

February 25, 2008

The Honorable Arlen Siegfried, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 161-W
Topeka, Kansas 66612

Dear Representative Siegfried:

SUBJECT: Fiscal Note for HB 2680 by Representative Mah, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2680 is respectfully submitted to your committee.

HB 2680 would establish the Immigration Accountability Act. Starting January 1, 2009, an employer would be prohibited from intentionally or knowingly employing an unauthorized alien. The bill defines both intentionally and knowingly. After a complaint that an employer has hired an unauthorized alien, the Attorney General or county attorney would investigate to determine if the employer is in violation of this act. When investigating a complaint, the Attorney General or county attorney would verify the work authorization of the alleged unauthorized alien with the federal government. A state, county, or local official would not attempt to independently make a final determination as to whether a person is unauthorized to work in the United States. After an investigation, the Attorney General or county attorney would notify the United States Immigration and Customs Enforcement and the local law enforcement where the unauthorized alien works or lives. If the complaint was originally filed with the Attorney General, then the Attorney General would notify the appropriate county attorney. A person who knowingly files a false complaint under this act would be guilty of a Class C, nonperson misdemeanor.

Violation of this act would be brought against the employer by the county attorney. A court would expedite any action, including assigning a hearing at the earliest date. The bill details court orders that employers would receive for a first violation of knowingly and intentionally employing unauthorized aliens. For a second violation of intentionally or knowingly employing an unauthorized alien, the court would order the appropriate agencies to permanently revoke all licenses that are necessary to operate the employer's business. The Attorney General would keep copies of such court orders. The Attorney General would also maintain a database of the employers who have a first violation and make the court orders available on the Attorney General's website.

Starting January 1, 2009, an employer would be required to verify employment eligibility after hiring an employee through e-verify. E-verify is an electronic system that is jointly administered by the Department of Homeland Security and the Social Security Administration. The Department of Revenue, by October 1, 2008, would be required to provide notice to all employers that are required to withhold taxes explaining the requirements of this act. The notice would also have instructions for employers on how to enroll in e-verify.

HB 2680 would prohibit compensation paid to unauthorized alien employees from being claimed as a deductible business expense for state income tax purposes. However, this prohibition would not apply to a business that is exempt from compliance with federal employment verification procedures under federal law. This would also not apply to individuals hired by the taxpayer prior to January 1, 2009. Furthermore, this bill would prohibit state agencies or municipalities from awarding a public works or purchase contract to a bidder, contractor, or employer who has violated this act within the preceding five years.

HB 2680 would make it unlawful for an employer to not designate an individual as an employee, unless the employment relationship satisfies a free from control test. The bill would require the Department of Labor to enforce this provision. The Department would also be allowed to adopt rules and regulations to enforce the provisions. Also, the bill would allow any person to file a complaint with the Department against a business or employer, if there is reason to believe that an employee is not classified properly. After an investigation, if the Department believes that the business has not properly designated an individual as an employee, the Department could assess appropriate civil penalties. The bill would require an employer to follow the Department's orders or the employer would be found guilty of contempt of court. The bill would require the Attorney General to prosecute criminal violations of this provision. The bill provides civil penalties for first, second, and subsequent violations of this provision. Furthermore, if an employer willfully violates this provision, the employer would be guilty of a Class C nonperson misdemeanor on his or her first offense. For a second violation within five years, an employer would be guilty of a severity level 10, nonperson felony.

The bill would require that monies recovered from a civil penalty be credited to the Employee Classification Fund, which the bill creates. The Department of Administration would use these funds for investigations and other expenditures to carry out the provisions of this bill. However, if the civil action is brought by an interested party, then the court would award the party 10.0 percent of the amount recovered and the remaining amount would be deposited into the Employee Classification Fund.

The bill would prohibit an employer from retaliating against a person who reported them for improperly classifying employees. Retaliation would be subject to civil penalties. HB 2680 would allow an interested or aggrieved person to file suit against an employer in court. The bill details the type of damages and other fees a person could collect.

