

PREPARED BY: Doug Nichols
 DATE PREPARED: May 12, 2021
 PHONE: 402-471-0052

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

Updated for amendments adopted through May 11, 2021.

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2021-22		FY 2022-23	
	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 by AM1268, would change immunity for intentional torts under the Political Subdivisions Tort Claims Act and the State Tort Claims Act.

The Attorney General (AG) estimates that the bill, as amended by AM1268, will increase cases litigated and therefore, they will require an additional assistant attorney general plus related costs of \$157,300 in FY22 and \$159,028 in FY23.

LFO has been informed that this bill attempts to return the law back to the way it was before a September 2020 Supreme Court decision. Biennial Budget Requests are submitted by September 15, 2020. Therefore, the AG had the staff for the law the way it was prior to the Court decision. Since this bill attempts to return the law to the way it was before the Court decision, the AG should not require any additional staff.

Lancaster County has contacted the Fiscal Office and stated that AM1268 does not affect their previous analysis, in which they estimated one claim per year at a cost of \$250,000 per year. This amount is the county's self-insured retention amount per claim, including defense costs. Because this bill expands claims allowed under the Political Subdivisions Tort Claims Act, it is not unreasonable to assume that Lancaster County could incur additional costs. There is no basis to disagree with this estimate.

The following responses were received to the introduced copy of this bill:

DAS Risk Management states that this bill will create a fiscal impact, but the amount is unknown.

The Cities of Imperial and Lincoln estimate no fiscal impact from this bill.

The City of Omaha estimates significant but undetermined costs.

Douglas County estimates significant unanticipated legal costs from the loss of immunity.

If responses are received to AM1268 from any of the above entities, this fiscal note may be updated.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 54	AM: 1268	AGENCY/POLT. SUB: Attorney General	
REVIEWED BY: Neil Sullivan		DATE: 5/11/2021	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the Attorney General assessment of fiscal impact from LB 54 as amended by AM 1268.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 54	AM:	AGENCY/POLT. SUB: Lancaster County
REVIEWED BY: Neil Sullivan	DATE: 1/19/2021	PHONE: (402) 471-4179
COMMENTS: The Lancaster County assessment of fiscal impact from LB 54 appears reasonable.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 54	AM:	AGENCY/POLT. SUB: Department of Administrative Services
REVIEWED BY: Neil Sullivan	DATE: 1/19/2021	PHONE: (402) 471-4179
COMMENTS: The Department of Administrative Services assessment of fiscal impact from LB 54 appears reasonable.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 54	AM:	AGENCY/POLT. SUB: City of Imperial
REVIEWED BY: Neil Sullivan	DATE: 2/5/2021	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the City of Imperial assessment of no fiscal impact from LB 54.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 54	AM:	AGENCY/POLT. SUB: City of Lincoln
REVIEWED BY: Jacob Leaver	DATE: 02/03/2021	PHONE: (402) 471-4173
COMMENTS: No basis to disagree with the City of Lincoln's estimate of no fiscal impact to the city as a result of LB 54.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 54	AM:	AGENCY/POLT. SUB: City of Omaha
REVIEWED BY: Neil Sullivan	DATE: 2/19/2021	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the City of Omaha assessment of indeterminate fiscal impact from LB 54.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 54	AM:	AGENCY/POLT. SUB: Douglas County
REVIEWED BY: Neil Sullivan	DATE: 2/12/2021	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the Douglas County assessment of indeterminate fiscal impact from LB 54.		

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

2021

LB⁽¹⁾ 54, AM1268

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Attorney General

Prepared by: ⁽³⁾ Josh Shasserre Date Prepared: ⁽⁴⁾ 5-11-21 Phone: ⁽⁵⁾ 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>157,300.</u>	<u> </u>	<u>159,028.</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>157,300.</u>	<u> </u>	<u>159,028.</u>	<u> </u>

Explanation of Estimate:

LB 54 will increase the number of cases litigated through trial under the State Tort Claims Act. This increase in caseload and time spent on each case will necessitate the addition of at least one assistant attorney general and require additional litigation costs.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>22-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Assistant Attorney General	<u>1.0</u>	<u>1.0</u>	<u>75,000.</u>	<u>76,500.</u>
Benefits.....			<u>32,300.</u>	<u>32,528.</u>
Operating.....			<u>50,000.</u>	<u>50,000.</u>
Travel.....			<u> </u>	<u> </u>
Capital outlay.....			<u> </u>	<u> </u>
Aid.....			<u> </u>	<u> </u>
Capital improvements.....			<u> </u>	<u> </u>
TOTAL.....			<u>157,300.</u>	<u>159,028.</u>

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2021

LB⁽¹⁾ 54

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ County of Lancaster

Prepared by: ⁽³⁾ David A. Derbin, Chief Administrative Officer Date Prepared: ⁽⁴⁾ 1/8/2021 Phone: ⁽⁵⁾ 402-441-7447

