PREPARED BY: Doug Gibbs
DATE PREPARED: January 28, 2016
PHONE: 402-471-0051

# LB 850

**Revision: 00**

# 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 | $12,498,015 | | $6,795,761 | |
| CASH FUNDS | | | | |
| FEDERAL FUNDS | | | | |
| OTHER FUNDS | | | | |
| TOTAL FUNDS | $12,498,015 | | $6,795,761 | |

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

LB 850 creates the Paid Family Medical Leave Insurance Act.

The basic purpose of LB 850 is to provide a covered individual (as defined by the bill) with paid family medical leave for: care for a new child after birth, adoption, or foster care placement; leave during the covered individual's serious illness or pregnancy; care for a family member who has a serious health condition; care for a covered servicemember who is next of kin; and for qualified exigency leave (as defined in the bill). A covered individual shall be entitled to take this leave beginning April 1, 2019.

The bill also creates the Paid Family Medical Leave Insurance Fund which is to be administered by the Commissioner of Labor, and from which the family medical leave benefits are to be paid. The fund is to consist of contributions collected by covered employers as payroll deductions from covered individuals and remitted to the State Treasurer for credit to the Fund. While the language of this section is unclear as to whether a tax is actually imposed, it appears that this is a mandatory payroll tax on each covered individual. The amount to be collected is to be determined by the Commissioner of Labor but is not to exceed one-half of one percent of a covered individual's wages in any 12-month period.

The maximum amount of paid family medical leave that may be taken varies between 12 weeks and 8 weeks during any calendar year dependent on the qualified reason for the leave.

"Covered individual" is defined as an individual who is employed by a covered employer or is self-employed and elects coverage.

"Covered employer" means an employer subject to the Employment Security Law.

The bill also provides definitions for "covered servicemember ," "designated person," "family member," "health care provider," "next of kin," "military member," qualified exigency leave," "serious health condition," and others.

Benefits amounts are determined by the covered individual's yearly earnings as a percentage of Nebraska's annual median wage as calculated by the Department of Labor as follows:

- For a covered individual whose yearly earnings are not more than 20% of Nebraska's annual median wage, an amount equal to 95% of their average weekly wage for the two most recent calendar quarters OR if they haven't been employed that long, 95% of their weekly wage at the time they take paid family leave;
- For a covered individual whose yearly earnings are more than 20% but not more than 30% of the annual median wage, an amount equal to 90% of their average weekly wage for the two most calendar quarters OR if they haven't been employed that long, 90% of their weekly wage at the time they take paid family leave;
- For a covered individual whose yearly earnings are more than 30% but not more than 50% of the annual median wage, an amount equal to 85% of their average weekly wage for the two most calendar quarters OR if they haven't been employed that long, 85% of their weekly wage at the time they take paid family leave;
- For a covered individual whose yearly earnings are more than 50% of the annual median wage, an amount equal to 66% of their average weekly wage for the two most calendar quarters OR if they haven't been employed that long, 66% of their weekly wage at the time they take paid family leave;

The amount of family medical leave benefits to be paid to a covered individual in any week shall not exceed 66% of Nebraska's annual median wage as calculated by the Department of Labor.

It is somewhat unclear if benefits are to be paid on a weekly basis or in a lump sum, although we assume weekly payments.

A covered individual may not receive family medical leave benefits and unemployment compensation at the same time.

LB 850 also provides for the claims process; situations where intermittent leave may be taken; prohibitions against retaliatory action by an employer; requires the employer to maintain health benefits for the covered employee during the leave period; requires the employer to restore the individual to their position prior to the leave or a position with equivalent pay and benefits; notification requirements; reasons for disqualification; and reporting requirements.

The Act becomes operative on July 1, 2018.

The Department of Labor will be required to determine eligibility for the program, collect the taxes, administer the program, and issue a report.

