

March 22, 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 219 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 219 is respectfully submitted to your committee.

SB 219 would prohibit employers from taking adverse action against any person in retaliation for asserting a claim or right for unpaid wages, for assisting a person in doing so, or for informing a person about his or her rights, as outlined in the bill. Any employer that would fail to pay wages required under law would be required to pay the balance of the wages owed, including interest, and an additional amount equal to twice the unpaid wages. The Secretary of Labor or any district court would have the authority to order payment of unpaid wages and other amounts as authorized by the bill.

When the Secretary of Labor would determine that an employer is a repeat offender, an order may be served directing an employer to show cause that it is not a repeat offender under the Kansas Wage Payment Act. The bill would outline procedures and penalties for repeat offenders of the Act, including requiring an employer to post a bond to cover employee wages in order to continue to stay in business.

The bill outlines civil and criminal penalties for employers that intentionally fail to pay an employee when the employer is considered a repeat offender. On a first conviction, the employer would be guilty of a class A misdemeanor, with a fine of at least \$400 and imprisonment up to one year. For a second or subsequent violation, the employer would be guilty of a severity level 10 nonperson felony, with a fine of at least \$1,000 and imprisonment for at least one year. In addition to any other penalties, the Secretary of Labor has authority to impose a civil fine of at least \$5,000 for each violation, with any funds deposited in the Wage Claims Assignment Fee Fund.

According to the Kansas Department of Labor, the agency has had very limited encounters with "repeat offenders" of failure to pay wages by employers. However, enactment of SB 219 could result in additional revenue to the Department of Labor through additional civil fines.

The Honorable Susan Wagle, Chairperson

March 22, 2011

Page 2—Fisc_Note_Sb219

In addition, enactment of the bill could result in additional offenders being sentenced to imprisonment. However, there are no estimates of the number offenders. 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 SB 219 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

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

cc: Kathie Sparks, Department of Labor