

Approved: 2.24.97  
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

The meeting was called to order by Chairperson Kent Glasscock at 9:00 a.m. on February 20, 1997, in Room 521-S of the Capitol.

All members were present except: Representative David Haley, Excused

Committee staff present: Mary Galligan, Legislative Research Department  
Mike Heim, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Representative Bob Tomlinson  
Mr. Bruce Dimmitt  
Mr. Charles Smithson, Attorney for Commission on Standards and Conduct  
Ms. Marilyn Scafe, Chair Kansas Parole Board

Others attending: See attached list

Minutes were distributed for the February 19, 1997 meeting. Representative Ralph Tanner made a motion to approve the February 19, 1997 minutes, and Representative Bonnie Sharp seconded. Motion passed.

Chairperson Glasscock opened the Public Hearing on **HB 2135**.

**HB 2135 -An act concerning state governmental ethics; relating to certain solicitations by state officers and employees; candidates and officers elect; amending K.S.A. 1996 Supp. 46-236 and repealing the existing section.**

The Chair recognized Representative Bob Tomlinson, Subcommittee Chair of Ethics, who spoke as a Proponent of **HB 2135**. Representative Tomlinson said that **HB 2135** "is an act that restricts conflict of interest." He explained that it does the following two things: 1) raises the standard of evidence in conflict of interest matters; 2) shifts the burden of proof to officers of the state. He also emphasized that the bill was passed out of the Subcommittee without recommendations, but is an effort to clarify the conflict of interest law. (Attachment 1.)

Chairperson Glasscock welcomed Mr. Bruce Dimmitt from Overland Park, Kansas who said that he generally supports **HB 2135**. He appeared before the Committee as an independent, but said that he was affiliated with several organizations that are interested in Governmental ethics reform. Mr. Dimmitt said that he thought some of the current language was difficult to interpret and would be difficult to equitably administer. His testimony included a recommendation to change Section 1a. (Attachment 2.)

During questioning, Representative Gwen Welshimer asked if a legislator who is also a teacher would be in violation of the conflict of interest law when voting on a COLA. Representative Tomlinson replied that the teacher/legislator would not.

Representative Larry Campbell asked about how intrusive this legislation would be, and Mr. Smithson, attorney representing the Commission on Standards and Conduct, said that from a practical effect, it would not be any different than the present procedure.

Representative Ralph Tanner explained that he believed this bill could cause some great problems. He told the Subcommittee that he thought the goals were notable, but could definitely anticipate some fault lines. He said that he personally had no desire to endorse a law that shifts the burden of proof to the accused. He also said it was impossible to write a rule that would cover every eventuality. Representative Tanner stated, "The public has a right to believe we are going to have integrity of the government and its leaders."

Representative Tomlinson said that perhaps a better term would be "burden of documentation."

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 20, 1997.

Representative Jim Long asked Mr. Dimmitt what he meant on page two, first paragraph when he refers to a "reasonable member of the public."

Chairperson Glasscock thanked the conferees and closed the Public Hearing on **HB 2135**.

The Chair directed the Committee's attention to **HB 2211**.

**HB 2211 - An act concerning the Kansas parole board; amending K.S.A. 22-3707 and 22-3709 and repealing the existing sections.**

Ms. Marilyn Scafe, Chair of Kansas Parole Board, distributed written testimony which explains the amendments. Theresa Kiernan, Revisor, distributed a balloon which included the following: 1) Section 22-3709 regarding the vote required for parole of a class A or B felony or off-grid crime by keeping the original wording of statute and simply changing the four to three; 2) Section 22-3701, delete all references to hearing since the Board does not hold personal hearings with inmates making application; 3) Section 22-3709 regarding the director position of the Kansas Parole Board; SB 505, which was passed in 1996, eliminated this position with the reorganization of the support staff of the Board; 4) Section 22-3717 regarding informational hearings-no longer a need to conduct these meetings; 5) Section 22-3717, 22-3718 regarding restitution; 6) Section 22-3712 allows the KPB to establish halfway houses in the state of Kansas, and the KPB is proposing the deletion of this section; 7) Section 22-3717 governs the time frames allowed for parole eligibility hearings; 8) Section 22-3717 regarding requirements for parole hearings (want the addition of video-conferencing. (Attachment 3.)

Representative Ted Powers made a motion to pass the balloon for **HB 2211**. Representative Deena Horst seconded, and motion passed.