<u>FISCAL IMPACT:</u>

The Department has indicated that to properly administer and enforce the program they will need to develop a new IT system to administer and fund the program. While in some ways this new program may align with existing Dept. of Labor programs it is a new program that will require new staff and new technology to administer.

The fiscal impact from the Department of Labor assumes a General Fund appropriation to cover start-up costs, so that the Department can be ready to administer the Act when it becomes operative on July 1, 2018 and begin the pay out of benefits on April 1, 2019. Prior to those dates the Department will need to establish the Fund to which employee contributions will be deposited, establish a method of payment, create the forms that employers are required to post, establish procedures for employers to remit the taxes due, and hire staff to administer the program. There is no provision in LB 850 to pay these costs from the Fund created by the bill. As such, the Department's fiscal note assumes an ongoing General Fund appropriation for each year for program administration.

The Department of Labor has indicated costs of $12,498,015 for the first year and $6,794,359 for the second year. These costs include hardware and software development, sums for contracted systems development, and staffing.

While the bill's operative date is July 1, 2018, it is obvious that considerable preparation time and effort will be necessary in order for the Department of Labor to fulfill its responsibilities under LB 850 and that the Department receives an appropriation this biennium to carry out its obligations under the Act. Therefore, we have no basis to disagree with the Department of Labor's estimate of fiscal impact and cost.

<u>NOTE:</u> We should also note that the Department of Labor estimates that, based on the experience of other states with a similar leave program, the revenue and commensurate expenditure of the Paid Family Medical Leave Insurance Fund will be approximately $73,936,594 each year. As noted above the first payouts from the Fund will not take place until April of 2019.

The Department of Administrative Services has indicated they will incur preparation costs of $1,402 in FY17-18.

We have no basis to disagree with the DAS estimate of cost.

DAS further indicated that beginning in FY2018-19 they will require an additional 0.5 FTE Personnel Officer to manage employee notification requirements and compensation processing requirements at an estimate cost of $46,576. Additional costs of $2,500 could be incurred for processing of withholding taxes and benefits payment through the State's E1 Accounts Payable system and could result in a statewide accounting assessment in FY18-19 and beyond.

The University of Nebraska estimates a cost of $385,000 in FY2018-19 and $345,000 in FY2019-20 to implement the provisions of LB 850,

We have no basis to disagree with the University's estimate of fiscal impact.

| ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES | | |
|---|---|---|
| LB: 850 | AM: | AGENCY/POLT. SUB: University of Nebraska |
| REVIEWED BY: Robin Kilgore | DATE: 1-28-16 | PHONE: 471-4180 |
| COMMENTS: No basis to disagree with agency estimate of fiscal impact. | | |

| ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES | | |
|---|---|---|
| LB: 850 | AM: | AGENCY/POLT. SUB: Dept. of Adm Services - Personnel/Human Resources |
| REVIEWED BY: Robin Kilgore | DATE: 1-21-16 | PHONE: 471-4180 |
| COMMENTS: No basis to disagree with agency estimate of fiscal impact. | | |

| ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES | | |
|---|---|---|
| LB: 850 | AM: | AGENCY/POLT. SUB: Department of Labor |
| REVIEWED BY: Robin Kilgore | DATE: 1-20-16 | PHONE: 471-4180 |
| COMMENTS: No basis to disagree with agency estimate of fiscal impact. | | |

Please complete **ALL** (5) blanks in the first three lines. **2016**

**LB**(1) 850 **FISCAL NOTE**

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

**Prepared by:** (3) Kim Schreiner **Date Prepared:** (4) 01-20-2016 **Phone:** (5) 402-471-2492

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

| | FY 2016-17 | | FY 2017-18 | |
|---|---|---|---|---|
| | **EXPENDITURES** | **REVENUE** | **EXPENDITURES** | **REVENUE** |
| **GENERAL FUNDS** | 12,498,015 | | 6,794,359 | |
| **CASH FUNDS** | | | | |
| **FEDERAL FUNDS** | | | | |
| **OTHER FUNDS** | | | | |
| **TOTAL FUNDS** | 12,498,015 | | 6,794,359 | |

