

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on February 1, 2001 in Room 245-N of the Capitol.

All members were present except:

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Natalie Haag, Chief Legal Counsel, Director of Governmental Affairs
Vera Gannaway, Governmental Ethics Commission Attorney

Others attending: See attached list.

Continued hearing on: SB 108 - elections; establishing requirements for electronic reporting of campaign contributions

Natalie Haag, Chief Legal Counsel/ Director of Governmental Affairs, provided the committee a chart on the number of contributions, statewide the last 11 days who would actually be reporting. This is suggesting language that is used in the federal law for years (Attachment 1).

Information on **SB 63** heard in committee January 24, 2001, regarding the last 4 digits for social security number was requested from the committee of Brad Bryant, Deputy Assistant Secretary of State. The request was for language from other states on the subject of concealing the social security number on voter registration records was distributed to the committee. This handout contains language from Florida and Virginia. Also, a draft for proposed language to protect social security numbers from disclosure in Kansas was distributed (Attachment 2).

Written testimony in support of **SB 108** was distributed to committee from Brad Bryant, Deputy Assistant Secretary of State. Brad was here yesterday, January 31, to testify, due to time constraints, we were unable to hear his testimony. He is unable to be here before the committee today (Attachment 3).

Bryan Caskey, Office of Secretary of State, addressed the committee to note one change in the written testimony of Brad Bryant on **SB 108**. In paragraph one, in the second sentence, "except U. S. Senate" should be struck. Bryan stated all federal offices file their campaign finance reports electronically.

There being no others wishing to testify on **SB 108**, the hearing was closed.

Hearing on: SB 114 - campaign contributions; use of to reimbursement of governor's spouse under certain circumstances

Natalie Haag, Governor's Chief Counsel and Director of Governmental Affairs, testified on behalf of the Governor's office in support of **SB 114** (Attachment 4).

There being no others to testify on **SB 114**, the hearing was closed

Hearing on: SB 90 - intent required for violation of governmental ethics act

Vera Gannaway, Governmental Ethics Commission Attorney, presented testimony in support of **SB 90** (Attachment 5).



There being no others wishing to testify on **SB 90** the hearing was closed.

The meeting adjourned 2:30.

The next meeting is scheduled for February 6, 2001.

SENATE ELECTIONS AND LOCAL GOVERNMENT GUEST LIST

Date Feb 1

BRYAN A. CASKEY	SECRETARY OF STATE'S OFFICE
Chip Wheelen	SOCIETY OF ASSOC. EXEC.S
Hera Gonnaway	GEC
Carl Wilbur	GEC
Kristin Snow	Rep. Tony Powell
Jennifer Orth	Senator Mark Gilstrap
Kyle Kerden	DOB
	
Martin Hawver	Hawver's Capitol Report
Chris Wilson	KGC

NUMBER OF CONTRIBUTIONS PLUS TOTAL DOLLAR AMOUNT

FROM JULY 24, 1998 THROUGH MIDNIGHT OF AUGUST 4, 1998

OFFICE	NUMBER OF CONTRIBUTIONS	TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS	CANDIDATE
Governor	336	\$76,010.00	Graves, Bill
Governor	134	\$52,327.15	Miller, David
Governor	1	\$100.00	Poovey, Kirt
Governor	56	\$31,021.67	Sawyer Tom
Attorney General	16	\$6,450.00	Lykins, Dan
Attorney General	58	\$14,650.00	Stovall, Carla
Insurance Commissioner	8	\$1,160.00	Riley, Bryan
Insurance Commissioner	45	\$20,175.00	Sebelius, Kathleen
Secretary of State	7	\$1,150.00	Thornburgh, Ron
State Treasurer	1	\$150.00	Cline, Rita
State Treasurer	10	\$7,277.83	Shallenburger, Tim
TOTAL	672	\$210,471.65	

