

Revised for the 2014 Legislative Session

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2014-15		FY 2015-16	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See below	(1,700,000)	See below	
CASH FUNDS		1,700,000		
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See below	0	See below	

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

LB 522 as amended would provide that when the Department of Natural Resources issues closing orders preventing the storage or diversion of surface water in order to comply with an interstate compact or decree, that the Department shall provide reasonable compensation to surface water users who had to forego the use of water. Compensation would be made through the irrigation districts. Reimbursement rates would be based upon dry year leases used by natural resources districts, but could not exceed \$300 per acre. LB 522 states that funding shall be provided through the General Fund and not exceed \$10,000,000 in any one fiscal year, and also allows the Water Resources Cash Fund to be utilized for payments to irrigation districts. Finally, an additional \$1,700,000 would be transferred from the General Fund to the Water Resources Cash Fund in both FY13-14 and FY14-15.

The extent of compensation to be provided to irrigation districts by the Department would depend upon the frequency of closing orders. The agency estimates that the amount of reimbursements requested could range from zero to \$57,600,000. Both the Blue River and Republican River basins could be subject to the provisions of LB 522. The Department bases its fiscal impact estimate upon the fact that there are no provisions in LB 522 to prorate payments based upon actual quantities of water available for irrigation and that one closure notice could result in an annual compensation. The agency further notes that although funding is limited to \$10,000,000, the requirement of the Department to provide reasonable compensation to surface water users does not cease once the funding cap is reached. As a result, the agency estimates that reimbursement requirements could be carried forward into future fiscal years.

The additional transfer of \$1,700,000 General Funds into the Water Resources Cash Fund authorized in LB 522 would result in a total of \$5,000,000 being transferred into the fund in FY13-14 and FY14-15. (The existing \$3,300,000 transfer authorization is carried out through the appropriations process.) While the Department of Natural Resources is allowed to determine how the Water Resources Cash Fund is expended, if the fund was used in its entirety to pay for reimbursements, the use of the fund for ongoing projects would cease. Currently the fund is being allocated for projects funded in conjunction with a grant from the Nebraska Environmental Trust Fund.

While LB 522 does not carry the emergency clause, it is estimated that there would be costs related to closure notices issued in FY14-15. LB 522 does not limit the number of years that reimbursements would be provided to surface water users, and as a result it is estimated that the program would be ongoing in nature.

ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES		
LB: 522	AM: 1071	AGENCY/POLT. SUB: Nebraska Department of Natural Resources
REVIEWED BY: Cindy Miserez	DATE: 12/16/2013	PHONE: 402-471-4174
COMMENTS: For AM1071 to LB522, the Nebraska Department of Natural Resources identifies a fiscal impact range from \$0 to \$57.6 million General Fund per year to provide reasonable compensation to irrigators under certain conditions. The department's analysis appears reasonable. AM1071 transfers \$1.7 million General Fund to the Water Resources Cash Fund in FY2014 and FY2015 and authorizes expenditures from the fund for the compensation. AM1071 defines and provides for reasonable compensation. AM1071 limits the funding to \$10 million General Fund per year. AM 1071 does not limit the amount of reasonable compensation determined, claimed or owed by the State of Nebraska.		

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FISCAL NOTE

LB⁽¹⁾ 522 AM 1071

State Agency OR Political Subdivision Name: (2)

Department of Natural Resources

Prepared by: Ron Theis (3)

Date Prepared: November 22, 2013 (4)

Phone: 402 471 0577 (5)

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2014-15		FY 2015-16	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	0-57.6M*		0-57.6M*	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	0-57.6M*		0-57.6M*	

Explanation of Estimate:

Because of multiple variables, DNR can only determine the fiscal impact of the amendment in terms of a range. As did AM709, AM1071 obligates DNR to compensate all surface water appropriators issued a closing notice for the purpose of complying with an interstate compact or decree. Two river basins with compacts are thus affected by the bill, the Republican and Blue River Basins (the Blue is administratively divided into two component sub-basins for compact purposes). Collectively, there are approximately 192,000 surface water irrigated acres in the two basins subject to the amendment's criteria for compensation (113,000 Republican, 25,000 Little Blue, and 54,000 Big Blue). Differing from AM709, AM1071 limits total amounts of annual compensation, modifies the criteria for "reasonable compensation," and adds the compensation as a specific potential use of the Water Resources Cash Fund (WRCF).

