

March 8, 2012

CORRECTED

The Honorable Sharon Schwartz, Chairperson
House Committee on Agriculture and Natural Resources Budget
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Schwartz:

SUBJECT: Corrected Fiscal Note for HB 2770 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following corrected fiscal note concerning HB 2770 is respectfully submitted to your committee.

Under current law, any amount above \$50,000 in the Securities Act Fee Fund at the end of a fiscal year is transferred to the State General Fund. HB 2770 would allow the Securities Commissioner to retain \$250,000 in the Securities Act Fee Fund at the end of a fiscal year and would eliminate the year end transfer to the State General Fund. The bill would also authorize new expenditures or transfers from the Securities Act Fee Fund for the following purposes:

1. Provide additional funding for investor education programs by authorizing transfers up to \$750,000 per fiscal year from the Securities Act Fee Fund to its Investor Education Fund.
2. Provide new funding to finance the costs associated with trials, court proceedings, and administrative hearings for enforcement of the Kansas Uniform Securities Act. The bill would create the Securities Litigation Fund and allow up to \$500,000 per fiscal year to be transferred to this new fund to be administered by the Securities Commissioner.
3. Provide new funding to distribute restitution payments from settlement of enforcement cases and other legal proceedings. The bill would create the new Securities Restitution Fund and allow up to \$500,000 per fiscal year to be transferred to this new fund to be administered by the Securities Commissioner.
4. Authorize the Securities Commissioner to make transfers of up to \$3.0 million per fiscal year to other state agencies in the Executive Branch that would provide funding related to investment of capital, creation of jobs, or other programs within the state for which the benefits of securities regulation and preservation of the integrity of the capital formation process can be realized as determined by the Commissioner in consultation with the

heads of the other state agencies. The original fiscal note incorrectly stated that these transfers could also be made within the funds of the Securities Commissioner, which the bill does not authorize.

The State Finance Council would have the authority to increase the amount that can be transferred in any fiscal year for each of these purposes. The bill would change the focus of the Investor Education Program to inform the public about personal financial literacy and investments instead of the previous emphasis on prevention and detection of securities fraud. The bill would also allow monies in the Investor Education Fund to be used for agency training expenses and for grants to public and private schools and universities located in Kansas for education in personal or business finance and related subjects.

The bill would provide clarifying information on the purpose and goals of the Kansas Uniform Securities Act. The Securities Commissioner would be authorized to charge an annual fee of up to \$300 to require notice filings for an exemption from the registration requirements under the Kansas Uniform Securities Act for broker-dealers, agents, investment advisers, or investment adviser representatives. The bill would add to the list of positions that the Securities Commissioner would be allowed to appoint in the unclassified service to include “other professional staff.” The Executive Director of the agency or another person appointed by the Securities Commissioner would be authorized to act as the agency head for purposes of administrative hearings. The Securities Commissioner would have the authority to adopt rules and regulations to implement procedures and limitations for payment awards from the Securities Restitution Fund. The bill would take effect upon its publication in the *Kansas Register*.

Estimated State Fiscal Effect				
	FY 2012 SGF	FY 2012 All Funds	FY 2013 SGF	FY 2013 All Funds
Revenue	(\$10,493,393)	--	(\$10,738,409)	--
Expenditure	--	--	--	--
FTE Pos.	--	--	--	--

The Office of the Securities Commissioner estimates that HB 2770 would decrease State General Fund revenues by \$10,493,393 in FY 2012 and by \$10,738,409 in FY 2013. The bill would redirect this revenue to allow the Office of the Securities Commissioner to retain additional revenues in the Securities Commissioner Fee Fund, redistribute to other funds at the Office of the Securities Commissioner, and to transfer to other state agencies in the Executive Branch for specific purposes. The decrease in revenues and how the November 4, 2011 consensus revenue estimate for FY 2013 would be affected are shown in the following table:

Effect on FY 2013 Consensus Revenue Estimates
(Dollars in Thousands)

