

March 16, 2011

The Honorable Virgil Peck, Chairperson
House Committee on Transportation and Public Safety Budget
Statehouse, Room 561-W
Topeka, Kansas 66612

Dear Representative Peck:

SUBJECT: Fiscal Note for HB 2370 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2370 is respectfully submitted to your committee.

HB 2370 would abolish the Office of the State Fire Marshal and would transfer most powers, duties, and functions of the agency to the Division of Facilities Management of the Department of Administration. Employees of the State Fire Marshal would become employees of the Division of Facilities Management of the Department of Administration. The powers, duties, and functions of the State Fire Marshal relating to post-incident fire or explosion investigations would be transferred to the Kansas Bureau of Investigation (KBI). The Director of Accounts and Reports would transfer 21.0 percent of any remaining balance from the Fire Prevention Fee Fund to the KBI Fire Investigation Fund of the KBI, excluding any amounts to be transferred to the Hazardous Materials Emergency Fund of the Adjutant General and the Y-Fire Program of the Kansas Department of Health and Environment (KDHE). Employees of the State Fire Marshal who perform functions related to post-incident fire or explosion investigations would be transferred and become employees of the KBI. The powers, duties, and functions relating to responding to hazardous material incidents would be transferred to the Division of Emergency Management of the Office of the Adjutant General. The Director of Accounts and Reports would transfer 22.0 percent of any remaining balance from the Fire Prevention Fee Fund, excluding any amounts to be transferred to KDHE for the Y-Fire Program to the Hazardous Materials Emergency Fund. Employees of the State Fire Marshal who perform functions related to hazardous material incidents would be transferred and become employees of the Division of Emergency Management of the Office of the Adjutant General.

The KBI and the fire chief of any organized fire department of any municipality, whether regular or volunteer, would be authorized to investigate any fire or explosion that occurs in Kansas as specified in HB 2370. Full-time fire prevention personnel who have been assigned investigation duties, are members of a paid fire department, and have been certified by the KBI would have authority to make arrests, carry firearms, and conduct searches and seizures while investigating any fire or explosion where arson or attempted arson is suspected. Fire prevention

personnel would also have the same authority if there is an attempt or suspected attempt to defraud an insurance company. The Attorney General would specify the number of investigators for fire departments or areas and would adopt rules and regulations establishing standards for certification of members of fire departments to make arrests, carry firearms, and conduct searches.

The bill would change the name of the Fire Marshal Fee Fund to the Fire Prevention Fee Fund and transfer it to the Department of Administration. The Fire Safety Standard and Firefighter Protection Act Enforcement Fund, the Cigarette Fire Safety Standard and Firefighter Protection Act Enforcement Fund, and the Liquefied Petroleum Gas Fee Fund would also be transferred to the Department of Administration. The Hazardous Materials Emergency Fund and the Hazardous Material Program Fund would be transferred to the Office of the Adjutant General. HB 2370 would also establish the KBI Fire Investigation Fund and all expenditures would for carrying out investigations as specified in the bill. The Y-Fire Program would remain with KDHE. HB 2370 contains other technical changes.

The Office of the State Fire Marshal states that HB 2370 transfers an annual percentage to the Hazardous Materials Emergency Fund, but recommends the amounts be transferred to the Hazardous Material Program Fund. Further, the State Fire Marshal indicates it has had ongoing cash flow issues since the fire insurance premiums were split between the Board of Emergency Medical Services and the University of Kansas Fire and Rescue Training Institute and the cash flow issues would continue amongst the agency programs if HB 2370 is passed. The agency notes HB 2370 does not address the repayment of a loan of \$250,000 from the Hazardous Materials Emergency Fund to the Fire Marshal Fee Fund that occurred in FY 2004. The agency indicates if the loan is not repaid it could eventually shut down all regional hazardous response activities across Kansas.

Based on the projected revenue to the Fire Marshal Fee Fund of \$4,352,000 in FY 2012 and the 21.0 percent transfer, KBI would receive \$913,920 annually. Total additional expenditures by the KBI to conduct fire, explosion and arson investigations are estimated at \$1,119,787. Of that amount, \$930,429 would be for salary and benefits and \$189,358 for other operating expenditures, according to the agency. The other operating expenditures are based on KBI's projected other operating expenses per investigator of \$14,566 ($\$14,566 \times 13$). The KBI indicates as HB 2370 is currently written, the agency would be underfunded by \$205,867 in FY 2012.

The Office of the Adjutant General indicates if HB 2370 is passed, there would be an increase in staff, additional equipment and the responsibility for storing and maintaining additional deployable assets, expanded training audiences to include regional hazardous materials response teams and fire departments, deployment of response teams, and financial responsibilities with different revenue sources. The Adjutant General indicates that the current daily operational budget for the hazardous materials response section of the State Fire Marshal is \$377,192 in FY 2012, which is less than the 22.0 percent of the Fire Marshal Fee Fund cited in HB 2370. The Adjutant General indicates the current funding source cited in the bill would not be adequate to fund operations for hazardous material incidents. The agency indicates additional

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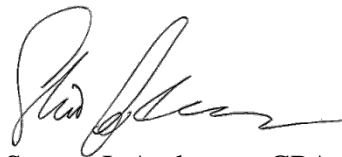
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staffing and funding would be necessary to pay for office space currently leased by the State Fire Marshal, which is not allocated in the Adjutant General's budget. The agency notes additional expenditures would include salary and wages, office space for personnel, lease/rental fees for storage space to store response assets, equipment for personnel, and maintenance of vehicles, fuel expenses, and contracts with regional hazardous response material teams.

The Office of the Attorney General indicates there is an Assistant Attorney General assigned to the State Fire Marshal, but HB 2370 does not indicate as to where this individual and the funding for the position would go. If the current Assistant Attorney General position is transferred, along with the salary from the Fire Marshal Fee Fund to the Attorney General's Office or the KBI, then the agency indicates there would be no additional costs to carry out the provisions in HB 2370. However, if the position and salary are not transferred, then an Assistant Attorney General would be needed with \$82,000 from the State General Fund in FY 2012 for salaries and wages.

The Insurance Department cannot determine with the language in HB 2370 if the intent of the legislation is to retain the 20.0 percent of the collected revenues up to \$200,000 from the State General Fund. The agency further states that there would be some computer programming changes and some modifications to electronic tax forms for tax year 2011, but both changes could be completed within existing resources. The Department of Administration indicates that until the programs of the State Fire Marshal are transferred, the agency cannot provide an accurate estimate of whether it would need more or less staff or funding to operate the programs effectively and efficiently. The Kansas Department of Health and Environment indicates passage of HB 2370 would have no fiscal effect to agency operations. The League of Kansas Municipalities cannot determine at this time what, if any, fiscal effect enactment of HB 2370 would have upon Kansas municipalities. The Division of the Budget notes that in HB 2370 reference to the "Liquefied Petroleum Gas Fee Fund" is not the correct fund name. The correct name is the "State Fire Marshal Liquefied Petroleum Gas Fee Fund." Any fiscal effect associated with HB 2370 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,



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

cc: Larry Baer, League of KS Municipalities
Megan Pinegar, Attorney General's Office
Steve Sutton, EMS
Pat Kuester, KDHE