*The range of fiscal impact to the General Fund from AM1071 is from \$0 (zero) for no closure notices within either basin for compact purposes in a particular year to \$57,600,000 annually for a single closure notice for every appropriator in both basins in a particular year (192,000 irrigated acres x \$300 per acre= \$57,600,000). Funding is limited in AM1071 to \$10M General Fund annually in line 12 and 13 but the State's obligation to provide reasonable compensation is not limited by line 7 and may result in obligations exceeding funding. The assumptions used and factors affecting the range of fiscal impact follow below. The reasonable compensation formula defined in AM1071 is only applicable within the definitions contained therein and has no applicability to the direct value of water as otherwise determined.

Technically on the face of the amendment, a determination of "reasonable compensation" in AM1071 presents two potentially inconsistent factors or criteria. AM1071 potentially bases (the amount of) reasonable compensation upon the volume of water not stored or diverted for irrigation due to the closing notice (line 4 to 6). AM1071 (lines 14 through 22 on page 1 and lines 1 and 2 on page 2) also bases reasonable compensation on the number of irrigated acres affected, defined as the dollar amount of compensation per acre to convert from irrigation to dry-land

practices for one year as determined in a respective natural resources district; the amendment caps the annual compensation at \$300 per acre affected. Assuming that each criterion may be independently determined, only the total annual compensation cap and the per acre compensation fee appear relevant to a determinable fiscal impact, but together cannot account for the water volume factor, "acre feet of water not diverted or stored," as a co-equal basis for compensation. In order to provide any estimate of fiscal impact, DNR therefore assumes the water volume criteria (lines 7 and 8) is either a categorical rationale for compensation or restatement of closing notice conditions rather than a quantifying variable for determining the amount of compensation.

The amount of required "reasonable" compensation to be provided to irrigation districts for disbursement to affected water users therefore is determined by the amendment's formula as "the dollar amount of compensation ... by a NRD ... for conversion of ... irrigated acres to dry-land acres for a period of one year." The bill provides that one closure notice equals an annual compensation; DNR assumes that multiple closing and opening notice cycles within a single irrigation season for compact compliance purposes will result in only a single compensation for the annual period. The bill's compensation formula has no direct relationship to any particular quantity of water available for irrigation by any user or the direct value of the water to the user, thus, no additional onsite irrigation data are necessary. The range of compensation rates for temporary conversion to non-irrigation for 2013 in the two NRDs with dry-year leasing was from \$250 to \$688 per acre. DNR uses AM1071's highest compensation rate (\$300 per acre) for determining the upper range of annual impact only.

The bill does not have an emergency clause and would therefore be effective approximately September 1, 2014, relatively late in the 2014 irrigation season and early in the 2015 irrigation season. Nevertheless, closure notices are technically possible after September 1, 2014 but before June 30, 2015, (within FY 2014-15) for all surface water irrigated acres subject to compensation under the amendment's provisions in both basins.

DNR cannot reasonably determine any limited impact of the amendment. Therefore fiscal impact is stated here in terms of maximum annual potential impact for fiscal planning purposes. Fiscal impacts in both short- and long-term outlying years are difficult to predict because variable climatic conditions tend to drive both the triggers for expenditure, closing notices for compact purposes, as well as the compensation rates, and natural variations in the market value of irrigation water in the basins.

The amendment provides in section 2 that compensation may be provided within DNR's discretion for use of the WRCF under §61-218 (3). DNR's use of WRCF is as provided under Title 461 *Neb. Admin. Code*. The amendment does not otherwise provide administrative or disbursement procedural guidance but DNR assumes no impact to agency operational costs and no increased personnel expenditures; all expenditures are classified as Aid to Local Governments based upon "through the affected irrigation districts" at line 9.

Technical note: Utilization of the amendment's section 2 authorities by DNR may result in a reduction of overall funding of WRCF related to the LB229, 2011, allocation of funds to WRCF pursuant to §81-15,175 from the Nebraska Environmental Trust grant process. Utilization of WRCF for the purposes of section 1 of the amendment will also require adjustment, deferment or elimination of currently planned expenditures of WRCF.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2014-15</u>	<u>2015-16</u>
	<u>14-15</u>	<u>15-16</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....			0-57.6M*	0-57.6M*
Capital improvements.....				
TOTAL.....			0-57.6M*	0-57.6M*