

February 25, 2011

The Honorable Susan Wagle, Chairperson
Senate Committee on Commerce
Statehouse, Room 135-E
Topeka, Kansas 66612

Dear Senator Wagle:

SUBJECT: Fiscal Note for SB 157 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 157 is respectfully submitted to your committee.

SB 157 would allow the Attorney General (AG) to investigate and bring action for injunctive relief against an employer when the AG has reason to believe that such employer is knowingly and intentionally misclassifying an employee as an independent contractor for the primary purpose of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements. Currently, the Department of Labor has this authority. In addition to any penalty imposed when a court determines an employer has violated this act, SB 157 would require the court to assess and award penalties in favor of the state in the amount of \$50 per day per misclassified employee up to \$50,000. The bill defines an employee using the Internal Revenue Service guidelines for determining an employer-employee relationship.

The bill would shift any penalties recovered and related expenditures for investigation and action sought from the Department of Labor to the Attorney General. However, there are no estimates provided for the number of actions sought or amount of penalties that could be recovered. According to the Department of Labor, the definition of employee could reduce the number of instances the Attorney General could investigate or bring action against an employer, reducing the amount of penalties that could be collected as well.

SB 157 has the potential for increasing litigation in the courts because of the new penalty created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they

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February 25, 2011

Page 2—Fisc_Note_Sb157

would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with SB 157 is not reflected in *The FY 2012 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: Megan Pinegar, Attorney General's Office
Mary Rinehart, Judiciary
Melissa Wangemann, Kansas Association of Counties
Bill Schafer, Department of Labor
Steve Neske, Revenue