

SESSION OF 2005

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2041**

As Amended by House Committee on  
Governmental Organization and Elections

**Brief\***

As amended, HB 2041 would modify the Kansas Campaign Finance Act to: (1) prospectively authorize the transfer of campaign funds between campaigns for the same candidate, if both campaigns are for offices at a specified contribution limit level; and (2) retroactively authorize all campaign fund transfers, occurring from January 1, 1976 through the effective date of this legislation, between any two campaigns for the same candidate regardless of the contribution limit level.

Specifically, the bill would:

- Permit a candidate or candidate committee to transfer campaign funds to a *bona fide* successor committee or candidacy established by the candidate, provided all money is transferred to the *bona fide* successor committee or candidacy, and provided both candidacies are for offices at one of the following three levels:
  - Governor, Lieutenant Governor, or other office elected on a statewide basis;
  - Legislator (either House or Senate); or
  - Any office not included in the above two groups (Note: Other offices addressed in the Campaign Finance Act include local offices, district magistrate judges, district attorneys, and members of the State Board of Education.
  
- Define the term "*Bona fide* successor committee or candidacy" (currently contained, but not defined, in administrative rules and regulations) to mean: (1) the candidate's campaign committee or candidacy for a public office initiated at the *termination* of the

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

original candidacy; or (2) the candidate's campaign committee or candidacy initiated at the time of the *transfer* of all money to a new campaign committee or candidacy for public office when debt exists in the original campaign at the time of the transfer and the candidate does not terminate the original committee or candidacy.

- Clarify that the transfer of funds to a *bona fide* successor committee or candidacy is not considered a contribution.
- Permit the transfer of residual funds for the purpose of retiring the remaining debt to the original committee or candidacy from which funds were transferred (when they were transferred to the bona fide successor committee or candidacy). In this instance, the candidate may only accept contributions to the original candidacy sufficient to retire the debt, and the contributions are subject to the original contribution limits.
- Define "public office" to include both local and state offices. (**Note:** Local offices to which the Campaign Finance Act applies include governing body members of cities of the first class, and elected offices of counties, school districts with more than 35,000 students and the Kansas City Board of Public Utilities. Applicable State offices include those elected on a statewide basis, state senators and representatives, members of the State Board of Education, district judges, district magistrate judges and district attorneys.)
- Deem all campaign transfers occurring between January 1, 1976 and the effective date of this act to be in compliance with the Campaign Finance Act in existence at the time of the transfer, regardless of when the original campaign fund is closed after the transfer is made.

## **Background**

During the 2004 Legislative Session, House Substitute for SB 376 was transmitted to the Governor to address a Supreme Court decision regarding the Kansas Campaign Finance Act (see below). The Governor vetoed the bill, stating her veto was due to lobbyist reporting changes that had been added to the bill and not because of what the bill did to "clarify the circumstances under which candidates for public office may transfer campaign funds." As introduced, HB 2041 con-

tained the campaign finance language in House Substitute for SB 376 that was submitted to the Governor.

On December 15, 2003, the Kansas Supreme Court ruled that the Campaign Finance Act (Act) prohibited former State Representative Carlos Mayans from transferring unused legislative campaign funds to his campaign for election to be mayor of Wichita. This ruling came after the Kansas Governmental Ethics Commission (KGEC) had issued several opinions, over a number of years, stating that such transfers were permitted under the Act. Former Representative Mayans had sought and received such an opinion. He also received an opinion from the Wichita city attorney that the transfer would not violate a Wichita ordinance dealing with campaign finance.

The Supreme Court, in *Cole v. Mayans and Kenton, Kansas Supreme Court Case No. 89,715*, disagreed with the KGEC's interpretation and overruled the trial court and the Court of Appeals, stating:

"We hold that the Campaign Finance Act and the related regulations, when coupled with the purpose for the Campaign Finance Act, must be construed to limit the transfer of campaign contributions from a candidate's campaign account for a specific office to the same candidate's campaign account for election to that same office. Thus, there are only two situations in which the transfer can be made. The first is when an incumbent runs for reelection to the same office. The second is when a candidate loses an election for a specific office but seeks reelection to the same office in a subsequent election. (Opinion pg. 16) (Emphasis added)

The Supreme Court further suggested the Legislature (a) define the term "bona fide successor candidacy," which is currently contained (but not defined) in KGEC administrative rules and regulations, and (b) require the KGEC to promulgate rules and regulations for the "orderly return of contributions to donors who have contributed to a candidate for a specific office but do not want to contribute to the same candidate if he or she decides to run for a different office."

Representative Mario Goico testified in favor of HB 2041. The KGEC executive director testified neutrally, saying the bill would codify the previous opinions the KGEC had issued on the subject since 1976. Since that year, the Commission had issued eight advisory opinions to legislators and other individuals regarding whether excess campaign

funds could be transferred to a campaign for another state or local office. In all eight opinions, the Commission had stated these transfers were permissible and did not constitute contributions. A minimum of 60 candidates made such transfers over the years.

The House Committee amended the bill to eliminate the ability to transfer funds prospectively between any two campaigns. Instead, the ability to transfer funds was limited to campaigns within certain groupings.

A fiscal note issued on the bill stated passage of HB 2041 would not affect the revenues, expenditures, or staffing needs of the agency. There would be fiscal implications for elected officials concerning the use of campaign funds, but the effect would vary case by case.