**Explanation of Estimate:** LB850 would create the Paid Family Medical Leave Act (PFMLA) and have the Commissioner (NDOL) enforce the Act. LB850 does not specifically provide for enforcement beyond the payment of benefits and collection of taxes, but if a greater role is contemplated additional staffing will be required. NDOL will have two roles as both a covered employer and the agency administering the Act. In general, LB850 provides for the payment of FMLA benefits when an employee is on leave for the care of a new child, a serious health condition, providing care for a family member who has a serious health condition, providing car for a covered service member, and for qualifying exigency leave. NDOL will determine eligibility, collect the taxes, and administer the PFMLA program, including the issuance of an annual report. It is anticipated based on other states that NDOL will pay out approximately $73,936,594.00 each year in PFMLA benefits beginning in April of Fiscal Year 2018-19. NDOL will need to develop the Paid Family Medical Leave Fund and a new IT system to administer and fund the program. While it is envisioned this program may align in some ways with existing NDOL programs, it is a new program that will require new staff and new technology to administer. The Commissioner will administer the PFMLA fund and determine the Employee Contribution rate for contributions to the fund on an annual basis. NDOL will also determine and collect overpayments.

The fiscal note assumes a General Fund appropriation to cover start-up costs, so that NDOL can be ready to administer the act on July 1, 2018 and pay out benefits by April 1, 2019. Prior to these dates, NDOL will need to establish the Fund to which employee contributions will be deposited, establish a method for payment, create the forms that employers are required to post, establish procedures for employers to remit the contribution due, and hire staff to administer the program. A previous bill, LB955 2014, provided for administrative costs of the program to be paid from the fund. There is no such provision in LB850. As such, the fiscal note assumes an ongoing general fund appropriation for each year for program administration. Current costs for administration are difficult to determine without more detail on the program. For example, it is unclear whether benefits are to be paid as a lump sum or on a weekly basis.

Costs associated with developing the system include $1,213,616 related to hardware and software and $13,000,000 for contracted system development, which will total $9,000,000 in year one and $4,000,000 in year two. This will also require the addition of 9.0 IT FTE's with a total associated cost of $971,703 and 20.5 FTE's for the Administration of the program totaling $1,534,784. Total base cost per subsequent year for I.T will be $995,024 and $1,467,359 for Administration.

## BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

**Personal Services:**

| POSITION TITLE | NUMBER OF POSITIONS 16-17 | 17-18 | 2016-17 EXPENDITURES | 2017-18 EXPENDITURES |
|---|---|---|---|---|
| Data Base Analyst/Lead | 1.0 | 1.0 | 78,394 | 80,275 |
| IT Applications Developer | 1.0 | 1.0 | 55,974 | 57,318 |
| Infrastructure Support Technician | 1.0 | 1.0 | 39,668 | 40,620 |
| IT Application Developer | 4.0 | 4.0 | 223,897 | 229,271 |
| IT Supervisor | 2.0 | 2.0 | 172,472 | 176,612 |
| Labor Law Specialist | 2.0 | 2.0 | 82,794 | 84,781 |
| Field Representative | 2.0 | 2.0 | 79,953 | 81,872 |
| Adjudicator | 10.0 | 10.0 | 345,942 | 354,244 |
| Program Supervisor | 1.0 | 1.0 | 49,972 | 51,172 |
| Benefits Administrator | 1.0 | 1.0 | 66,741 | 68,343 |
| Accountant II | .5 | .5 | 20,731 | 21,228 |
| Accountant III | 1.0 | 1.0 | 47,913 | 49,062 |
| Attorney II | 1.0 | 1.0 | 56,062 | 57,407 |
| Staff Assistant I | 2.0 | 2.0 | 63,488 | 65,012 |
| **Total Salaries** | 29.5 | 29.5 | 1,384,001 | 1,417,217 |
| **Benefits**.......................................... | | | 516,135 | 528,522 |
| **Operating**........................................ | | | 9,789,639 | 4,800,620 |
| **Travel**............................................. | | | 48,000 | 48,000 |
| **Capital outlay**................................. | | | 760,240 | |
| **Aid**................................................. | | | | |
| **Capital improvements**....................... | | | | |
| **TOTAL**.......................................... | | | 12,498,015 | 6,794,359 |

