

March 25, 2015

The Honorable Steve Brunk, Chairperson  
House Committee on Federal and State Affairs  
Statehouse, Room 285-N  
Topeka, Kansas 66612

Dear Representative Brunk:

**SUBJECT:** Fiscal Note for HB 2294 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2294 is respectfully submitted to your committee.

HB 2294 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 legal resident of Kansas could bring action in district court against any public employer that adopts a policy or practice that is in violation of registering with or participating in the E-Verify Program. Civil penalties of not less than \$1,000 and not more than \$5,000 could be assessed for each violation and would be deposited in the State General Fund. If a public employer is found by a court to have committed subsequent violations, the civil penalty imposed on the public employer would be greater than that imposed for the immediately preceding violation. The prevailing party in these actions could be awarded court costs and reasonable attorney fees.

On and after January 1, 2016, the bill would require every business in the State of Kansas that employs five or more employees to register with and participate in good faith in the E-Verify Program to verify the employment authorization of all new employees. Businesses would be required to retain all documentation, which is received in connection with its participation in the E-Verify Program that verifies the employment authorization of every employee verified for at least three years after the termination of the employee. The documentation would be provided to the Department of Revenue upon request. The provisions could be enforced in any court of competent jurisdiction by the Attorney General or any district or county attorney.

On a first violation, the court would be required to order the suspension of all licenses that are held by the business for not less than 10 days and not more than 30 days; for a second violation, the court would be required to order the permanent suspension of all licenses that are held by the business for not less than 90 days and not more than one year; and for a third violation, the court would be required to order the permanent suspension of all licenses that are held by the business as well as the revocation of the business' registration with the Secretary of State, if applicable.

The bill specifies that no payment, compensation, or other remuneration, including wages, bonuses, benefits, in-kind exchanges, expenses or any other economic benefit, paid to an employee, whose employment authorization has not been verified through the E-Verify Program could be claimed and allowed as a deductible business expense for state income tax purposes. This section would apply whether or not an Internal Revenue Service form 1099 or form W-2 is issued in conjunction with the payments. HB 2294 would prohibit any payment, compensation, or other remuneration paid to an independent contractor to be claimed and allowed as a deductible business expense for state income tax purposes if an independent contractor is not registered with and participating in good faith in the E-Verify Program. HB 2294 would allow exemptions for certain employers that are specified in the bill.

All employers would be required to submit an affidavit to the Department of Revenue accompanying the annual tax return required under state law. The employer would be required to sign the affidavit under the penalty of perjury and would be required to state the following:

1. Whether the employer utilized a business expense or business loss deduction in determining federal adjusted gross income;
2. Whether the employer employed any employees or independent contractors for the tax year in question and the number of employees or independent contractors;
3. Whether the employer is registered with and participating in good faith in the E-Verify Program;
4. Whether the employer has utilized the E-Verify Program to confirm the employment eligibility of every employee hired on or after January 1, 2016;

5. Whether the employer has confirmed that any independent contractor employed by the employer is registered with and participating in good faith in the E-Verify Program to verify the authorization of new employees; and
6. The employer's identification number signifying the employer's registration with the E-Verify Program.

The Department of Revenue could audit any employer who fails to timely submit the affidavit required or if the agency has probable cause to believe the employer is not complying with the bill's provisions. If the Department determines that an employer has knowingly made material misrepresentations of fact regarding information contained in the affidavit, the employer would be required to add back business deductions taken in determining the employer's adjusted gross income used to calculate the employer's state tax liability, to the extent that the deductions constitute wages or remuneration paid to employees whose employment was not verified using the E-Verify Program.

A business or public employer that has complied in good faith with the bill's provisions through registration and good faith participation in the E-Verify Program to confirm authorization of any employee in question would create a rebuttable presumption that the business or public employer did not knowingly employ an unauthorized alien. A business or public employer that terminates an employee because the employee is not authorized to work in the United States that is provided as a result of the employer's participation in the E-Verify Program would not be liable for any claims alleging the termination was wrongful that are made against the employer under the laws of Kansas.

The Office of Judicial Administration states passage of HB 2294 could result in civil case filings by persons or entities seeking to enforce rights and remedies for violation of the bill's provisions. This would create additional work for judicial and nonjudicial personnel in processing, researching, and hearing cases. Until the courts have been given an opportunity to operate under the provisions of HB 2294, an accurate estimate of the fiscal effect upon the Judicial Branch cannot be given.

The Board of Regents estimates additional State General Fund expenditures of \$69,188 in FY 2016 and \$110,250 in FY 2017 if the bill is enacted. Of the FY 2016 amount, \$52,313 would be to verify the employment eligibility in the E-Verify Program for new employees and \$16,875 would be for initial staff training. The Board's estimated fiscal effect, for FY 2016, is only for the last half of the fiscal year since many of the bill's provisions become effective on January 1, 2016. For the FY 2017 amount, \$104,625 would be to verify new employees with the E-Verify Program and \$5,625 would be for on-going staff training.

The Department of Administration cannot estimate what level of increase in expenditures it would have to contracts awarded by the state. The Department indicates it would be responsible for taking the lead in incorporating the E-Verify Program into the state's hiring process, according to Executive Order 11-04. The agency states the E-Verify Program is a free

service and there are no costs associated with it, other than staff time spent training on and using the program. The agency indicates if there is a delay or waiting period associated with the program, it could result in delays in the hiring process.

The Department of Revenue states that enactment of the bill would have a negligible fiscal effect to State General Fund revenues; however, the agency cannot estimate a precise fiscal effect at this time. The Office of the Attorney General estimates additional funding from the State General Fund would be needed if the agency had to defend the bill's provisions in court.

The League of Kansas Municipalities states passage of HB 2294 could result in additional administrative duties on cities to ensure that the contractual requirements in the bill were complied with and that all new hires were verified through the E-Verify Program. Any fiscal effect associated with HB 2294 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,  
Director of the Budget

cc: Mary Rinehart, Judiciary  
Jack Smith, KDOR  
Willie Prescott, Attorney General's Office  
Larry Baer, LKM  
Kelly Oliver, Regents  
Dawn Palmberg, Labor  
Colleen Becker, DofA