

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 2576 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2576 is respectfully submitted to your committee.

HB 2576 would amend current law regarding immigration and harboring of aliens. It would be unlawful for any person to intentionally or attempt to conceal, harbor, shield an alien from detection by law enforcement officials in any place in Kansas if the person recklessly disregards the fact that the alien is in the United States in violation of federal law. It would also be a violation to intentionally encourage or induce an alien to come to or reside in the United States in violation of federal law. Violation of these provisions would be a class A misdemeanor. However, a violation involving ten or more aliens who are 18 years of age or older and who are unlawfully present in the United States would be a severity level eight person felony.

The bill also would restrict the eligibility requirements of certain public benefits for aliens who are unlawfully present in the United States. Government agencies would be required to verify that the alien is lawfully present in the United States before providing public benefits and would also require the government agency to cooperate with the Department of Homeland Security.

It would be a class C misdemeanor, with a fine not to exceed \$100, for any alien failing to complete or carry an alien registration document if the person is in violation of federal law and the alien is unlawfully present in the United States. The alien's immigration status would be determined by verification with the federal government pursuant to federal requirements. Law enforcement officers must not attempt to independently verify the immigration status of any alien. Moreover, no consideration may be given to race, color, or national origin except to the extent permitted by the United States Constitution and the Kansas Constitution. The provisions relating to registration documentation would not apply to any person who maintains authorization from the federal government to be present in the United States. Any records that relate to the immigration status of a person would be admissible in court.

HB 2576 would also increase the penalties for the crimes of vital records identity fraud and dealing in false identification documents. The penalty for vital records identity fraud would increase from a severity level eight nonperson felony to a severity level seven nonperson felony. Likewise, the penalty for dealing in false identification documents would increase from a severity level eight nonperson felony to a severity level six nonperson felony.

Finally, upon the first appearance before a magistrate, any offender who has been charged with a crime and is not a citizen of the United States must have their immigration status verified with the federal government. For the purposes of determining the grant of or issuance of appearance bonds, it shall be a rebuttable presumption that a person who has been verified by the federal government to be an alien unlawfully present in the United States is a risk of flight.

It is the Department of Revenue's view that the interpretation of "public benefit" would include food sales tax refunds and homestead property tax refunds. The Department notes that food sales tax refunds are not allowed under the Kansas Income Tax Act, which was amended last year to permit income tax credits only for filers with valid social security numbers (SSN). However, the Department currently does allow homestead refund for claimants with Individual Taxpayer Identification Numbers (ITINs) issued by the IRS. Since the IRS allows an undocumented alien to obtain ITINs, it is possible that some homestead refund claimants using ITINs are undocumented aliens. However, the Department of Revenue does not know the percentage of ITIN filers who are undocumented aliens. For tax year 2010, the Department had 120,000 homestead refund filers producing a total rebate amount of \$38.0 million. Included in these amounts were 3,000 filers with ITINs, which produced a total rebate of \$1.2 million. HB 2576 would prohibit illegal aliens from receiving homestead refunds, which would possibly increase revenues to the State General Fund by an unknown amount. The Department would need to update tax forms and databases to capture all SSNs to verify if they are valid. The resulting programming and administrative costs are estimated to be \$38,400 for FY 2013.

The Department of Social and Rehabilitation Services (SRS) states that assistance is currently limited to United States citizens and legal residents who are not citizens. SRS requires documentation of citizenship for all state-funded assistance programs. For federally funded programs, SRS adheres to all federal laws and regulations that govern citizenship documentation.

According to the League of Municipalities, HB 2576 would place additional obligations on cities to review and verify immigration status of persons seeking public services, which in the League's view could include applications for utility services, business licenses, cereal malt beverage licenses, and public housing. Cities would incur expenses to hire and train additional staff members to carry out the verification process. This would be particularly true for small cities and all cities that have had to reduce staff. However, the precise fiscal effect on cities is difficult to determine the precise fiscal effect from the passage of the bill because the number of cities that would have to increase staff is not known.

HB 2576 has the potential for increasing the number of cases filed in district courts relating to immigration and alien verification. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system resulting from the additional time needed by courts to process, research, and hear the cases. Also, the increased caseload could result in added revenue from docket fees and penalties. However, it is not

possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Consequently, a precise fiscal effect cannot be determined.

The bill would also have an effect on prison capacity. The Kansas Sentencing Commission estimates that passage of HB 2576 would result in an increase of one to three adult prison beds in FY 2013 and an increase of two to four adult prison beds by FY 2022. Currently, the number of male inmates exceeds the available bed capacity of 8,442, and based upon the Kansas Sentencing Commission projections, it is estimated that at the end of FY 2012 and FY 2013, the number of male inmates will exceed available capacity by 262 beds and 380 beds, respectively. To address capacity issues, the Governor's budget includes \$3,896,150 to renovate and operate existing facilities in Labette County and an additional \$1.5 million to contract for prison beds (\$2.5 million was added last year for contract beds). If it is determined that additional facility construction is essential in the near-term, the Department of Corrections has identified a capacity expansion project at El Dorado Correctional Facility that includes building two new medium security housing units, which would provide a total of 512 beds. It is estimated that the new units would have a construction cost of \$22,320,329 and operating costs of \$8,184,231 (or \$43.79 per inmate per day).

Any near-term or long-term capacity needed beyond the options outlined above would 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 2576 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,



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

cc: Mary Rinehart, Judiciary
Scott Schultz, Sentencing Commission
Jeremy Barclay, Corrections
Jackie Aubert, SRS
Kathie Sparks, Department of Labor
Larry Baer, League of Kansas Municipalities