**Please complete ALL (5) blanks in the first three lines.** **2016**

**LB**(1) 850 REVISED **FISCAL NOTE**

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

**Prepared by:** (3) Michael Justus **Date Prepared:** (4) January 28, 2016 **Phone:** (5) 402-472-2191

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

| | FY 2016-17 | | FY 2017-18 | |
|---|---|---|---|---|
| | **EXPENDITURES** | **REVENUE** | **EXPENDITURES** | **REVENUE** |
| **GENERAL FUNDS** | | | | |
| **CASH FUNDS** | | | | |
| **FEDERAL FUNDS** | | | | |
| **OTHER FUNDS** | | | | |
| **TOTAL FUNDS** | | | | |

**Explanation of Estimate:**

The bill establishes the State Paid Family Medical Leave Insurance Act (State Plan). The University will need HR staff to track the employee eligibility (officially determined by the State), coordinate pay plans, establish and maintain designee records, track FLSA (rolling calendar) and State Plan (calendar year) leave records and to coordinate with the departments. We do not currently anticipate changing the HR system to track this leave, but that would be an additional cost, if necessary. The University anticipates a fiscal impact of $385,000 in FY 2018-2019 and a fiscal impact of $345,000 in FY 2019-2020.

The operative date of the law is July 1, 2018. The fiscal impact on the two years included in this fiscal note would be zero.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

| POSITION TITLE | NUMBER OF POSITIONS 16-17 | 17-18 | 2016-17 EXPENDITURES | 2017-18 EXPENDITURES |
|---|---|---|---|---|
| | | | | |
| | | | | |
| **Benefits**……………………………...…… | | | | |
| **Operating**…………………………...………. | | | | |
| **Travel**……………………………………….. | | | | |
| **Capital outlay**…………………...………….. | | | | |
| **Aid**…………………………………………... | | | | |
| **Capital improvements**……………………... | | | | |
| **TOTAL**………………………………..... | | | | |

**Please complete ALL (5) blanks in the first three lines.** **2016**

# LB[1] 850 FISCAL NOTE

**State Agency OR Political Subdivision Name:** (2) Department of Administrative Services (DAS) – State Personnel/Human Resources (HR), State Accounting

**Prepared by:** (3) Josh Stafursky, Jerry Broz, Ann Martinez **Date Prepared:** (4) January 11, 2016 **Phone:** (5) 402-471-4165, 402-471-0600, 402-471-4135

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

| | FY 2016-17 | | FY 2017-18 | |
|---|---|---|---|---|
| | **EXPENDITURES** | **REVENUE** | **EXPENDITURES** | **REVENUE** |
| **GENERAL FUNDS** | | | | |
| **CASH FUNDS** | | | | |
| **FEDERAL FUNDS** | | | | |
| **REVOLVING FUNDS** | | | 1,402 | |
| **TOTAL FUNDS** | | | 1,402 | |

**Explanation of Estimate:**

LB850 creates a paid family leave program for employees in the State of Nebraska. Employers subject to the Employment Security Law are subject to LB850. The operative date for the Act is July 1, 2018.