FROM OCTOBER 23, 1998 THROUGH MIDNIGHT OF NOVEMBER 3, 1998

OFFICE	NUMBER OF CONTRIBUTIONS	TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS	CANDIDATE
Governor	208	\$70,616.62	Graves, Bill
Governor	6	\$500.00	King, Darrel
Governor	3	\$300.00	Miller, David
Governor	6	\$600.00	Poovey, Kirt
Governor	61	\$60,777.14	Sawyer, Tom
Attorney General	1	\$250.00	Lykins, Dan
Attorney General	64	\$23,195.00	Stovall, Carla
Insurance Commissioner	21	\$10,725.00	Riley, Bryan
Insurance Commissioner	76	\$18,301.75	Sebelius, Kathleen
Secretary of State	6	\$500.00	Rezac, Don
Secretary of State	31	\$7,910.59	Thornburgh, Ron
State Treasurer	7	\$1,600.00	Cline, Rita
State Treasurer	41	\$7,425.00	Shallenburger, Tim
TOTAL	531	\$202,701.10	

GOVERNMENTAL ETHICS COMMISSION

Senate Elec & Loc. Gov
2-1-01
Attachment 1



Welcome

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The 2000 Florida Statutes

Title IX

Chapter 97

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ELECTORS AND ELECTIONS Qualification And Registration Of Electors

97.0585 Declinations to register; place of registration and registration information; confidentiality.--

(1) All declinations to register to vote made pursuant to ss. [97.057](#) and [97.058](#) are confidential and exempt from the provisions of s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution and may be used only for voter registration purposes.

(2) Information relating to the place where a person registered to vote or where a person updated a voter registration is confidential and exempt from the provisions of s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution; and a voter's signature, social security number, and telephone number may not be copied and are exempt for that purpose from the provisions of s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution.

History.--ss. 1, 2, ch. 94-345; s. 24, ch. 96-406.

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Senate Elec + Loc Gov
2-1-01
Attachment 2

§ 24.2-1002.1. Unlawful disclosure or use of **social security number**.

Any person who discloses or makes any use of the **social security number** of any applicant for voter except as authorized by law for official use, shall be guilty of a Class 5 felony.

Go to [General Assembly Home](#)

§ **24.2-405**. Persons who may obtain lists of registered voters.

A. The State Board shall furnish, at a reasonable price, lists of registered voters for their districts to (i) courts of the Commonwealth and the United States for jury selection purposes, (ii) candidates for election or political party nomination to further their candidacy, (iii) political party committees or officials thereof for political purposes only, (iv) incumbent officeholders to report to their constituents, and (v) nonprofit organizations which promote voter participation and registration for that purpose only. The lists shall be furnished to no one else and used for no other purpose. However, the State Board is authorized to furnish information from the voter registration system to general registrars for their official use and to the Department of Motor Vehicles and other appropriate state agencies for maintenance of the voter registration system.

B. The State Board shall furnish, at a reasonable price, lists of the addresses of registered voters for their localities to local government census liaisons and their staffs for the sole purpose of providing address information to the United States Bureau of the Census. The State Board shall also furnish, at a reasonable price, such lists to the Clerk of the Senate and the Clerk of the House of Delegates for the sole purpose of maintaining a database of constituent addresses for the General Assembly. The information authorized under this subsection shall be furnished to no other person and used for no other purpose. No list furnished under this subsection shall contain the name of any registered voter. For the purpose of this subsection, the term "census liaison" shall have the meaning provided in 13 U.S.C. § 16.

C. In no event shall any list furnished under this section contain the **social security number** of any registered voter except a list furnished to a court of the Commonwealth or of the United States for jury selection purposes.

D. Any list furnished under subsection A of this section shall contain the post office box address in lieu of the residence street address for any active or retired law-enforcement officer, as defined in § 9-169 and in 5 U.S.C.A. § 8331 (20) but excluding officers whose duties relate to detention as defined in paragraphs (A) through (D) of § 8331 (20), who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address for his residence for use on such lists.

