

February 18, 2024

The Honorable Nick Hoheisel, Chairperson
House Committee on Financial Institutions and Pensions
300 SW 10th Avenue, Room 582-N
Topeka, Kansas 66612

Dear Representative Hoheisel:

SUBJECT: Fiscal Note for HB 2729 by Representative Murphy, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2729 is respectfully submitted to your committee.

HB 2729 would establish the Kansas Specie Legal Tender Act that would allow specie to be used as legal tender in Kansas. Specie legal tender is defined as gold or silver coin or bullion including, but not limited to, gold and silver bullion coin issued by the United States. The exchange of one type or form of legal tender for another type or form of legal tender would not be a taxable event. The bill would not allow someone to compel another person to tender or accept specie as legal tender. The bill does not allow bullion to be characterized as personal property for taxation or regulatory purposes. The Attorney General would be required to enforce the Act without prejudice to any private right of action.

The State Treasurer would be required to adopt rules and regulations to approve and allow the use of one or more electronic currencies as a valid form of payment within the state. The electronic currency is the representation of actual precious metals, specie, or bullion held in a depository account that may be transferred by electronic instruction. The rules and regulations would require that an approved electronic currency is administered by a vendor selected by a competitive bid process and backed by specie legal tender. Specie legal tender would be required to be deposited in a secure vault located within the state and approved by the State Treasurer and directly allocated to and held for the benefit of any person holding the approved currency. The State Treasurer would also be responsible for setting security, insurance, audit, and inspection requirements. The State Treasurer would ensure the approved currency is able to be purchased, transferred, exchanged, redeemed, and used for the payment of any tax or fee administered by the Department of Revenue.

The State Treasurer would establish standards and procedures for qualifying an electronic currency as an approved currency; selecting a vendor to administer an approved currency; approving a vault for the deposit of specie legal tender; detecting and preventing fraud in connection with an approved currency; and revoking the status of an electronic currency as an approved currency. The State Treasurer could consult with public or private entities with expertise in the regulation or administration of electronic currencies and establish and collect fees to pay for the costs associated with adopting rules and regulations and the administration of this new program. The State Treasurer would be required to submit a report to the Legislature on or before the first day of the Legislative Session each year regarding the status of approved currencies, including any recommendations for statutory changes to improve the State Treasurer's effectiveness in implementing this program.

The bill would establish the Kansas Bullion Depository Act that would allow the State Treasurer to establish and administer bullion depositories to provide a secure location for the storage of bullion. The State Treasurer could contract with a third party to act as the administrator to manage the day-to-day operations of the depositories and implement the depositories' security, storage, transactional, and administrative procedures. The administrator may enter into contractual agreements with private entities for the provision of services for bullion storage, transportation, or security. The bill includes procedures to establish a depository account and actions that an account holder may do with their account. A depository would maintain records and would have processes and systems to facilitate timely bullion purchases, sales, deposits, and withdrawals. The bill would allow state agencies, counties, municipalities, and other governmental entities to use a depository for storing bullion.

The administrator would ensure that a depository has state-of-the-art security measures to prevent theft, fraud, or other unauthorized access or removal of bullion. The bill also has insurance, audit, legal, and conflict of interest provisions. The administrator would provide a quarterly report to the State Treasurer detailing the operations, transactions, and financial status of each depository. The State Treasurer would provide an annual report to the Legislature on or before the first day of the Legislative Session regarding the operations and financial status of each depository.

The bill includes language that would nullify and void any action by a non-Kansas governmental or quasi-governmental authority to confiscate a depository account or an electronic currency account, including the precious metals represented by the balance of a depository account or an electronic currency account. The State Treasurer would refer any matter relating to this confiscation to the Attorney General for resolution.

The bill would allow the Pooled Money Investment Board (PMIB) the ability invest the state's idle fund balance on specie legal tender. The amount of the investment would not exceed 20.0 percent of the total amount of the Pooled Money Investment Portfolio at the time when the investment is made.