LB850 calls for a payroll deduction to fund the Paid Family Medical Leave Insurance Fund, which would be administered by the Department of Labor. The deduction would come from employee wages, not from employer funds. However, the bill does require that each employee be provided written notice of his or her rights under the Act at hiring and annually thereafter. Notifications must also be made when an individual requests leave under the Act or when the employer acquires knowledge that an employee's leave may qualify for benefits under the Act. Agencies would also be required to respond to requests from the Department of Labor (DOL) for compensation data in each instance that an employed individual files a claim.

There would be one-time costs for Department of Administrative Services (DAS) State Accounting Division in FY17-18 in preparation of the operative date of the bill which is July 1, 2018 of approximately $1,402.

State Accounting would need to review, plan and implement the requirements of the bill. This would include approximately eight (8) hours of staff time to create a new fund; the new employee payroll deduction code in the E1 system; and a Journal Entry template that would be used to regularly remit the withheld funds to the new fund.

DOL could also require additional reporting or detail supporting the contributions that are submitted. This could result in additional one-time costs of an estimated eight (8) hours of development time at the current contracted development rate of $130.

<u>Calculations for FY17-18:</u>
One-time review, planning, set up, etc.: 8 hrs. X $45.28 (estimated fully loaded rate – salary and benefits) = $362.
One-time programming of report: 8 hrs. X $130 = $1,040.

There would be another fiscal impact of the bill to the Divisions of DAS which wouldn't occur until FY18-19.

In order to manage the additional notification requirements and compensation processing requirements for all DAS eligible employees served by DAS State Personnel/Human Resources (HR), an additional half-time Personnel Officer would be required beginning July 1, 2018.

The estimated cost to DAS for this .50 FTE is $46,576 for FY18-19. These costs include estimated FY18-19 salary and benefits (health insurance is budgeted using the State's current share of the highest cost family plan); and ongoing annual operating costs (communication/data processing, printing/publication and office supplies) which also includes $2,000 for materials and postage required to make the required written notifications to newly hired and existing employees. A capital outlay of $2,500 would be required for a computer and work space/materials for the new 0.5 FTE.

These additional costs would result in the need for additional revolving appropriation and a possible increase in the Director's Office Assessment to the Divisions of DAS in FY18-19 and beyond.

Future costs would be impacted by salary and health insurance costs as well as operational costs – rent, communication costs, etc.

In addition to the FY18-19 impact on DAS Personnel/HR, if DAS State Accounting facilitates payment of benefits and withholding taxes through the E1 Accounts Payable (A/P) system, the potential volume of A/P transactions and related 1099 reporting could increase significantly. Calculation of this incremental cost is difficult without an anticipated volume of annual transactions, but if it is estimated that with processing 5,000 benefits payments at an average cost of $0.50 including reporting requirements would increase costs by $2,500 (5,000 transactions x $0.50 = $2,500). There is a cost associated with any transaction whether it is paper or electronic.

These additional costs would result in the need for additional revolving appropriation and an increase in the statewide State Accounting assessment in FY18-19 and beyond. The short term impact would be statewide across all Agencies, but as the number of transactions is a factor in calculating the assessment the increase in transactions could eventually impact DOL's share of the State Accounting assessment.

See the table below for a summary of the estimated FY18-19 fiscal impact:

| FY18-19 | Revolving Appropriation Increase | Assessment Increase / Source |
|---|---|---|
| State Personnel/HR | $46,576 | Director's Office Assessment – AS Divisions only |
| State Accounting | $2,500 | State Accounting Assessment – Statewide Impact. |

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

| POSITION TITLE | NUMBER OF POSITIONS 16-17 | 17-18 | 2016-17 EXPENDITURES | 2017-18 EXPENDITURES |
|---|---|---|---|---|
| | | | | |
| | | | | |
| **Benefits**.......... | | | | |
| **Operating**.......... | | | | 1,402 |
| **Travel**.......... | | | | |
| **Capital outlay**.......... | | | | |
| **Aid**.......... | | | | |
| **Capital improvements**.......... | | | | |
| **TOTAL**.......... | | | | 1,402 |