E. Any printed precinct list furnished under subsection A of this section shall contain the post office box address in lieu of the residence street address for any party granted a protective order as described in §§ 16.1-253.1, 16.1-253.4, 16.1-279.1, and 18.2-60.3, who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address for his residence for use on such lists.

[Go to General Assembly Home](#)

§ **24.2-407.1**. Prohibition on disclosure of **social security numbers**.

It shall be unlawful for any person who has obtained, under § **24.2-405** or § **24.2-406** or any prior law, a list of persons registered or voting which contained **social security numbers** to disclose any voter's **social security number** to any other person. Any person maintaining a system containing **social security numbers** obtained from the Board shall delete or destroy the portion of his records containing those numbers.

Go to [General Assembly Home](#)

25-2320

Chapter 25.--ELECTIONS

Article 23.--REGISTRATION OF VOTERS

25-2320. Copies of registration records. (a) The county election officer shall allow access to any person at any time during regular business hours, under supervision of the county election officer for the purpose of examining the voter registration books. Any person may make a written request for a copy of the registration books at any time except on any election day. The election officer is hereby directed to provide one or more copies which are accurate insofar as practicable of such books to the person so requesting. The election officer shall provide such copies to the person within 10 days following the request if so requested. The expense of making such copies shall be paid by the person requesting them. The cost of copies shall be established by the county election officer at a price which is not more than the actual cost and shall be set uniformly in order that the price therefor shall be the same for all persons requesting identical copies.

(b) No voter registration record containing an individual's social security number, or any part thereof, shall be made available for public inspection or copying.

History: L. 1968, ch. 55, § 20; L. 1977, ch. 139, § 1; L. 1987, ch. 127, § 1; July 1.

RON THORNBURGH
Secretary of State



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STATE OF KANSAS

Senate Committee on Elections and Local Government

Testimony on Senate Bill 108

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

January 31, 2001

Madam Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of SB 108.

This legislation would move our state a step closer to a paperless system of electronic filing. Although this bill only requires electronic filing by candidates for statewide office and only requires them to electronically report their campaign receipts during the eleven days preceding a primary or general election, it is a step in the right direction.

My comments are addressed to the electronic filing aspect of the bill, not the policy question regarding whether candidates should be required to report campaign contributions received during the last few days before an election.

The Secretary of State strongly supports electronic filing in principle. We support faster and more open public access to accurate and up-to-date information. We have already taken two steps to that end:

1. Our office participates in the Federal Election Commission's waiver program. This means that candidates for all federal offices ~~except U.S. Senate~~ file their campaign finance reports electronically at the federal level and are no longer required to file duplicates at the state level. The state is required to maintain a public access computer terminal to allow viewing of the reports via the Internet. That terminal is now available to the public in the reception area of our elections division.

2. We have had discussions with the Governmental Ethics Commission during the past several years on the subject of creating an electronic filing system in Kansas. Such a system could be required or optional for all candidates for state office, and it could cover all their reports, not just the contributions received immediately before the election. Further, the system could be used by lobbyists to file their expenditure reports and state officers and employees filing Statements of Substantial Interests. Preliminary research has led us to believe an Internet-based

system, rather than software-based, is an easier and less expensive approach. We would choose an Internet-based system as long as proper security measures were included.

Any such electronic filing system must be secure. The receiving agency must know that the persons filing are who they say they are and that the message or record has not been intercepted or altered during transmission. Legislation passed last year provides for a high level of security using digital signatures, and our office will soon be issuing a request for proposals from vendors capable of building the system. If it is decided that digital signatures are required for campaign finance reports, we will be equipped to administer them.

Even if digital signatures are not required for these reports, our office and the Governmental Ethics Commission will incur some programming and database costs, which are as yet undetermined. If SB 108 passes, we will request funding to implement its provisions.

Thank you for your consideration.

