

February 15, 2012

The Honorable Steve Brunk, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Brunk:

SUBJECT: Fiscal Note for HB 2492 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2492 is respectfully submitted to your committee.

HB 2492 would require that as a condition for the award of any contract or grant in excess of \$5,000 by a governmental entity to a business entity, the business entity would affirm its enrollment and good faith participation in the E-Verify Program with respect to all new employees eligible for verification under the E-Verify Program, working in connection with the contracted services. The bill would require that all public employers, including any governmental entity, would enroll and participate in good faith in the E-Verify Program.

General contractors and subcontractors would not be liable for unknowingly violating the provisions in the bill if they obtain a sworn affidavit signed before a notary attesting to the fact that they are enrolled and participate in good faith in the E-Verify Program. HB 2492 states it would be considered a breach of contract for any business entity that is found to have violated the provisions of the bill and the government entity could terminate the contract. Upon written notice and the opportunity to be heard, the governmental entity could suspend or debar the business entity from doing business with the governmental entity with the following violations:

1. Upon a first violation, for a period of up to three years, and upon any contract termination, the governmental entity may, in addition to other remedies as may be provided by law, withhold from amounts due or recover as liquidated damages up to 5.0 percent of the total amount of the contract with the business entity; and
2. Upon a second or subsequent violation, for a period of not less than three years, and upon any contract termination, the governmental entity may, in addition to such other remedies as may be provided by law, withhold from amount due or recover as liquidated damages up to 10.0 percent of the total amount due to the business entity.

HB 2492 would require that any civil action undertaken by any governmental or business entity to enforce rights and remedies associated with the provisions in the bill, the prevailing party would be awarded its costs to include reasonable attorney fees associated with such action. Any business entity covered under the provisions of HB 2492 which terminates an employee pursuant to a notification that such employee is not authorized to work in the United States, pursuant to the business entities' participation in the E-Verify Program, would not be liable for any claims made against the business entity under the laws of the State of Kansas alleging that such termination was wrongful.

Estimated State Fiscal Effect				
	FY 2012 SGF	FY 2012 All Funds	FY 2013 SGF	FY 2013 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$76,126	\$76,126
FTE Pos.	--	--	--	1.00

The Department of Administration indicates in accordance with Executive Order 11-04 that it would be responsible for taking the lead in incorporating the E-Verify system into the state's hiring process. The E-Verify system is a free service, so the Department states there are no costs associated with the participation in the system, other than staff time spent training on and subsequently using the system. The current process would need to be changed slightly to inform candidates that they must be verified before being hired and to reinforce that key personal information must be submitted to the agency before a candidate could be offered a position. The Department indicates that it could take time to receive authorization through the E-Verify system. If there were to be significant delay or waiting period associated with the E-Verify system, this could result in delays in the hiring process, which could result in a hardship on state agencies when a position needs to be filled expeditiously. The Department notes that E-Verify system is free and relatively easy to use, but of either of those two features were to change it would result in additional expenditures for the Department of Administration.

The Department of Administration's Office of Procurement and Contracts states it would need to include language on their bid documents to discuss the requirements. The Department estimates there would be significant work associated with the education of agency procurement functions in these requirements, auditing their work in locally developed contracts and grants that exceed \$5,000, as well as dealing with violators of these requirements. The agency estimates it would need \$76,126 in FY 2013 and \$75,176 in FY 2014 from the State General Fund, along with a Procurement Officer IV FTE position to implement the requirements of HB 2492.

The Board of Regents indicates passage of the bill could have a fiscal effect on the Board and state universities, but it would be negligible since the Board estimates that most of the E-Verify documentation and background work would be provided by the business entity receiving

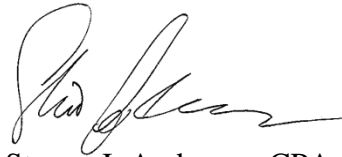
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the contract. The League of Kansas Municipalities states that the actual implementation of the requirement to use the E-Verify Program would have a negligible fiscal effect on cities. The requirement that businesses entities affirm their use and participation in the E-Verify Program could have a fiscal effect on cities because they may choose not to do business with a city rather than take on the added obligation or they may pass any additional costs associated with the program on to the city as part of the cost of doing business, according to the League. The Kansas Association of Counties believes enactment of HB 2492 would have a fiscal effect on counties, but cannot provide a precise fiscal effect at this time. Any fiscal effect associated with HB 2492 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

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

cc: Marilyn Jacobson, Administration
Kathie Sparks, Department of Labor
Larry Baer, League of Kansas Municipalities
Melissa Wangemann, Kansas Association of Counties