Representative Ted Powers moved to pass **HB 2211** as amended and be marked favorable for passage. Representative Ruby Gilbert seconded, and the motion passed.

The meeting adjourned at 9:45 a.m.

The next meeting is scheduled for February 21, 1997.

GOVERNMENTAL ORGANIZATION & ELECTIONS  
COMMITTEE GUEST LIST

DATE: THURSDAY, FEBRUARY 20, 1997

NAME	REPRESENTING
Robert Segman	Kansas City Star
Patricia V. Nelson	<del>BA</del> Visitor/Employee
Bruce Dimmitt	Independent
Elaine Reid	visitor/walk-in
Brad Bryant	Sec. of state

BOB TOMLINSON  
REPRESENTATIVE 24TH DISTRICT  
STATE CAPITOL  
TOPEKA, KS 66612-1504  
913 296-7678  
5722 BIRCH  
ROELAND PARK, KS 66205  
913 831-1905



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ECONOMIC DEVELOPMENT  
GOVERNMENTAL ORGANIZATION & ELECTIONS  
INSURANCE

Testimony Before  
Governmental Organization and Elections  
February 20, 1997

HB 2135 is an act that restricts conflict of interest. It was passed out of sub committee without recommendations. It does two things. First, it raises the standard of evidence in conflict of interest matters and Secondly, it shifts the burden of proof to officers of the state.

Current law is unenforceable because you must get into a person's mind. This law is enforceable because it allows for documentation of the lack of conflict of interest.

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**STATEMENT BY BRUCE DIMMITT**  
**Before the House Committee on Governmental**  
**Organization and Elections**  
**Concerning House Bill No. 2135**  
**February 20, 1997**

My name is Bruce Dimmitt and I am from Overland Park (Johnson County), Kansas. Although I am registered as an independent, unpaid lobbyist, I am affiliated with a number of organizations concerned with a variety of issues. Governmental ethics reform is an issue I am very much concerned about, and after campaigning last year for state senate, I also know it is one that many others are concerned about as well.

By way of background, I should say that prior to my retirement from the Federal Government in June 1994, I was for over 15 years an ethics officer at the Office of the Secretary, U.S. Department of the Interior, Washington, D.C. In that capacity, I annually trained and counseled several hundred Federal Interior Department executives, officials and employees, both career and political, concerning the Federal ethics laws and regulations that applied to them.

Though I was in the Washington, D.C. area for an extensive period, I am a native of the Kansas City area and have my roots and many friends and relatives in Kansas.

I believe that some of the current language in Section 1(a) of K.S.A. 46-236 may be so subjective as to be difficult to interpret and administer equitably. The language I refer to are the following words on line 20 and 21 "major purpose of the donor in granting the same could be to influence the performance of..."

Therefore, I recommend that Section 1(a) be changed to read as follows:

"No state officer or employee, candidate for state office or state officer elect shall solicit or accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service from any person who the officer, employee, candidate or candidate elect knows or reasonably should know has a financial interest in the performance or non-performance of official duties

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of the officer, employee, candidate or candidate elect or in a matter under the control of the officer, employee, candidate or candidate elect unless the value of the gift, etc., is of such nominal value so as not to cause a reasonable member of the public to have reason to perceive that the officer, employee, candidate or candidate elect is using his or her public office for private gain."

**The public has a right to be confident in the integrity of its government.** There is a fundamental principal of government ethics that a government official or employee, whether appointed or elected, should not use, **or appear to use,** public service for private gain.

Concerning House Bill 2135, it, therefore, goes without saying that it should be illegal for an officer, employee, candidate or candidate elect to use his or her official status with the government to exploit a party or person that desires some special or significant governmental action from the official, employee, candidate or candidate elect by soliciting or accepting from such party or person any job or other economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service if a reasonable member of the public would perceive that he or she has reason to believe that the official by soliciting or accepting such gift etc., is using his or her office for personal gain through a quid pro quo.

Obviously, if an official solicits or accepts a gift from a family member or person who is a friend (where the friendship is clearly not based on the position held by the official) and it would be clear that the gift would not be perceived as being for the purpose of obtaining any governmental action, such solicitation or acceptance should not be deemed to be a violation.

House Bill No. 2135, with my proposed amendment, would not prevent an official from applying for a routine benefit such as a loan from a bank so long as the official has no duties that would affect the bank or, if the official does have official duties that would affect the bank, the timing, nature and circumstances of the loan request would not be so unusual as to suggest to a reasonable member of the public that the officer is using his or her position for private personal gain through a quid pro quo, that is by suggesting that performance of a governmental action is conditioned on the granting of the loan solicited or that acceptance of the loan may obligate the official to satisfy the desires of the bank.

