

February 13, 2017

The Honorable Rick Wilborn, Chairperson
Senate Committee on Judiciary
Statehouse, Room 541-E
Topeka, Kansas 66612

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 125 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 125 is respectfully submitted to your committee.

SB 125 would allow for damages of \$80,000 per year of incarceration in a state correctional facility for any claimant wrongfully convicted of a felony under the Kansas Criminal Code who demonstrates he or she did not commit the crime and did not plead guilty or no contest to the crime. The bill would allow for damages of \$1.0 million for any claimant wrongfully convicted of capital murder who was sentenced to death and served all or part of the sentence, and who demonstrates he or she did not commit the crime; did not commit or suborn perjury, fabricate evidence or by their own conduct cause or bring about their conviction; and did not plead guilty or no contest to the crime. In addition, the bill would allow for damages of \$5.0 million for any claimant who is the heir, legal representative, or estate of a person wrongfully convicted and executed for capital murder, who also demonstrates the executed person did not commit the crime; the executed person did not commit or suborn perjury, fabricate evidence or by their own conduct cause or bring about their conviction; and the executed person did not plead guilty or no contest to the crime.

Damages would only be available to a claimant who is released or pardoned, or is seeking damages related to an execution occurring, on or after July 1, 2017. In any case, claims would have to be proven by a clear and convincing evidence standard. The claimant would be required to bring suit within two years of release from imprisonment or within two years after the execution. Prevailing claimants would be entitled to costs related to the suit, including legal fees. All damages, costs, and fees would be paid from the State General Fund, and any damages awarded under the new law would be used to offset any other award in a related action brought against the state or any of its political subdivisions or employees.

The Office of the Attorney General (OAG) estimates SB 125 could increase State General Fund expenditures by at least \$1.4 million in FY 2018 for compensation of a wrongful conviction that is currently before the court. The estimate includes \$1,250,000 (\$80,000 per year of incarceration x 15.625 years) of recovery in addition to \$100,000 to \$200,000 in legal fees that would be awarded to the claimant. However, if the case is contested and the state loses, the OAG indicates the claimant's attorney fees and costs could exceed \$1.0 million, alone. The OAG indicates its capacity to handle such cases would depend on whether or not a case is contested. If a case is not contested, the OAG would use in-house counsel and could absorb the cost within existing resources. If a case is contested, the OAG would still use in-house counsel, but would incur expenditures of approximately \$50,000 per case for associated costs, such as expert witness fees and DNA testing.

The Office of the Attorney General indicates there could be two additional long-term incarceration cases of this type coming in the near future, but is unable to determine what the awards might be. For these two cases and any other cases that may come forward in the future, the amount of awards made under the provisions of SB 125 would depend on the type of conviction, the length of incarceration, attorney fees and other costs, and whether or not the case is contested.

The Office of Judicial Administration indicates SB 125 could increase costs from additional time spent by judicial and nonjudicial personnel processing, researching and hearing new cases and appeals in district court and appellate court related to wrongful felony convictions and wrongful capital murder convictions and executions. Likewise, the courts could also see increased docket fee revenues from the additional filings. However, an estimate cannot be provided. Any fiscal effect associated with SB 125 is not reflected in *The FY 2018 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Ashley Michaelis, Judiciary
Willie Prescott, Office of the Attorney General