

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates)				
	<b>FY 2017-18</b>		<b>FY 2018-19</b>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See below			
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.**

This bill would provide for subpoena of records in certain cases.

The Supreme Court states that this bill has the potential to increase court workload and operations, but the impact is unknown at this time. It is assumed that court fees would be assessed on these complaints which could increase Cash Fund revenue.

The Department of Administrative Services (DAS) estimates additional costs of \$560 in FY18 and \$566 in FY19. DAS also notes that the fiscal impact in some cases could be significant. See the agency response attached for additional details. Due to the relatively small expenditure impact, no additional appropriation should be required.

The Department of Health and Human Services (HHS) estimates a one-time \$13,088 impact. Due to the relatively small expenditure impact, no additional appropriation should be required.

The State Patrol estimates no fiscal impact from this bill.

<b>ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY &amp; POLT. SUB. RESPONSES</b>			
<b>LB: 527</b>	<b>AM:</b>	<b>AGENCY/POLT. SUB: Nebraska Supreme Court (05)</b>	
REVIEWED BY: Joe Wilcox	DATE: 3/14/2017	PHONE: <a href="tel:4024714178">(402) 471-4178</a>	
COMMENTS: No basis to dispute the Nebraska Supreme Court estimate of Undetermined Fiscal Impact to the Agency from LB 527.			

<b>ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY &amp; POLT. SUB. RESPONSES</b>			
<b>LB: 527</b>	<b>AM:</b>	<b>AGENCY/POLT. SUB: Department of Administrative Services – Legal Division (65)</b>	
REVIEWED BY: Joe Wilcox	DATE: 1/27/2017	PHONE: <a href="tel:4024714178">(402) 471-4178</a>	
COMMENTS: No basis to dispute the Nebraska Department of Administrative Services – Legal Division estimate of potential yet Indeterminate fiscal impact to the Agency and the State from LB 527.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES		
<b>LB: 527</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>Nebraska State Patrol (64)</b>
REVIEWED BY: Joe Wilcox	DATE: 2/01/2017	PHONE: <a href="tel:4024714178">(402) 471-4178</a>
COMMENTS: No basis to dispute the Nebraska State Patrol estimate of No Fiscal Impact to the Agency from LB 527.		

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

**2017**

**LB<sup>(1)</sup> 527**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Supreme Court

Prepared by: <sup>(3)</sup> Eric Asboe Date Prepared: <sup>(4)</sup> 3/13/17 Phone: <sup>(5)</sup> 1-4138

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2017-18</u>		<u>FY 2018-19</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:

LB527 has to potential to increase court workload and operations to a measurable degree, although the impact on expenditures and court and judicial resources is unknown at this time. It is assumed that court fees would be assessed on this complaints which could increase Cash Fund revenue.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2017-18</u>	<u>2018-19</u>
	<u>17-18</u>	<u>18-19</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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

2017

LB<sup>(1)</sup> 527

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup>

Department of Administrative Services (DAS) - Legal

Prepared by: <sup>(3)</sup> Christopher Ferdico

Date Prepared: <sup>(4)</sup> 1/26/2017

Phone: <sup>(5)</sup> 402-471-1638

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2017-18</u>		<u>FY 2018-19</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
REVOLVING FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

**Explanation of Estimate:**

LB527 allows a person who is unable to bring an action or cause to bring an action in a Nebraska court, to have access to state or political subdivision records by filing a complaint in the applicable district court that asks for an order authorizing the complainant to take the records described in the complaint.

LB527 is expected to have a fiscal impact for the majority, if not all, of the subpoenas filed under this section. This is true because these subpoenas will be necessarily vague as no case or controversy has identified the relevant and discoverable issues. DAS is likely to have information which it would have a duty to protect and thus, would have to seek a motion to quash or, in the alternative in some cases, a protection order. For example, the types of records which would likely require such a motion on the part of the Agency may include, but would not be limited to:

1. Human Resources records relating to the Americans with Disabilities Act, Medicaid, CHIP or other federally funded programs which have a higher duty of confidentiality or statutory prohibitions against disclosure;
2. Records protected by the Health Insurance Portability and Accountability Act (HIPAA) which may not be releasable by a subpoena of this type under the provisions of Federal Law;
3. Records which contain Privacy Act Information or "Personally Identifiable Information" of third parties for which it may be impossible to identify whether said information would be relevant and discoverable absent an adversarial legal proceeding;
4. Disciplinary records regarding professional licensure that might otherwise be confidential;
5. Records regarding labor negotiations that are sensitive and may be protected by federal or state statutes;
6. Background check information which may be protected under Federal Department of Labor rules and regulations;
7. Video and surveillance information which, for security reasons, is not public record and the release of which in an actual proceeding may not be required because it lacks relevant information.