The State Treasurer indicates HB 2729 would require at least \$500,000 from the State General Fund in FY 2025 to implement the bill. The State Treasurer is aware of several states that

have enacted or considered legislation similar to the bill, including Florida, Texas, and Utah. Administrative expenses to operate similar programs in other states have varied widely. The State Treasurer assumes that much of the administrative work to implement the Kansas Specie Legal Tender Act and the Kansas Bullion Depository Act (collectively, the “Program”) would be performed by one or more third-party vendors. The State Treasurer expects that Program users would be subject to maintenance fees and per-transaction fees that could increase the total costs of the Program. The State Treasurer is unable to estimate these increased costs given uncertainty about the scope of vendor contracts that would be required and ultimately the market interest in the Program.

Even with a vendor performing much of the day-to-day administrative work, the bill would require the State Treasurer to establish a new division and hire additional employees to manage the vendor procurement process and continuing oversight; assist with the creation of rules and regulations, and standards; and to perform other administrative tasks. At minimum, this would require the hiring of 1.00 new FTE program director position with an estimated annual salaries and wages cost of \$106,100. Additional staff and consults would likely be needed to perform administrative and legal requirements of the bill; however, these costs are unknown and a reliable timeline of when these expenses would occur is also unknown. Computer workstation setup, software licensing, phone and jack fees, postage and printing, office furniture, and the rental of additional office space would likely be needed for this new division.

The development and construction cost required to establish one or more bullion depositories would be a significant expense for the Program. Total cost to the state would depend, among other factors, on financing arrangements available through potential Program vendors or other partners, but the State Treasurer is unable to provide a reliable estimate of the costs.

The State Treasurer assumes that with adequate market interest, the Program’s administrative expenses and other costs would eventually be funded through fees from Program users of the digital currency and bullion depositors; however, future appropriations from the State General Fund would be required until the Program became self-sustaining. The timeline by which the Program could become self-sustaining is unknown, it would depend on market interest in the Program and revenue collected from fees.

The State Treasurer notes that creation of a specie-backed currency as contemplated by the bill would require investment of state moneys in specie which would be subject to market risk. The actual amount required to be invested in connection with the specie-backed currency would depend on various factors including market demand for such currency.

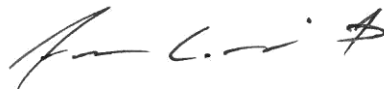
The PMIB indicates the bill permits investments in specie legal tender but does not mandate those investments. The PMIB indicates it will remain committed to its fiduciary responsibility and the guiding investment principles of safety, liquidity, and then yield. Current cashflow needs for the state have required the PMIB to maintain a high quality and highly liquid portfolio. However, the amount of earnings that the state would earn on investments in specie legal tender is unknown, so the PMIB cannot make a precise estimate of the fiscal effect of this bill.

The Department of Revenue indicates the bill would decrease State General Fund revenues by \$100,000 in FY 2025, \$200,000 in FY 2026, and \$200,000 in FY 2027. The bill explains that there would be no tax liability from sale of specie except for taxable distributions from any retirement plan account that holds specie. The Department indicates the bill would have no fiscal effect on its operations. The Department would develop a procedure to accept Specie legal tender for fees and taxes.

The Office of Judicial Administration indicates the bill is not expected to have a significant fiscal effect on expenditures for the Judicial Branch.

The Division of the Budget has requested a fiscal note response from the Attorney General's Office on how this bill would impact their operations. The Office has not yet provided this information to the Division. The Division's review of the bill indicates that it has the potential to increase litigation or enforcements costs by unknown amounts for the Office; however, those unknown costs could potentially be funded by existing resources. Any fiscal effect associated with HB 2729 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Proffitt", with a stylized flourish at the end.

Adam C. Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Joel Oliver, Pooled Money Investment Board
Trisha Morrow, Judiciary
John Hedges, Office of the State Treasurer
William Hendrix, Office of the Attorney General