

Revised to reflect all amendments adopted to date.

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

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates)				
	<b>FY 2016-17</b>		<b>FY 2017-18</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	43,623		87,244	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS	99,400			
<b>TOTAL FUNDS</b>	<b>143,023</b>		<b>87,244</b>	

**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 necessitates 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.

As amended by AM1976, the bill’s operative date is specified as January 1, 2017. By delaying the operative date, the costs incurred by the Department of Correctional Services are reduced in the fiscal year 2016-17 but increased in fiscal year 2017-18. The time and scope of work performed is not reduced, simply the date upon which work will initiate.

As amended the Nebraska Department of Correctional Services (NDOC) estimates the need to hire one-half additional FTE (Administrative Assistant III) in fiscal year 2016-17. This position is increased to a full-time FTE 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. Regardless of the amended bill’s operative date, this work will be undertaken in fiscal year 2016-17. There is no basis to disagree with this estimate.

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

2016

LB<sup>(1)</sup> 867

FISCAL NOTE

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

Nebraska Department of Correctional Services

Prepared by: <sup>(3)</sup> Jeff Beaty

Date Prepared: <sup>(4)</sup> 3/21/2016

Phone: <sup>(5)</sup> (402) 479-5767

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>\$43,623</u>	<u>                    </u>	<u>\$87,244</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>\$43,623</u>	<u>                    </u>	<u>\$87,244</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.

**Amendment 1976**

Am1976 delays the operative date of LB 867 until January 1, 2017. The impact of this amendment would be to delay the hiring of the temporary employee required to comply with LB 867 by 6 months. The temporary

employee would start in January 1, 2017 instead of July 1, 2016 and continue through the entirety of FY 2017-18 rather than terminating on January 1, 2018.

**Amendment 2380**

There is no fiscal impact to the Department of Correctional Services from the adoption of AM 2380.

**Amendment 2548**

There is no fiscal impact to the Department of Correctional Services from the adoption of AM 2548.

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**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)	.5	1	\$21,489	\$42,978
Benefits.....			\$6,447	\$12,893
Operating.....			\$15,687	\$31,374
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			\$43,623	\$87,244

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**2016**

**LB<sup>(1)</sup> 867 AM1976 AM2380**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Department of Administrative Services (DAS)

Prepared by: <sup>(3)</sup> Bo Botelho Date Prepared: <sup>(4)</sup> 3/10/2016 Phone: <sup>(5)</sup> 402-471-0972

**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	_____	_____	_____	_____
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 and provide an electronic copy of the index to the Legislative Council by December 31<sup>st</sup> each year. Further, the Agency shall include a notice, as described in the bill, with each guidance document and allow 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 will have 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 specific to the Department of Corrections and language regarding an emergency adoption or amending of a rule or regulation. AM1976 modifies the factors for justification of an emergency situation to specifically limit financial loss to unforeseen loss of federal funding for an agency program as opposed to the broader language of substantial financial loss to the State. Such amendment also requires the agency that adopts, amends or repeals a rule or regulation to file such rule or regulation with the Secretary of State and publish same on the agency’s website, as well as setting an operative date for such act of January 1, 2017. AM2380 clarifies that an emergency adoption, amendment or repeal or a rule under the bill shall be exempt from the review of the Attorney General required under section 84-905.01.

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 EXPENDITURES</u>	<u>2017-18 EXPENDITURES</u>
	<u>16-17</u>	<u>17-18</u>		
Benefits.....				
Operating.....			99,400	
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
<b>TOTAL.....</b>			<b>99,400</b>	

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**2016**

**LB<sup>(1)</sup> 867, AM1976 and AM2380**

**FISCAL NOTE**

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

Nebraska Public Service Commission

Prepared by: <sup>(3)</sup> Suzanne Hinzman

Date Prepared: <sup>(4)</sup> 3/9/2016

Phone: <sup>(5)</sup> 402-471-0240

**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	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Explanation of Estimate:

This bill has no fiscal impact for the Public Service Commission.

**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.....	_____	_____	_____	_____

