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Steven J. Anderson, CPA, MBA, Director

Sam Brownback, Governor

February 17, 2011

The Honorable Anthony Brown, Chairperson
House Committee on Commerce and Economic Development
Statehouse, Room 151-S
Topeka, Kansas 66612

Dear Representative Brown:

SUBJECT: Fiscal Note for HB 2131 by House Committee on Commerce and Economic Development

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2131 is respectfully submitted to your committee.

HB 2131 would amend current law to prevent the misclassification of workers in the construction industry. It would be unlawful for an employer or organization to misclassify employees and would create procedures for reporting violations to the Department of Labor.

The Secretary of Labor would be authorized to issue orders or impose civil fines of not more than $2,000 for each violation on a first offense and not more than $3,000 for each subsequent violation, within a five-year period. If the Secretary finds that a violation is willful, the fine could be doubled and assess punitive damages equal to the fine. For any second or subsequent violation within five years, the employer or organization would be posted on the Department's official website, and the employer or organization would be prohibited from being award state contracts for four years from the last date of violation.

The Department would be required to refer any criminal matters for prosecution by the Kansas Attorney General, or the district or county attorney for the county which the violation occurred. A willful violation of the provisions would be a class C, nonperson misdemeanor. A second or subsequent violation within a five-year period would be a severity level 10, nonperson felony.

Any civil fines received by the Department would be deposited in the state treasury and be credited to the Attorney General Employee Classification Fund, which would be created by HB 2131. The fund would be used to pay for expenses incurred by the Attorney General for enforcing the bill. Any remaining portion of the fine in excess of amounts needed to pay expenses by the Attorney General would be credited to the Department of Labor Employee Classification Fund, which is also created by the bill.

The bill would make it unlawful for an employer or organization to retaliate against a person making a complaint, would provide civil penalties or private cause of action. Also, an attempt for an employer or organization to attempt to induce any person to waive rights under the bill would be a class C nonperson misdemeanor.

The bill would authorize the Secretary of Revenue to provide taxpayer information of person suspected of violating provisions of the bill to the staff attorneys of the Department of Labor. In addition, the bill would make the disclosure of this confidential information a class A nonperson misdemeanor and would be grounds for a state officer or employee to be dismissed from employment.

Enactment of HB 2131 would increase the case workload for the Office of the Attorney General. The agency notes that any additional costs incurred by the agency would be paid from civil fines and penalties assessed against violators of the bill. However, the agency does not estimate the number of violations expected with enactment of the bill.

According to the Department of Labor, the bill shifts the burden of penalty enforcement from the agency to the Attorney General. Recovery of penalties shifts as well. The Department characterizes this legislation as revenue neutral.

The number of individuals who may be prosecuted under provisions of HB 2131 is not known. However, the bill does provide that certain violations would be classified as a felony. 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. Any fiscal effect associated with HB 2131 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

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

cc: Bill Schafer, Department of Labor
Megan Pinegar, Attorney General's Office