Receipt Description	Consensus Revenue Estimates (Nov. 4, 2011)	Change in Revenue FY 2013	Proposed Adjusted CRE FY 2013
Motor Carrier	\$ 21,000	\$ --	\$ 21,000
Income Taxes:			
Individual	3,065,000	--	3,065,000
Corporate	240,000	--	240,000
Financial Institutions	24,000	--	24,000
Excise Taxes:			
Retail Sales	2,200,000	--	2,200,000
Compensating Use	335,000	--	335,000
Cigarette	92,000	--	92,000
Corporate Franchise	6,000	--	6,000
Severance	102,800	--	102,800
All Other Excise Taxes	96,000	--	96,000
Other Taxes	<u>141,000</u>	<u>--</u>	<u>141,000</u>
Total Taxes	\$6,322,800	\$ --	\$6,322,800
Other Revenues:			
Interest	\$ 7,400	\$ --	\$ 7,400
Transfers	(90,300)	(10,738)	(101,038)
Agency Earnings	<u>51,500</u>	<u>--</u>	<u>51,500</u>
Total Other Revenues	(\$ 31,400)	(\$ 10,738)	(\$ 42,138)
Total Receipts	\$6,291,400	(\$ 10,738)	\$6,280,662

The fiscal effect to state revenues during subsequent years would be as follows:

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
State General Fund	(\$10,800,000)	(\$11,000,000)	(\$11,200,000)	(\$11,400,000)

The bill would eliminate the annual year-end transfer that is made from the Securities Act Fee Fund to the State General Fund beginning in FY 2012 and each future fiscal year. Increasing the carryover balance from \$50,000 to \$250,000 will allow the agency to retain additional funds to start out the next fiscal year and to maintain an adequate cashflow. The agency does not provide expenditure or transfer estimates on how it plans to make the distributions from the Securities Act Fee Fund that are authorized under HB 2770. However, if the Securities Commissioner makes the maximum transfer amounts authorized in the bill, then the Investor Education Fund would receive \$750,000 in FY 2012 and each future fiscal year; the Securities Litigation Fund and Securities Restitution Fund would each receive \$500,000 in FY 2012 and

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each future fiscal year; funding related to investment of capital, creation of jobs, or other programs by the Securities Commissioner and other state agencies in the Executive Branch would receive transfers that total \$3.0 million in FY 2012 and each future fiscal year; the remaining \$5,743,393 in FY 2012 and \$5,988,409 in FY 2013 would be retained by the Securities Act Fee Fund. The agency indicates that the amount retained by the Securities Act Fee Fund in future years could be reduced as certain fees are decreased or eliminated.

The Office of the Securities Commissioner indicates that the bill will allow it to collect fees for notice filings for an exemption from the registration requirements under the Kansas Uniform Securities Act; however, the additional fee revenue is estimated to be negligible.

The agency would be allowed to use someone other than the Securities Commissioner to conduct administrative hearings which has the potential to reduce costs for the Office of the Securities Commissioner by allowing the agency to use existing staff or hire an attorney to conduct its own administrative hearings. The agency indicates that by conducting its own administrative hearings there would be less time needed for expert witnesses to explain issues related to the complexity of securities laws. The agency indicates that it conducts very few administrative hearings each year; therefore, the savings are estimated to be negligible.

The Office of Administrative Hearings indicates that it has currently not been asked to conduct administrative hearings for the Office of the Securities Commissioner. The bill would have the potential to reduce fee revenue to the Office of the Administrative Hearings by not requiring the Office of the Securities Commissioner to use its services by allowing the agency to appoint someone other than the Securities Commissioner to conduct its administrative hearings; however, a precise fiscal effect cannot be estimated. The Office of Administrative Hearings indicates that its fee schedule is determined by the number of administrative hearings that it conducts for each agency and with the limited number of administrative hearings that it would conduct for the Office of the Securities Commissioner, the agency estimates that it would charge \$70 per hour for its services. Any fiscal effect associated with HB 2770 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

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

cc: Steve Wassom, Securities Commission