STATE OF KANSAS

BILL GRAVES, Governor
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Topeka, Kansas 66612-1590



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OFFICE OF THE GOVERNOR
Before the Senate Elections and Local Government Committee
January 31, 2001

Testimony by Natalie G. Haag
Chief Legal Counsel
Director of Governmental Affairs

Senate Bill 114

Chairman Allen and members of the committee:

My name is Natalie Haag and I serve as the Governor's Chief Counsel and Director of Governmental Affairs. It is a privilege to testify today on behalf of the Governor's office in support of Senate Bill 114.

Senate Bill 114 has been requested to address an inequity in authorized expenditures from campaign or candidate funds. Under current law, expenditures from this fund can be used for the purpose of holding office. Last spring, the Governmental Ethics Commission advised Governor Graves that the expenditures of holding office did not include expenditures for the First Lady's travel to a Republican Governor's event. At the event in question, the First Lady appeared with the Governor and participated in events specifically for First Ladies.

The State of Kansas has historically expected the first spouse, without compensation, to contribute significantly to the State of Kansas. The first spouse is provided with a staff and a budget, which allows this person to operate on behalf of the State of Kansas. The First Lady frequently acts as a spokesperson for the State of Kansas and the Governor. In addition to official functions, the First Lady engages in other activities promoting Kansas citizens, like her work for the Breast Cancer Awareness program.

The Republican Governor's events are excellent avenues to coordinate the multi-state work of first spouses, like the Habitat for Humanity project where First Ladies from a number of states, including Kansas, participated in building homes for the less privileged.

Senate Bill 114 would allow expenditures from campaign funds when the Governor's spouse is appearing on behalf of, or in conjunction with, the Governor to promote the Governor's legislative or political agendas. These expenditures would come out of campaign funds and not state funds. The State of Kansas would continue to reimburse the First Spouse's expenses when he or she acts in an official capacity on behalf of the State of Kansas.

I will stand for questions with regard to this issue and request the committee report favorably Senate Bill 114. Thank you for the opportunity to address the committee.

Senate Elec. + Loc. Gov
2-1-01
Attachment 4



GOVERNMENTAL ETHICS COMMISSION

Testimony before the Senate Committee on Elections and Local Government as a proponent of Senate Bill 90

by
Vera May Gannaway
General Counsel, Kansas Governmental Ethics Commission
February 01, 2001

Madam Chairwoman, members of the Committee.

On behalf of the Commission, let me thank you for the opportunity to be here today and to present you with testimony as a proponent of Senate Bill 90.

The Current Status of the Law

Senate Bill 90 would amend K.S.A. 46-277 by changing the level of intent required to prove a violation of the Kansas Governmental Ethics Laws. In its current form, K.S.A. 46-277 states in pertinent part:

"No act, action or conduct of any person shall constitute a violation of this act . . . unless such act, action or conduct is *intentionally violative of a provision of this act . . .*"
(Emphasis added.)

As it is written, K.S.A. 46-277 requires the Complainant to prove an extremely high level of intent. A higher level of intent than is required for most crimes under the criminal code. Under the criminal code, the prosecutor does not need to prove that the defendant knew of the statute or knew that his actions were even "wrong." The prosecutor must only prove that the defendant's actions were not accidental.

K.S.A. 46-277, on the other hand, requires specific knowledge of the law. Under existing law, the complainant must prove that a respondent knew of the particular Kansas governmental ethics law in question and that the respondent knew that his conduct violated that law. For the vast majority of cases brought before the Commission, this is a nearly impossible standard to prove.

In essence, this statute, in its current form, allows a state employee to generally avoid learning about the ethics laws in order to insulate him or herself from prosecution for even a flagrant

violation. Admittedly, as was seen this past spring, the respondent can't have learned that there was such a law and consciously avoid learning the details in order to avoid prosecution. But, if the employee successfully avoids learning about the ethics laws altogether, then the complainant will not be able to prove that the respondent acted to intentionally violate a provision of the act, because the complainant won't be able to show that the respondent knew of the specific provision of the ethics law his actions violated. In addition, in most situations, it will be extremely difficult for the complainant to prove what the respondent actually knew or didn't know.