The affect of 2135 as I propose that it be amended, would be to motivate officials to avoid any solicitation or acceptance of a gift etc., where a reasonable member of the public would have reason to perceive that the donor might wish to obtain some governmental action by the official, whether there actually is a quid pro quo or not, because officials would have to show by clear and convincing evidence that there was no quid pro quo. If a violation could ultimately be adjudicated in court, an official would likely not wish to risk to his or her reputation or government status if there is a chance that his or her evidence might be deemed to be inadequate.

Marilyn Scafe  
Chairperson

Leo "Lee" Taylor  
Vice Chairperson

Christopher N. Cowger  
Member

Bob J. Mead  
Member

Larry D. Woodward  
Member



**KANSAS PAROLE BOARD**  
LANDON STATE OFFICE BUILDING  
900 SW JACKSON STREET, 4TH FLOOR  
TOPEKA, KANSAS 66612-1236  
(913) 296-3469

Teresa L. Saiya  
Administrator

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**MEMORANDUM**

TO: Chairman and Members  
Governmental Organization and Elections

FROM: Marilyn Scafe, Chair *MS*  
Kansas Parole Board

DATE: February 20, 1997

RE: HB2211

The Kansas Parole Board is in support of the concept of the reduction of the board membership by one member beginning FY98. A number of changes have been implemented to streamline the operations in order to reach this goal, and we have advised the Governor that the timing is now appropriate for a reduction. However, the Board is proposing the following amendments in addition.

1. Section 22-3709 regarding the vote required for parole of a class A or B felony or off-grid crime: Keeping the original wording of statute and simply changing the *four* to *three* would be consistent with our present way of voting for parole.
2. Section 22-3701 regarding recommendations for pardon or commutation of sentence (clemency): All references to *hearing* are deleted. The Board does not hold personal hearings with inmates making application. The procedure used is a file review and a recommendation to the Governor.
3. Section 22-3709 regarding the director position of the Kansas Parole Board: SB505, which was passed in 1996, eliminated this position with the reorganization of the support staff of the Board. Staff is now provided by the Department of Corrections and supervised by an administrator within the DOC.

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4. Section 22-3717 regarding informational hearings: Previously, the Board conducted regular meetings with new inmates upon admission to the DOC to orientate them on requirements for favorable consideration by the Board at such time as they would be parole eligible. Since most new admissions are now under the new law, there will no longer be a reason for the Board to conduct these meetings. Currently, institutional staff work with the inmates in preparation for parole hearings.

5. Section 22-3717, 22-3718 regarding restitution: The Board is given the authority to order restitution in cases prior to July 1, 1986, if the court did not specify anything at the time of the sentencing. By deleting these sections, the Board wishes to clearly define that the Board is the enforcer of court orders. If restitution appears to be appropriate, it needs to be referred back to the court where there are appropriate procedures to conduct fair investigations and hearings to determine the amount owed.

6. Section 22-3712 allows the KPBB to establish halfway houses in the state of Kansas. The KPBB is proposing the deletion of this section. This function is currently completed through the private sector and contracted by the Kansas Department of Corrections.

7. Section 22-3717 governs the time frames allowed for parole eligibility hearings. Currently, the statute requires the KPBB to conduct hearings the month before an inmate is parole eligible. The KPBB proposes changing the wording of *during* to *at least* the month before... This will give the KPBB more flexibility and will allow the KPBB to utilize resources in a more efficient and effective manner by holding some hearings, especially hearings in remote areas of the state and/or facilities with a consistently small number of inmates who are parole eligible, two months at a time.

8. Section 22-3717 regarding requirements for parole hearings. The addition of *video-conferencing* will ensure that interactive technology will be an appropriate vehicle for parole hearings.

VOTES FOR PAROLE

Y=Yes N=No vote for parole

Current with 5 member board:

Y Y Y = Parole  
Y Y N Y Y = Parole  
N N = No Parole  
Y Y N Y N = No Parole  
Y Y N N = No Parole  
(2 No Votes= No Parole)

Proposed with 4 member board:

Y Y Y = Parole  
Y Y N Y = Parole  
N N = No Parole  
Y Y N N = No Parole  
(2 No Votes = No Parole)