

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				
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.

LB 325 allows claims under the Tort Claims Act arising from intentional torts 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.

The Department of Administrative Services (DAS) notes that over the past few years, there have been several claims filed under the State Tort Claims Act based on similar allegations. As the statute is currently written, those claims were denied. It is foreseeable that the passage of LB 325 would create additional claims and payments against the State. These claims would be paid by available agency funds or General Funds. Passage of LB 325 creates a fiscal impact, but the exact impact is unknown.

A similar situation exists with Nebraska's county governments. Although the number of claims a county may be required to address annually is unknown, the potential liability exposure is great, not only for the claims that could be paid but also for the costs of defending against such claims.

The Fiscal Office has no basis to disagree with the assertions that impacts to the State and to local governments would be negative and potentially substantial, though unquantifiable at this time.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 325	AM:	AGENCY/POLT. SUB: Dept. of Administrative Services – Risk Management	
REVIEWED BY: Kimberly Burns	DATE: 01/26/2023	PHONE: (402) 471-4171	
COMMENTS: No basis to disagree with the Department of Administrative Services' assessment of unknown fiscal impact from LB 325.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 325	AM:	AGENCY/POLT. SUB: Nebraska Association of County Officials (NACO)	
REVIEWED BY: Kimberly Burns	DATE: 02/21/2023	PHONE: (402) 471-4171	
COMMENTS: No basis to disagree with the Nebraska Association of County Officials' (NACO) assessment of potential, but unknown fiscal impact from LB 325.			

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

2023

LB⁽¹⁾ 325

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⁾ 01/12/2023 Phone: ⁽⁵⁾ (402) 471-4436

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2023-24		FY 2024-25	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
REVOLVING FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB 325 proposes to create an exception to the intentional torts exception in the Tort Claims Act that would allow claims arising from intentional torts 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 few past years, 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) was for \$10,000,000. Enacting changes in Section 2(7)(b) of LB 325, 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:

POSITION TITLE	NUMBER OF POSITIONS		2023-24	2024-25
	23-24	24-25	EXPENDITURES	EXPENDITURES
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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

2023

LB⁽¹⁾ 325

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Nebraska Association of County Officials (NACO)

Prepared by: ⁽³⁾ Elaine Menzel Date Prepared: ⁽⁴⁾ 2/16/2023 Phone: ⁽⁵⁾ 402.434.5660

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	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB325 would expand legal exposure to State and Political Subdivisions, including counties, by adding harm caused by intentional (“bad actor”) torts that are the proximate result of a failure of political subdivision (county) or an employee of the county to exercise reasonable care to either:

1. Control a person of whom it has taken charge; or
2. Protect a person who is in the county’s care, custody or control from harm caused by a non-employee actor.

Although the number of claims a county may be required to address annually is unknown, the potential liability exposure as a result of LB325 would greatly expand the potential legal exposure to Additionally, added costs for counties would be incurred to defend such claims in litigation and trial expenses

The overall fiscal impact if LB325 were implemented is unknown. However, even if there were one claim filed against the county due to LB325 changes, the fiscal impact is negative and the additional exposure could be significant to counties.

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>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____