

February 8, 2023

The Honorable Adam Thomas, Chairperson
House Committee on Education
300 SW 10th Avenue, Room 218-N
Topeka, Kansas 66612

Dear Representative Thomas:

SUBJECT: Fiscal Note for HB 2238 by House Committee on Education

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2238 is respectfully submitted to your committee.

HB 2238 would create the Fairness in Women's Sports Act to require student athletes to compete in gender-specific sports based upon the student's biological gender. The bill would require athletic sports in any public school or postsecondary educational institution to expressly designate sports as men only, women only, or coed. Male gender student athletes would be prohibited from participating in sports designated for women or girls. The Act defines biological sex as the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads and non-ambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen or subjective experience of gender.

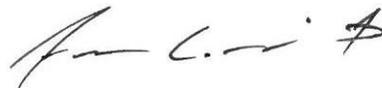
Any governmental entity, licensing or accrediting organization, athletic association, or organization would be prohibited from entertaining any complaint, opening an investigation, or taking any other adverse action against any public school or postsecondary educational institution for maintaining separate sports. Any student aggrieved by a public school, postsecondary educational institution or athletic association or organization in violation of the bill, or any student who is subject to retaliation or other adverse actions as a result of reporting a violation of the Act would have private causes of action for injunctive relief, damages, or other relief allowed by law. Likewise, any public school or postsecondary educational institution that suffers from any direct or indirect harm as a result of violations of the Act would also have a private right of action. The bill would require all civil actions to be initiated within two years after the harm occurred and the prevailing parties would be entitled to monetary damages, reasonable attorney fees, and other relief allowed by law. Finally, the bill would contain a severability clause should any section or provision be struck down.

The Office of the Attorney General (OAG) indicates HB 2238 would likely be challenged on constitutional grounds and would need to go through the appellate process to get a definitive ruling on the validity of the law. The OAG indicates, depending on which court system, federal or state, the case was filed in, getting to an appellate decision could span multiple fiscal years. However, the OAG indicates the costs to defend the state in any lawsuits could be absorbed within existing resources. The OAG indicates local school boards and community colleges would likely be affected by passage of HB 2238 and subject to increased legal liability. The Kansas Department of Education indicates the enactment of the bill would have no fiscal financial effect on the agency or local school districts.

The Kansas Board of Regents indicates the passage HB 2238 would require the Board and the governing boards of Washburn University, community colleges and technical colleges to adopt rules and regulations related to implementation of the Act. The Board indicates the duties associated with adopting rules and regulations and the administration of the Act could be absorbed within existing resources. However, the Board indicates that if the bill were amended to make adoption of regulations optional, rather than required, the additional administrative cost to promulgate regulations could potentially be avoided.

Further, the Board indicates that if the National Collegiate Athletic Association's (NCAA) policies are in conflict with HB 2238, enactment of the bill could affect the state's ability to host NCAA events. If this were the case, the Board indicates it could have a fiscal effect on the institutions, communities, and region of the state where those events would have been held; however, the fiscal effect cannot be estimated. The Office of Judicial Administration indicates HB 2238 could result in additional civil cases being filed, which could increase revenues and expenditures from additional time spent by judges and court staff in hearing and processing these cases. However, a fiscal effect cannot be estimated. Any fiscal effect associated with HB 2238 is not reflected in *The FY 2024 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Becky Pottebaum, Board of Regents
Vicki Jacobsen, Judiciary
John Milburn, Office of the Attorney General
Craig Neuenswander, Department of Education