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>\$250,000</u>	<u>0</u>	<u>\$250,000</u>	<u>0</u>
CASH FUNDS	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
FEDERAL FUNDS	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
OTHER FUNDS	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL FUNDS	<u>\$250,000</u>	<u>0</u>	<u>\$250,000</u>	<u>0</u>

Explanation of Estimate: LB54 amends Section 13-910(7) by excepting the following claims from the sovereign immunity of political subdivisions: claims arising out of an act that is the direct result of the negligent failure of a political subdivision or an employee of a political subdivision to protect a person to whom the political subdivision or employee owes a duty of care. To the extent LB54 removes sovereign immunity under existing Section 13-910(7) for such claims, the cap on liability that may accrue to the political subdivision is one million dollars for any person for any number of claims arising out of a single occurrence; and five million dollars for all claims arising out of a single occurrence. *See* Neb. Rev. Stat. § 13-926. If the County's excess liability insurance carrier happens to respond to these claims, then the financial impact per claim would be up to the limit of the County's \$250,000 self-insured retention amount per claim, including defense costs. Due to the novelty of these potential claims and the likelihood that immunity has prevented such claims from ever being filed in the first instance, we conservatively anticipate one such claim per year and would anticipate potential expenditures of up to \$250,000 in payouts and defense costs per claim per year.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22 EXPENDITURES</u>	<u>2022-23 EXPENDITURES</u>
	<u>21-22</u>	<u>22-23</u>		
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

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

2021

LB⁽¹⁾ 54

FISCAL NOTE

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

Prepared by: ⁽³⁾ Allen D. Simpson Date Prepared: ⁽⁴⁾ 1/11/2020 Phone: ⁽⁵⁾ (402)471-4436

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
REVOLVING FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB 54 proposes to allow tort claims against the state that that are the direct result of the negligent failure of a state agency or an employee of the state to protect a person to whom the agency or employee owes a duty of care. These claims are currently excluded. As a result, there is the potential for an increase in the number of tort claims filed each year and an increase in the amount of staff time needed to process such claims.

Over the course of the past year, there have been several claims filed under the State Tort Claims Act based upon similar allegations. As the statute is currently written, these claims were denied. The 2017 tort claim in *Moser v. State*, 307 Neb. 18, 948 N.W.2d 194 (2020), alone was for \$10,000,000. By allowing this type of claim pursuant to the State Tort Claims Act, it is foreseeable that there will be additional claims and payments against the State. These claims would be paid by available agency funds or General Funds.

The bill will create a fiscal impact; however, such impact is unknown.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>21-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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2021

LB⁽¹⁾ 54

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ City of Imperial

Prepared by: ⁽³⁾ Jo Leyland Date Prepared: ⁽⁴⁾ 01-11-2021 Phone: ⁽⁵⁾ 308-882-4368

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</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:

No Fiscal Impact

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>22-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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

2021

LB⁽¹⁾ 54

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ City of Lincoln

Prepared by: ⁽³⁾ James Van Bruggen Date Prepared: ⁽⁴⁾ 1/22/21 Phone: ⁽⁵⁾ 402-441-8301

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</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:

No fiscal impact.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>22-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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

2021

LB⁽¹⁾ 54

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ City of Omaha

Prepared by: ⁽³⁾ Tyler Leimer Date Prepared: ⁽⁴⁾ 2/19/2021 Phone: ⁽⁵⁾ (402) 444-4514

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</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 54 would expand the legal exposure to the City of Omaha by revising the Political Subdivision Tort Claims Act. The City of Omaha may experience significant unanticipated legal costs from the loss of a political subdivision's immunity from suit for negligence claims arising out of intentional torts committed by non-employees engaging in wrongful acts. The fiscal impact is hard to quantify however would likely be negative and not in the City of Omaha's favor.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>22-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	=====	=====	=====	=====

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

2021

LB54⁽¹⁾ *Change immunity for intentional torts under the Political Subdivisions Tort Claims Act and the State Tort Claims Act*

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ DOUGLAS COUNTY, NEBRASKA

Prepared by: ⁽³⁾ Marcos San Martin, County Administration Date Prepared: ⁽⁴⁾ 2/12/2021 Phone: ⁽⁵⁾ 402.444.5116

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2021-22</u>		<u>FY 2022-23</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

Explanation of Estimate:

NEGATIVE (DETRIMENTAL) FISCAL IMPACT TO DOUGLAS COUNTY

The provisions of LB54 expand the legal exposure to counties by revising the Political Subdivision Tort Claims Act (PSTCA). As a consequence of LB54, counties may experience additional significant unanticipated legal costs stemming from the loss of a political subdivision's immunity from suit for negligence claims arising out of intentional ('bad-actor') torts committed by non-employees engaging / acting in independent, unjustified and wrongful acts.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22 EXPENDITURES</u>	<u>2022-23 EXPENDITURES</u>
	<u>21-22</u>	<u>22-23</u>		
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____