

February 20, 2019

The Honorable Sean Tarwater, Chairperson  
House Committee on Commerce, Labor and Economic Development  
Statehouse, Room 151-S  
Topeka, Kansas 66612

Dear Representative Tarwater:

**SUBJECT:** Fiscal Note for HB 2259 by Representative Finney

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2259 is respectfully submitted to your committee.

HB 2259 would prohibit state agencies from conducting background checks on applicants for employment unless the agency has made a good faith determination that the position's job duties are sensitive enough to warrant a background check or a background check is required by state or federal law. All job announcements would have to state that the position is subject to a background check and only job-related convictions would be considered and would not automatically disqualify the candidate. Job applications could not include questions about an applicant's conviction history. The bill would prohibit state agencies from using certain criminal records when conducting background checks. State agencies would be prohibited from asking about or considering an applicant's conviction history until after the applicant has received a conditional offer. The bill would prohibit using a job-related conviction as the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position. If an agency makes an adverse decision, the applicant would have to be notified of the final decision and that he or she may be eligible for other positions. An individual could appeal adverse decisions as provided by law.

The Secretary of Administration would be responsible for enforcing the provisions of HB 2259. Agencies would be required to retain application forms and other records for a minimum of three years and the Secretary would be allowed access to those records. Any person who is aggrieved by a violation of the bill could contact the Secretary. The Secretary would be required to conduct a confidential, anonymous survey of state employees in positions that do not require background checks to determine the number of people who were hired with criminal records. The Secretary must submit a report to the Legislature each January regarding the status of employment of persons with criminal records.

The Department of Administration indicates that the bill would add a number of delays and steps to the state hiring process; particularly as a result of not being allowed to begin a background check until after a conditional offer is made. Generally, when an agency makes a conditional offer to a candidate, the agency has already spent time processing applications, screening candidates for qualifications, conducting interviews and contacting references. Under the bill, if the results of a background check cause a candidate to be disqualified because of a certain conviction, agencies would have to re-start the process with a new candidate; this would cause delays in filling the position. Delays in hiring would affect all state agencies including smaller agencies; agencies with around-the-clock operations; and agencies that have minimum staffing requirements. The Department notes that the State of Kansas already prohibits inquiring about an applicant's conviction history except for certain positions in the Department for Children and Families, law enforcement officers, corrections officers and juvenile corrections officers.

According to the Department of Administration, agencies with many positions may need to hire additional human resource or legal staff. However, the Department does not have information regarding what those statewide staffing needs would be.

The Department of Administration estimates that it would require additional expenditures of up to \$182,000 from the State General Fund in FY 2020. This figure includes the salaries and wages of 1.00 human resource FTE position (\$65,000) and 1.00 administrative support FTE position (\$45,000) in the Office of Personnel Services. Also included in the estimate is \$72,000 for 1.00 attorney FTE position in the Office of the Chief Counsel. Any fiscal effect associated with HB 2259 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is fluid and cursive, with the first name "L." and the last name "Campbell" clearly legible.

Larry L. Campbell  
Director of the Budget

cc: Colleen Becker, Department of Administration