

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

Updated for amendments adopted through March 7, 2018.

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2018-19		FY 2019-20	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See Below			
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

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

This bill, as amended, would require that certain prosecution costs be paid by the state.

AM1946 defines a correctional institution incident as an incident in which a crime or crimes are committed by an inmate or inmates confined in a state correctional institution. The costs of prosecution includes the costs of defense for indigent defendants, including attorney and expert witness fees. Threshold amount is defined as a property tax levy of 2 ½ cents per \$100 of valuation.

AM1946 states that if a county’s costs of prosecution relating to a single correctional institution incident exceeds the threshold amount for such county, such costs of prosecution in excess of the threshold amount shall be paid by the state. Any amount to be paid by the state shall be paid as provided in the State Miscellaneous Claims Act. The affected county shall file a claim for such amount in the manner provided in such act. The bill, as amended, will apply to any correctional institution incident occurring on or after May 1, 2015.

The following table shows how the threshold amount varies depending on the valuation of the county where a state correctional institution is located:

COUNTY	THRESHOLD AMOUNT	STATE CORRECTIONAL INSTITUTION
Douglas County	\$10.6 million	Community Corrections Center - Omaha, Nebraska Correctional Youth Facility, Omaha Correctional Center
Johnson County	\$228,000	Tecumseh State Correctional Institution
Lancaster County	\$6.4 million	Community Corrections Center - Lincoln, Diagnostic & Evaluation Center, Lincoln Correctional Center, Nebraska State Penitentiary
Red Willow County	\$324,000	Work Ethic Camp
York County	\$864,000	Nebraska Correctional Center for Women

The “County” and “Threshold Amount” in the above-table were provided by Senator Watermeier’s office.

DAS Risk Management states that there is a potential for a large General Fund impact to the state, but such impact is unknown. They also note that all claims under the bill would need to be approved by the Legislature in order to obtain a General Fund appropriation for payment of such claims.

The examples given by DAS Risk Management of the Richardson County prosecutions of Michael Ryan and John Lotter do not fall within the confines of this bill because such prosecutions were not the result of a *correctional institution incident*, as defined by this bill.

AM2285 amends provisions similar to LB883 into this bill. This amendment states that the Attorney General may request the appointment of independent counsel “if a state official or employee is suspected of committing a crime or if the Attorney General has an actual or perceived personal or ethical conflict in the prosecution of an alleged crime”. The amendment allows the Attorney General to request the appointment of independent counsel to appear for and investigate and prosecute certain actions. The independent counsel

shall be independent of and not act under the authority or direction of the Attorney General. The independent counsel may employ such assistance and incur such expenses as necessary in any such action. Such expenses shall be paid from the Attorney General's budget.

In the fiscal note to LB883, the Attorney General estimated adding one Senior Assistant Attorney General with salary and benefit costs of \$134,839 in FY19 and \$137,142 in FY20.

In the fiscal note to LB883, the following comments were made by the Legislative Fiscal Office (LFO) fiscal analyst regarding the Attorney General's estimated costs and this fiscal note adopts those comments:

The likelihood of such a situation arising every year is small. Even if such a situation arises, the Attorney General is not required to request independent counsel. Depending on the situation, independent counsel may not be necessary. Thus, the estimate of \$137,142 being added to the agency's base budget appears unreasonable.

However, if/when such a case arises that independent counsel is needed, provision for addressing the associated expenditure needs to be made. The Attorney General correctly identifies that, depending on the scope of the case, the costs could easily be far greater than the estimate they provided. There is simply no way to accurately identify the potential costs.

See the fiscal note to LB883 for additional information not included in this fiscal note.

This bill, as amended, has the potential for a fiscal impact to the state, but that amount, if any, is not able to be determined at this time.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 861	AM: 1946	AGENCY/POLT. SUB: Nebraska Department of Administrative Services – Risk Management Division (065)
REVIEWED BY: Joe Wilcox	DATE: 03/14/2018	PHONE: (402) 471-4178
COMMENTS: No basis to dispute the Nebraska Department of Administrative Services – Risk Management Division estimate of potential but Indeterminate Impact to the Agency and the State from AM 1946 to LB 861.		

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2018

LB⁽¹⁾ 861 AM 1946

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Department of Administrative Services (DAS) – Risk Management Division

Prepared by: ⁽³⁾ Shereece Dendy-Sanders Date Prepared: ⁽⁴⁾ 3/8/2018 Phone: ⁽⁵⁾ 402-471-4436

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2018-19</u>		<u>FY 2019-20</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 861 AM 1946 seeks to allow the State to pay the portion of the cost of prosecuting inmates that commit crimes while incarcerated that exceed .00025% of the property tax revenue of the County. Such costs are proposed to be paid under the Miscellaneous Claims Act. The bill, as amended, applies to any correctional institute incident retroactive to May 1, 2015.

The Miscellaneous Claims Act is designed to pay claims against the State of Nebraska and not the claims of political subdivisions. Further, the Miscellaneous Claims Act is not funded to pay claims. Instead, the Act requires the state agency involved to pay the costs of the claim directly. When miscellaneous claims are approved, the Risk Management directs the agency involved to make the payment to the claimant. If the agency does not have the funding to pay the claim, a request is made to the Legislature for payment of the claim.

The proposed legislation creates two problems. First, in order for Risk Management to direct payment, a state agency must have been a party to the claim. Criminal prosecution of inmates is not the statutory or financial responsibility of a state agency. So, there would be no agency to which to direct payment. Secondly, there is no fund from which Risk Management could pay such claims.

Such claims are currently outside the Miscellaneous Claims Act, so there is no estimate of how many claims have been or would be filed in the future. If this bill were passed, all claims would need to be approved by the Legislature to obtain a General Fund appropriation for payment

There is the potential for a large General Fund fiscal impact to the State, however such impact is unknown. As an example, Richardson County spent \$1.35 million on the Michael Ryan (1986) and John Lotter (1995) prosecutions. Any expenses over the Richardson County property tax revenue limit for those respective years would have been the responsibility of the State.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2018-19 EXPENDITURES</u>	<u>2019-20 EXPENDITURES</u>
	<u>18-19</u>	<u>19-20</u>		
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____