The Proposed Amendments to K.S.A. 46-277

Senate Bill 90 would amend K.S.A. 46-277 by adding the words "or should have known" to the statute. It would read, in pertinent part:

"No act, action or conduct of any person . . . shall constitute a violation of the state governmental ethics law, . . . unless such person knew *or reasonably should have known* that such act, action or conduct is violative of one or more provisions of the state governmental ethics law." (Emphasis added.)

Senate Bill 90 does not ask for sweeping changes to the current standard. It merely lessens the level of intent required, so that a state employee who either knew or *should have known* about the ethics laws could successfully be prosecuted.

This Bill would **not** lower the standard to that of the general criminal intent. And, it clearly would not impose absolute liability on a person who knew nothing about the ethics laws or would have had no reason to know that their actions were in violation of the ethics laws. It would only change the law to allow the Complainant to show that a person committed a violation of the ethics act when that person *should have known* that his actions violated a provision of the act.

This change would encourage state employees to learn about the ethics laws when the occasion arose, instead of avoiding those opportunities in an attempt to avoid prosecution for actions they should know are against the law.

Examples

While the change in this law would apply to the ethics laws imposed on all state employees (with the exception of the judicial branch), all legislators, and all lobbyists, the greatest impact would undoubtedly be upon the complainant's ability to prove violations made by state employees and **not** lobbyists or legislators.

Lobbyists: In order to be a lobbyist in the state of Kansas, the person must register with the Secretary of State. Each registered lobbyist is provided with a "handbook for Legislative Lobbyists." This handbook contains copies of all of the ethics statutes which apply to the lobbyists and a plain language section on what must be reported and what prohibitions are placed on lobbyists. In addition, the Governmental Ethics Commission's staff provides numerous

lectures and question and answer sessions each year in order to inform the lobbyists of the laws applicable to them. Even under current law, it will be much easier for a Complainant to prove that a lobbyist knew of the law that he or she violated. Clearly, it would be even easier under the proposed amendments to the law, but if this were the only group at issue the change in the law would be much less important.

There may have been some concern that under the new version of the statute, a lobbyist could be found to have violated the ethics laws for failure to report a gift if the entity he or she represents provides a gift to a legislator without the lobbyist's knowledge. It should be noted, that K.S.A. 46-269(b)(6) already addresses this issue by providing that a lobbyist is not responsible for the reporting of any expenditure made by his or her employer if the lobbyist has no knowledge of such expenditure. The change in the new law, would not change this scenario at all.

Legislators: The same basic analysis applies to legislators. As you know, there are only 165 legislators. Throughout the legislative session, the Governmental Ethics Commission's staff provides numerous lectures and question and answer sessions with these legislators making them aware of the few laws in the ethics Act which apply to them. In this vein, it should be noted that the contracting provisions of the ethics laws, in essence, do not apply to legislators, because legislators are not involved in the act of contracting. Because legislators are consistently informed about the ethics laws that apply to them, the burden on the Complainant under the current law is not as difficult to prove as it is for state employees.

State Employees: As noted above, these are the people for whom the change in the law will really have an impact. Because there are approximately 77,000 state employees located all across the state, the Commission's staff can not individually train all of them. Consequently, there is no way to know who has been informed of the laws and whether they were informed correctly. Because of this, it is nearly impossible for a Complainant to prove that a state employee not only intended to participate in the contract with his spouse, but that he knew of the contracting statute and knew that his participation in such a contract was a violation of that particular statute.

And again, this statute does not impose absolute liability on a state employee who has violated a provision of the act. The complainant will still have to prove that this particular employee should have known about the law and that his actions were in violation of a provision of this act. If the state employee is the head of an agency and has been there for 20 years, a strong argument can be made that he should have known that there is a provision of the ethics laws that prohibit contracting with your spouse. On the other hand, the complainant will have a much harder time showing that a new employee, who hasn't had an opportunity to be presented with the ethics laws yet, should have known that there was a state law prohibiting her from contracting with her spouse.