

PREPARED BY: Scott Danigole
 DATE PREPARED: February 06, 2023
 PHONE: 402-471-0055

LB 43

Revision: 00

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2023-24		FY 2024-25	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$134,120		\$140,826	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$134,120		\$140,826	

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

LB 43 prohibits a hearing officer or judge hearing a contested case under the Administrative Procedure Act to defer to the state agency's interpretation of such statute or regulation. The hearing officer or judge shall interpret the statute or regulation de novo on the record.

In actions brought by or against state agencies, after applying all customary tools of interpretation of a statute or regulation, Section 3 requires the court or hearing officer to resolve any remaining doubt in favor of a reasonable interpretation which limits agency power and maximized individual liberty.

The provisions of LB 43 become part of the Occupational Board Reform Act.

The Nebraska Department of Labor (NDOL) estimates the need for an additional attorney position to address anticipated workload issues arising from LB 43. Under the bill, increased discretion is provided hearing officers. NDOL will no longer be able to reply upon precedent from previous decisions. Additionally, NDOL anticipates a greater number of appeals to the District Court, which could increase costs to counties where the District Court is located and costs to the Supreme court for judicial education.

There is no basis to disagree with NDOL's estimate.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 43	AM:	AGENCY/POLT. SUB: Nebraska Department of Labor (023)	
REVIEWED BY: Joe Wilcox	DATE: 02/06/2023	PHONE: (402) 471-4178	
COMMENTS: No basis to disagree with the Nebraska Department of Labor estimate of Potential Fiscal Impact to the Agency from LB 43.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 43	AM:	AGENCY/POLT. SUB: Nebraska Department of Health and Human Services (025)	
REVIEWED BY: Joe Wilcox	DATE: 02/06/2023	PHONE: (402) 471-4178	
COMMENTS: No basis to disagree with the Nebraska Department of Health and Human Services (DHHS) estimate of No immediate, but Potential future Fiscal Impact to the Agency from LB 43.			

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

2023

LB⁽¹⁾ 43

FISCAL NOTE

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

Prepared by: ⁽³⁾ Rea Easton Date Prepared: ⁽⁴⁾ 02/3/2023 Phone: ⁽⁵⁾ 402-416-6809

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>134,120</u>	<u> </u>	<u>140,826</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>134,120</u>	<u> </u>	<u>140,826</u>	<u> </u>

Explanation of Estimate: LB43 amends the standard of deference applied to administrative hearings. It provides significant discretion to the hearing officer in interpreting regulation. The Nebraska Department of Labor (NDOL) conducts administrative hearings regarding unemployment insurance benefits and tax, contractor registration, employee classification, and wage payment classification. The majority of the appeals conducted are done by hearing officers employed by NDOL. Unemployment appeals are purposely informal, as most parties are not represented by counsel. The appeals are fact finding appeals. Once appeals are decided, all parties have appellant rights to the appropriate Nebraska District Court and then the Nebraska Court of Appeals and the Nebraska Supreme Court. The Nebraska Commissioner of Labor is a party to all unemployment benefit and tax appeals. During State Fiscal Year 21-22 NDOL received approximately 7,500 appeals. 14 appeals were filed to District Court.

NDOL attorneys represent the Commissioner of Labor in appeals filed pursuant to District Court under the Administrative Procedure Act. Because of the increased discretion provided to hearing officers, NDOL anticipates inconsistent results. NDOL will not be able to rely upon precedent from previous decisions from its hearing officers and anticipates an increase in appeals to the District Court. Additionally, as drafted, Agency Guidance documents will no longer be binding interpretations for hearing officers. NDOL will have to promulgate additional regulations for consistent application of law. NDOL will need an additional Attorney III to handle the increased workload.

The additional costs resulting from the bill will be supported from the General Fund.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Attorney III	<u>1.0</u>	<u>1.0</u>	<u>87,404</u>	<u>91,774</u>
Benefits.....			<u>28,218</u>	<u>29,629</u>
Operating.....			<u>18,498</u>	<u>19,423</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>134,120</u>	<u>140,826</u>

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

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

Prepared by: (3) John Meals

Date Prepared 2-6-2023

Phone: (5) 471-6719

	<u>FY 2023-2024</u>		<u>FY 2024-2025</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:

LB43 requires Hearing Officers and Judges to interpret statutes and regulations to limit agency power and maximize individual liberty. LB43 will require additional research and analysis for Attorney III positions in the Department of Health and Human Services (DHHS) Hearing Office.

The Hearing Office projects a minimum average of 30 minutes extra research and analysis per order with an estimated average of 4 draft orders per day.

With six Hearing Officers, this would amount to an additional 60 hours of work per week. This would not result in an additional cost to the agency, rather it would create delays for hearings. Should the amount of research and number of hearings increase to a level that creates issues with regulatory requirements, an additional FTE Attorney III Hearing Officer would be needed.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:	NUMBER OF POSITIONS		2023-2024 EXPENDITURES	2024-2025 EXPENDITURES
	POSITION TITLE	23-24		
Benefits.....			\$0	\$0
Operating.....			\$0	\$0
Travel.....			\$0	\$0
Capital Outlay.....			\$0	\$0
Aid.....			\$0	\$0
Capital Improvements.....			\$0	\$0
TOTAL.....			\$0	\$0