

March 10, 2011

The Honorable Lance Kinzer, Chairperson
House Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for HB 2372 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2372 is respectfully submitted to your committee.

HB 2372 would require public employers, including the state and municipalities, to enroll and participate in the E-verify program. Any contractor who is awarded a contract in excess of \$5,000 by the state or a municipality would have to confirm that the contractor is enrolled and participates in the E-verify program. Contractors under certain circumstances would not be liable under this bill for a subcontractor's noncompliance. In addition to current penalties enforced, a first violation by a contractor could cause termination of the contract, the business could be suspended from contracting with the state or municipality for three years, and up to 25.0 percent of the total amount of the contract could be withheld or recovered by the state or municipality. A second or subsequent violation would result in termination of the contract, a permanent suspension from doing business with the state or municipality, and up to 25.0 percent of the total amount of the contract could be withheld or recovered by the state or municipality. If the state or municipality is the prevailing party in certain civil actions, then reasonable attorney fees could be awarded. A business that terminates an employee based on information received from the E-verify would not be liable for claims made against the business for wrongful termination.

The bill would prohibit the state and municipalities from adopting any policy that would limit or restrict the enforcement of federal immigration laws. If, in the opinion of the Kansas Attorney General, a state official or agency or a municipality is limiting or restricting enforcement of federal immigration laws no funding, grants or appropriations from the State of Kansas could be received until the Attorney General certifies that the violation has ceased. The bill would require all state officials, agencies and personnel to fully comply with and support federal law prohibiting the illegal entry into, presence or residence in the United States. The bill would allow state and local officials to send, receive, or maintain information related to an individual's immigration status under certain circumstances.

A legal resident of Kansas could bring action in district court against any state official or agency or municipality that adopts a policy or practice that limits or restricts enforcement of federal immigration laws. Civil penalties of not less than \$1,000 and not more than \$5,000 could be assessed for each violation and deposited in the State General Fund. The prevailing party in these actions could be awarded court costs and reasonable attorney fees.

HB 2372 would require state, county and city law enforcement officers to make a reasonable attempt, through the federal government, to determine the citizenship and immigration status of persons legally stopped, detained or arrested if there is a reasonable suspicion that the person is an alien and is unlawfully in the United States. The bill details what factors could not be used in formulating this reasonable suspicion and lists documentation that the person could provide to dismiss the suspicion. When an illegal alien is convicted of a violation of state or local law, the bill would require the notification of the United States Bureau of Immigration and Customs Enforcement immediately upon the discharge from imprisonment or assessment of fines. The bill would specify conditions under which law enforcement agencies could securely transport an illegal alien to federal custody. The Attorney General would be required to reach a cooperative agreement with the United States Department of Homeland Security to designate specific state law enforcement officers to exercise the enforcement powers of federal immigration officers.

The bill would make it a class A misdemeanor to intentionally conceal, harbor, or shield an illegal alien. However, the violation would be a severity level 8, person felony, if it involved ten or more illegal aliens who are 18 years of age or older. In addition, HB 2372 increases the severity level of the current crimes of vital records identity fraud and dealing in false identification documents. The bill would also specify in current law that a verified illegal alien is at risk of flight when a court is considering issuance of an appearance bond.

The bill specifies that illegal aliens could not receive any state or local public benefits, unless required by federal law. The bill would add providing proof of citizenship or legal residency to the other eligibility requirement for receiving any public benefits including grants, loans, contracts, commercial or professional licenses, welfare, health, disability, housing, food assistance, or unemployment benefits. HB 2372 includes a severability provision for the new sections in the bill, and would take effect upon its publication in the statute book.

The Office of the Attorney General states that the additional duties required by HB 2372 could potentially require the attention of a full time prosecutor and investigator. The agency estimates FY 2012 expenditures of approximately \$100,000 and subsequent annual costs of approximately \$66,000, all from the State General Fund. The Kansas Highway Patrol states that if the Attorney General designated its officers as those qualified to exercise the enforcement powers of federal immigration officers, there could be additional costs. However, without knowing whether that designation would cause a significant increase in the agency's workload an estimate cannot be made.

The League of Kansas Municipalities states that HB 2372 places a number of additional requirements on cities and heightens the exposure of cities to litigation and liability in a number of areas that do not currently exist. No estimate can be made on the fiscal effect.

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The Kansas Sentencing Commission estimates that passage of HB 2372 would result in an increase of one to three adult prison beds in FY 2012 and an increase of two to four adult prison beds by FY 2021. Currently, the number of male inmates exceeds the available bed capacity of 8,259, and based upon the Kansas Sentencing Commission projections, it is estimated that at the end of FY 2011 and FY 2012, the number of male inmates will exceed available capacity by 235 beds and 394 beds, respectively. To address capacity issues, the Governor's recommended FY 2012 budget includes \$2.5 million for contract prison beds. If it is determined that facility construction is necessary, the Department of Corrections has identified two capacity expansion projects: two high medium security housing units at El Dorado Correctional Facility that would provide 512 beds with a construction cost of \$22,687,232 (\$44,311 per bed X 512) and operating costs of \$9,339,904 (\$18,242 per bed X 512); and one minimum security housing unit at Ellsworth Correctional Facility that would provide 100 beds with a construction cost of \$5,935,000 (\$59,350 per bed X 100) and operating costs of \$1,832,000 (\$18,320 per bed X 100).

Any capacity needed beyond the options outlined above could require additional contract or construction costs. The actual construction costs would depend upon the security level of the beds to be constructed and when construction is actually undertaken, while the actual operating costs would depend upon the base salary amounts, fringe benefit rates, per meal costs, per capita health care costs, and other cost factors applicable at the time the additional capacity is occupied. Likewise, any further prison commitments that result in additional parolees could require additional staff and resources so that the additional parolees can be effectively supervised.

HB 2372 has the potential for increasing litigation in the courts. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with HB 2372 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,



Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Megan Pinegar, Attorney General's Office
Larry Baer, League of KS Municipalities
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