The likelihood of a need to quash, or seek a protection order, is heightened because the statute requires the "taking" of the evidence in question, and thus DAS would lose control over its publication and dissemination. This would be necessary to limit the potential liability of the State for disclosure purposes. Disclosure of some of these records (i.e. Medicaid) include criminal penalties under both state and federal law.

Although the fiscal impact is likely to be significant in each case, it is difficult to predict because the scope of the discovery order could vary greatly. Some instances could literally require thousands of hours of collection and review time (as is the case with many public records requests, but without the reimbursement protection of the public records statutes). In what we estimate to be an "average" case involving one or two individual's records, we would expect the following activity:

- 2-3 hours of record compilation by a Paralegal;
- 2-3 hours of Attorney III time to review both the nature of the documents and conduct legal research regarding the appropriateness of release with the type of subpoena being used;
- 1-2 hours of Attorney III time for memorandum preparation to forward to agency counsel at the Attorney General's office;
- 1 hour of Attorney III time for drafting of pleadings (Assistant Attorney General or Agency Counsel as requested);
- 1-2 hours of Attorney III hearing preparation time as requested by Assistant Attorney General;
- 1 hour of Paralegal time for filing pleadings and general support as requested by Assistant Attorney General; and
- 1-2 hours of Attorney III hearing time as requested by the Assistant Attorney General.

FY17-18	Paralegal (hours)	Attorney III (hours)	FY18-19	Paralegal (hours)	Attorney III (hours)
compile records	3		compile records	3	
review doc		3	review doc		3
prepare memo		2	prepare memo		2
draft pleadings		1	draft pleadings		1
hearing prep		2	hearing prep		2
filing of pleadings	1		filing of pleadings	1	
hearing		2	hearing		2
<b>Total Hours</b>	<b>4</b>	<b>10</b>		<b>4</b>	<b>10</b>
<b>Fully loaded cost per hr.</b>	<b>\$ 24.901</b>	<b>\$ 46.057</b>	<b>Fully loaded cost per hr.</b>	<b>\$ 25.149</b>	<b>\$ 46.517</b>
<b>Total cost per staff per review</b>	<b>\$ 99.60</b>	<b>\$ 460.57</b>	<b>Total cost for staff per review</b>	<b>\$ 100.60</b>	<b>\$ 465.17</b>
<b>Total cost per review</b>		<b>\$ 560.17</b>	<b>Total cost per review</b>		<b>\$ 565.77</b>

It is important to note that some records, under Federal Law, are not discoverable in Court and if the issuing court requires the discovery despite our attempt to quash, an appeal would be necessary. This would add significant time and cost.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

POSITION TITLE	NUMBER OF POSITIONS		2017-18	2018-19
	17-18	18-19	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
<b>TOTAL.....</b>				

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) Karen Gatherer

Date Prepared:(4) 2-27-17

Phone: (5) 471-6351

	<b>FY 2017-2018</b>		<b>FY 2018-2019</b>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
<b>GENERAL FUNDS</b>	\$13,088	\$0	\$0	\$0
<b>CASH FUNDS</b>				
<b>FEDERAL FUNDS</b>				
<b>OTHER FUNDS</b>				
<b>TOTAL FUNDS</b>	\$13,088	\$0	\$0	\$0

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

**Explanation of Estimate:**

LB 527 would result in an estimated 60 additional subpoenas, 5 hours of staff time by a DHHS Program Specialist for each subpoena. Or 300 hours at approximately \$25 per hour plus benefits and operating costs.

**MAJOR OBJECTS OF EXPENDITURE**

PERSONAL SERVICES:	POSITION TITLE	NUMBER OF POSITIONS		2017-2018	2018-2019
		17-18	18-19	EXPENDITURES	EXPENDITURES
	DHHS Program Specialist C73210	0.1443	0	\$7,500	\$0
	Benefits.....			\$2,326	\$0
	Operating.....			\$3,262	\$0
	Travel.....				
	Capital Outlay.....				
	Aid.....				
	Capital Improvements.....				
	<b>TOTAL.....</b>			<b>\$13,088</b>	<b>\$0</b>

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

**2017**

**LB<sup>(1)</sup> 527**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Nebraska State Patrol

Prepared by: <sup>(3)</sup> Carol Aversman Date Prepared: <sup>(4)</sup> 1-26-2017 Phone: <sup>(5)</sup> (402)471-4545

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2017-18</u>		<u>FY 2018-19</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:

**NO FISCAL IMPACT.**

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2017-18</u>	<u>2018-19</u>
	<u>17-18</u>	<u>18-19</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____