

FISCAL NOTE
 LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See Below		See Below	
CASH FUNDS	See Below		See Below	
FEDERAL FUNDS	See Below		See Below	
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

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

LB 288 would adopt the Small Business Regulatory Flexibility Act. In general, the Act would require state agencies, when developing rules and regulations, to consider the possible adverse economic impact of those regulations on small business.

Adverse economic impact is defined as a financial impact on a small business that a reasonable owner of a small business would determine negatively affects his or her ability to maintain or promote the growth of the small business.

Small business is defined as an entity, including its affiliates, that is independently owned and operated and employs fewer than 500 full-time employees or has gross annual sales of less than \$6,000,000. Approximately 98 percent of all Nebraska business falls into these categories.

Prior to adoption of any rules or regulations, state agencies are required to solicit public comment by providing notification of the proposed rules or regulations on the agency web site and if the agency has reasonable certainty that a specific small business may be adversely affected they are to provide electronic notification to the small business and post such notification on the agency web site. The agency is then to take into account any comment received regarding potential impact of the rule or regulation and shall consider methods, listed in the bill, to reduce the adverse economic impact on small business.

The bill also provides for judicial review of a rule or regulation by the district court of Lancaster County if a small business is adversely affected or aggrieved by adoption of the rule or regulation. The business may seek this review up to one year after the effective date of the rule or regulation.

As the bill would apply to all state agencies that have rule and regulation making authority, the potential fiscal impact is enterprise wide. A sampling of agencies were asked to respond as to potential fiscal impact and their responses vary.

Department of Education:

If the bill affects any entities that are subject to NDE regulations, it would primarily be limited to private postsecondary career schools, and may also include regulations that affect small private K-12 schools and colleges if they meet the definition of "small business," which is not clear in terms of parochial institutions.

The section of the bill that would most likely affect NDE is the requirement for specific individual electronic notice to entities such as private postsecondary career schools when NDE issues or revises relevant regulations. The Department of Education indicates that there would be little or no fiscal impact to the Department because the Department maintains an e-mail list of these entities and little additional time, effort, or expense would be necessary to send the notifications.

Department of Banking and Finance:

The amount of time required to post notices of proposed rules on the internet, receive information back from the small businesses regarding adverse impacts, and the negotiations required as a result of those responses would cause an impact on staff resources. This would require an additional part-time attorney and administrative assistant. Cost is estimate at \$27,650 for FY11-12 and \$23,650 for FY12-13.

Department of Insurance:

No fiscal impact.

Department of Natural Resources:

The bill does not affect agency operations or budget.

Board of Engineers and Architects:

The Board will be attempting revision of their regulations and rules during FY11-12 and FY12-13. Costs are computed per applicable rule or regulation and are estimated at \$104 per change for each fiscal year.

Department of Environmental Quality:

The Department is unsure of how broad the definition of rule and regulation should be interpreted. For purposes of this estimate, the Department did not include Guidance documents. In addition, the Department assumed 12 of the department's 24 regulatory titles were exempt pursuant to Section 2 of the bill. The Department typically proposes amendments to 4 to 8 titles of regulations annually.

Since several titles of regulations are amended regularly, the Department estimates that the analysis will be conducted on an average of three sets of regulations annually through procurement of contractual services. The Department estimates that each economic analysis would cost \$6,000 and total \$18,000 for each fiscal year of the biennium.

Department of Revenue:

The Department estimates the cost to implement LB 288 will be \$23,931 for FY11-12 and \$24,409 for FY12-13. The cost is for a 0.5 FTE Research Analyst II.

Department of Labor:

The Department of Labor indicates that a large number of their programs would be affected by LB 288. Increased costs resulting from the internal review processes described in the bill could be minimal or could be considerable depending upon the interpretation of the definition of rule or regulation in Section 2 of the bill. LB 288 includes any action by an agency which "implements . . . law or policy" within its definition of rule or regulation. The determination of combined tax rates for the coming year is a ministerial function of the Department. If that ministerial act implementing state law is considered a rule or regulation for purposes of LB 288, it would involve a substantial cost to the Department. There are 47,878 small employers as defined in the bill subject to payment of the combined tax. The analysis requirements in Section 4 and the notice requirements in Section 3 would be considerable if such analysis and notice is required as part of the combined tax rate setting process. The Department's estimate is prepared under the assumption that LB 288 does not apply to the combined rate setting process. Any additional costs resulting from the bill would be paid from the existing federal grant. However, no additional federal funds would be provided to pay those costs so staffing levels in other parts of the unemployment program might have to be adjusted to cover the LB 288 costs.

The Department estimates 2.0 FTE per fiscal year for an Economist and a Research Analyst I at a cost of \$160,002 and \$164,001 respectively.

Conclusion: As can be seen from the sample of agencies, the potential impact varies. It appears the impact to the larger regulatory agencies is significant and their estimates, for the most part, reasonable. Given this is only a sample, it is also reasonable to expect enterprise wide impact to be somewhat higher.

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Gary Bush	DATE	1/21/11	PHONE	471-2526
COMMENTS					
DEPT. OF EDUCATION – No basis to disagree. BANKING AND FINANCE – Agency's estimate appears to be reasonable. DEPT. OF INSURANCE – Concur. DEPT. OF NATURAL RESOURCES – No basis to disagree. BD. OF EXAMINERS-ENGINEERS & ARCHITECTS – No basis to disagree with agency's estimate. DEPT. OF ENVIRONMENTAL QUALITY - No basis to disagree with agency's estimates. Estimates do appear to be reasonable.					