PREPARED BY: DATE PREPARED: PHONE: Doug Gibbs February 18, 2016 402-471-0051

LB 1045

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT - STATE AGENCIES (See narrative for political subdivision estimates)								
	FY 201	6-17	FY 2017-18					
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE				
GENERAL FUNDS		See Below		See Below				
CASH FUNDS	See Below		See Below					
FEDERAL FUNDS								
OTHER FUNDS	See Below	See Below	See Below	See Below				
TOTAL FUNDS	See Below	See Below	See Below	See Below				

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

LB 1045 defines terms relating to certain contractors.

The bill defines "qualified marketplace contractor" (QMC) to mean any person or organization, including but not limited to, a natural person, a corporation, a limited liability company, a partnership, a sole proprietor, or another entity, that enters into an agreement with a "qualified marketplace platform" to provide services to individuals or entities seeking such services.

"Qualified marketplace platform" (QMP) means an organization, including but not limited to, a corporation, a limited liability company, a partnership, a sole proprietor, or another entity, that operates a digital application or digital platform that facilitates the provision of services by qualified marketplace contractors to individuals or entities seeking such services.

The bill provides that a QMC shall be treated as an independent contractor for all purposes if the following requirements are met:

- Remuneration for the services performed by the QMC is directly related to the performance of services or other output rather than to the number of hours worked;
- Services performed by the QMC are governed by a written contract executed between such contractor and a QMP; and
- The written contract includes but it not limited to the following:
 - The QMC shall be engaged as an independent contractor, not as an employee, and shall be treated as such for all purposes, including federal, state, and local taxation, withholding, unemployment benefits, and workers' compensation;
 - The QMC shall be paid based on the performance of services or other output and shall not be treated as an employee with respect to such services for federal, state, or local tax purposes;
 - The QMC shall be permitted to work any hours or schedules they choose, provided that if the QMC elects to
 work specified hours or schedules, the contract may require them to perform work during the selected hours or
 schedules:
 - The QMC shall be free to engage in outside employment and to perform services through other QMPs;
 - The QMC shall bear their own expenses; and
 - The contract and the association created thereby may be terminated without cause by either party at any time upon reasonable notice given to the other party.

The bill contains the severability clause.

The Department of Labor has indicated that it is currently indeterminable as to which industries and workers will be affected by LB 1045. However, should this definition expand the applicability of the independent contractor designation, there will be a fiscal impact to the Department and the Unemployment Trust Fund.

We disagree somewhat with the Department of Labor's analysis, in that while the bill could be intended for certain situations, such as for Uber and Lyft drivers, it would have no fiscal impact as those drivers are already considered independent contractors under the Employment Security Law. However, it appears that the bill could be applied to other situations and if so, the Department would have oversight and enforcement responsibility. If that were to occur we do not believe the Department would incur additional expense to enforce. We do agree with the Department that there could be impact to the Unemployment Trust Fund but we are unable to estimate that impact.

The Department of Revenue has indicated a possible increase in General Fund revenue as a result of LB 1045.

We disagree with the Department of Revenue and believe the bill will be General Fund revenue neutral.

ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES						
LB: 1045 AM: AGENCY/POLT. SUB: Dept. of Revenue						
REVIEWED BY: Lyn Heaton DATE: 2/19/2016 PHONE: 471-4181						
COMMENTS: Concur. Minimal or no fiscal impact on the operations of the Department of Revenue.						

LB 1045 Fiscal Note 2016

State Agency Estimate							
State Agency Name: Department of	Revenue				Date Due LFA:	2/22/2016	
Approved by: Tony Fulton		Date Prepared:	2/18/2016		Phone: 471-5896		
	FY 2016-2017		FY 2017-2018		FY 2018-2019		
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue	
General Funds		See below		See below		See below	
Cash Funds							
Federal Funds							
Other Funds							
Total Funds		See below		See below		See below	

LB 1045 defines "qualified marketplace contractor" and "qualified marketplace platform." A qualified marketplace contractor is an individual, organization, or business entity that enters into an agreement with a marketplace platform to use the marketplace platform's digital application or platform to provide services. A qualified marketplace platform is an organization, or business entity that operates a digital application or platform that facilitates providing these services.

The bill provides that a qualified marketplace contractor is an independent contractor for all purposes, including unemployment insurance and workers compensation if 1) substantially all the remuneration is related to the services performed and not the hours worked, 2) the services performed are governed by a written contract, and 3) the written contract provides that the person is an independent contractor, the person can work any hours or schedules he or she chooses, the person is free to perform services for other qualified marketplace platforms, the person pays their own expenses, and the contract can be terminated at any time by either party upon reasonable notice.

The bill provides that these same requirements apply for services performed prior to the effective date of the act. Section 2 provides for severability if any part of section 1 is held unconstitutional.

To the extent LB 1045 eliminates the capacity of taxpayers to obtain software (platforms or applications) using temporary employees the bill would result in an increase in General Fund revenues. The amount of any increase cannot be determined at this time.

It is estimated that there will be minimal costs to the Department to implement this bill.

Major Objects of Expenditure							
Class Code	Classification Title	16-17 <u>FTE</u>	17-18 <u>FTE</u>	18-19 <u>FTE</u>	16-17 Expenditures	17-18 Expenditures	18-19 Expenditures
							_
	Benefits.						
Operating Costs	Operating Costs.						
Travel							
Capital Outlay							
Aid							
Capital Improvement	nts				,		
Total							

LB ⁽¹⁾ 1045					FISCAL NOTE			
State Agency OR Political Subdivision Name: (2)		Nebraska Department of Labor						
Prepared by: (3) Kim Schreiner		Date Prepared: (4) _ 2/18/2016		Phone: (5)	402-471-2492			
ESTIMATE PRO	OVIDED BY S	TATE AGEN	CY OR POLITICA	AL SUBDIVIS	ION			
	FY 2016-17			FY 201				
EXPENDITU	RES	<u>REVENUE</u>	<u>EXPENDI</u>	TURES	REVENUE			
GENERAL FUNDS								
CASH FUNDS								
FEDERAL FUNDS								
OTHER FUNDS								
TOTAL FUNDS								
RREAKD	OWN RV MA	IOR ORIFCT	S OF EXPENDIT	URF				
Personal Services:	OVIV DI WIM	JOH OBSECT	S OI LAILINDII	<u>CKL</u>				
	NUMBER C	NUMBER OF POSITIONS		-17	2017-18			
POSITION TITLE	<u>16-17</u>	<u>17-18</u>	EXPEND	TURES	<u>EXPENDITURES</u>			
		-	_					
Benefits								
Operating								
Travel								
Capital outlay								
Aid	···							
Capital improvements								
TOTAI								