The Secretary of the Department of Revenue would be allowed to provide taxpayer information of suspected violators to the Department of Labor's staff attorneys. The bill details the type of information that can be provided and how the information can be used. Under HB 2680, no type of compensation paid to an unauthorized alien employee would be allowed to be used as a Kansas itemized deduction. Finally, the bill would provide for modifications to the employer's federal adjusted gross income for compensation paid to an unauthorized alien employee.

HB 2680 would create several new responsibilities for the Department of Labor. The agency estimates that it would require \$359,850 for FY 2009 from the State General Fund to fulfill these duties. The agency would use the requested funds to create a database of employers that have been found guilty of employing unauthorized aliens. All public contracts would have to be verified through the Department's database to determine if the employer has violated this Act. The Department would also have responsibilities to review and hear those who face forfeiture of public contract proceeds. Furthermore, the agency would provide the hearing and review process for civil enforcement for employers who do not properly classify their employees.

Under HB 2680, the Attorney General's Office would investigate and prosecute certain violations of the Immigration Accountability Act. Also, the agency would be responsible for having a database on its website of employers who violate the act. The Office anticipates the responsibilities of this bill would increase its workload. Given the recent attention of immigration issues, the agency assumes that the number of complaints reported to the agency could increase. However, the agency does not have any information on which to base an accurate estimate.

The Secretary of State's Office states that enactment of HB 2680 would increase its expenditures by \$54,883 in FY 2009 from the State General Fund. Since the agency currently does not have a filing system for suspensions and reinstatements of businesses, one would have to be created. The agency would hire 1.00 new IT Programmer FTE position to perform the required programming changes.

The Department of Revenue has no data on how many undocumented aliens are currently employed in Kansas. To the extent that employers would no longer be able to hire undocumented workers or employers could lose their license for hiring such workers, business income for the employers would decrease. Therefore, this could reduce state tax revenues. On the other hand, the bill would prohibit an employer from deducting compensation paid to unauthorized alien employees for Kansas income tax purposes. In addition, itemized deductions would not be allowed for compensation paid to unauthorized alien employees. These items

could increase state revenues. However, the agency is unable to estimate the net effect of this bill.

This bill would require modifications to the automated tax system. The required programming for this bill would cost \$16,640 for 208 hours of contract programming at a cost of \$80 per hour. The agency estimates printing costs for reprinting the KW-100 Kansas withholding tax guide and notices to employers would be approximately \$42,800. In order to handle the increase of tax returns and phone calls, the Department would also need to hire 1.00 Customer Representative Specialist FTE position at a salary cost of \$53,527. The other operating expenditures would total \$5,193. The total administrative costs would be \$118,160 for FY 2009 from the State General Fund.

The Kansas Sentencing Commission estimates that passage of HB 2680 could require additional adult prison beds in FY 2009. However, the effect cannot be estimated because there are no data on which to base an accurate estimate.

When considered by custody level, the Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates. Nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual costs to staff and operate the additional capacity would be required.

If the bill does not contribute to the need for capacity expansion, additional annual costs of approximately \$2,000 per inmate for basic support, including food service, would be needed. Additional expenditures for health care also could be incurred, if the increase in the inmate population required adjustments in the medical contract. The health care contract provides that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment in contract payments is made. The amount of any adjustment would depend on the specific facility involved.

HB 2680 has the potential for increasing litigation in the courts because of the new violations and penalties 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 would be. Therefore, a precise fiscal effect cannot be determined for the Office.

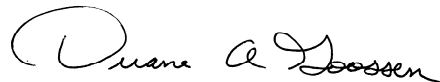
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The League of Kansas Municipalities and the Kansas Association of Counties would have increased expenditures because of increased responsibilities in the bill. Again, however, there are no data on which to make an accurate estimate. Any fiscal effect associated with HB 2680 is not reflected in *The FY 2009 Governor's Budget Report*.

Sincerely,

A handwritten signature in cursive script that reads "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

cc: Larry Baer, LKM
Steve Neske, Revenue
Matt Sinovic, Attorney General's Office
Judy Moler, KS Association of Counties
Bill Schafer, Labor
Christy Harvey, Secretary of State's Office
Helen Pedigo, Sentencing Commission
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