, therefore there is no fiscal impact.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2016-17</u>	<u>2017-18</u>
	<u>16-17</u>	<u>17-18</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

State Agency Estimate

State Agency Name: Department of Revenue		Date Due LFA: 2/2/2016	
Approved by: Tony Fulton		Date Prepared: 2/1/2016	
		Phone: 471-5896	
	FY 2016-2017	FY 2017-2018	FY 2018-2019
	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>
		<u>Revenue</u>	<u>Expenditures</u>
General Funds		\$ 0	
Cash Funds			
Federal Funds			
Other Funds			
Total Funds		\$ 0	

LB 867 amends several provisions of the regulation-making process in the Nebraska Administrative Procedures Act (APA). Most of the changes are of general application and make the Nebraska APA more flexible, modern, and definite. Changes in definitions clarify which types of documents require full compliance with the Nebraska APA.

Sections 1, 16, and 17 of the bill apply specifically to the Department of Corrections.

Section 3 amends § 84-901 to change the definition of “rule or regulation” (subject to the Nebraska APA) to mean any standard of general application including an amendment or repeal of a rule or regulations. It would exclude internal procedural documents, guidance documents, and forms and instructions. “Guidance documents” are defined as any statement developed by an agency which provides information or direction to the public but lacks the force of law. A guidance document is binding on an agency until amended, but does not create any legal duty, nor is it treated as authority.

Section 4 declares that guidance documents are to be available at a public location and on the agency’s website. Each agency is also to maintain an index of all guidance documents on its website. The index is to be electronically delivered to the Executive Board of the Legislative Council by December 31 each year. Guidance documents are to include a notice stating that the guidance document is advisory only but is binding on the agency. Any person may request in writing that a guidance document be repealed or changed into a regulation. The agency is to respond to the request within 60 days.

Section 5 provides an emergency rulemaking procedure to replace the current process for waiving the 30-day notice requirement. The justifications for emergency rulemaking include imminent peril to public health or safety, preventing substantial financial loss to the state, or occurrence of an unforeseen event. Emergency regulations are exempt from the notice and hearing requirements and are valid for 90 days, renewable for another 90 days.

Section 6 amends § 84-902 to allow agencies to submit amended regulations as entire chapters or sections rather than pages, and authorizes electronic filing.

Section 8 amends § 84-906.03 to eliminate the requirement that the Secretary of State distribute regulations to various outlets, replacing those outlets with a requirement to publish regulations on the Secretary of State website.

Section 9 amends § 84-906.04 to strike the requirement that the Secretary of State keep a record of who submitted written comments on the proposed regulations.

Section 10 amends § 84-907 to exempt regulation changes that merely alter the style or form of the regulation, correct a technical error, or alter a citation or reference from the Nebraska APA requirements. Also exempt security policies and procedures which should not be made public.

