

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

Due to additional information

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2010-11		FY 2011-12	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS	\$98,963		\$98,963	
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$98,963		\$98,963	

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

LB 563, as amended by AM 2079 and AM 2227, would adopt the Employee Classification Act.

The Act provides a definition of contractor, criteria to determine whether an individual is an employee or an independent contractor, gives the Department of Labor oversight and investigatory responsibility, provides for fines and penalties, and requires posting of notice regarding proper classification.

As amended, contractor is defined as an individual or business entity engaged in a delivery service or construction contractor business.

LB 563, as amended, provides that it is a violation of the Act for a contractor to designate an individual as an independent contractor who would be properly classified as an employee under Section 1 of the Act.

The Department of Labor is required to maintain a hotline and website to allow for individuals to report suspected violations of the Act and the Department is also required to investigate in a timely fashion all credible reports of suspected violations.

For violations of the Act, the fine for a first offense is \$500 per each misclassified individual and \$5,000 per misclassified individual for a second or subsequent offense. In addition, upon a finding that a contractor has violated the Act, the Commissioner of Labor shall instigate proceedings to collect any unpaid combined taxes and interest, and share any findings with the Department of Revenue for analysis of possible violations of the Nebraska Revenue Act of 1967.

The Department of Labor is also required to report annually to the Legislature regarding compliance and enforcement of the Act.

The Act, as amended, also requires that each contractor who enters into a contract for construction or delivery services with the state or any political subdivision shall provide an affidavit attesting that each individual performing services for the contractor is properly classified under the Act, and that a federal I-9 immigration form is on file for each performing employee. Any contractor who knowingly violates these provisions is subject to the penalties of perjury and for a second or subsequent violation shall not be permitted to contract with the state or any political subdivision for three years.

As amended, the bill provides that funding for enforcement of the Act is to come from the Employment Security Special Contingent Fund at the Department of Labor. The Department has indicated that while the fund is identified as the potential source of funds, the Department does not anticipate that any such funds will be available for use in implementing LB 563. Traditionally, the Employment Security Special Contingent Fund has only been used to fund one-time expenses of the Department. However, there are adequate sums at this time in the Employment Security Special Contingent Fund to fund the program.

The Department of Labor indicates that the cost to implement the provisions of LB 563 will be \$98,963 in FY10-11 and \$98,963 in FY11-12. This includes an additional 1.0 FTE Attorney II to coordinate the investigative teams from the new program and the program currently in place under Contractor Registration and Unemployment. The cost also includes a 0.5 FTE Staff Assistant I to support the program.

There is no basis to disagree with the Department of Labor's estimate of cost to implement LB 563.

The Department of Revenue originally estimated that the cost to implement LB 563 would be minimal. However, the Department has issued a revised fiscal note as a result of AM 2227 and now estimates a cost of \$20,606, \$21,121, and \$21,649 in FY10-11, FY11-12, and FY12-13 respectively for a 0.5 FTE revenue agent.

We disagree with the Department of Revenue's estimate of cost and believe the Department can implement the portions of LB 563 that apply to the Department with no additional personnel.

The Department of Labor also indicates in the revised fiscal note that the impact on revenue is unknown at this time as it is unknown how many instances of improperly-classified contractors exist, and what the net effect would be on the General Fund. The bill as amended would likely increase individual income tax withholding, but would likely reduce estimated payments, but the net impact is unknown at this time.

We have no basis to disagree with the Department of Revenue's estimate regarding potential impact to the General Fund.

IMPACT TO POLITICAL SUBDIVISIONS:

There is no fiscal impact to political subdivisions associated with this bill.