

## **Campaign Finance Act Reform; House Sub. for SB 208**

**House Sub. for SB 208** amends provisions in the Campaign Finance Act (Act) on topics including procedures of the Kansas Governmental Ethics Commission (Commission).

The bill will take effect upon publication in the *Kansas Register*.

### ***Governmental Ethics Commission***

The bill applies the provisions of the Kansas Administrative Procedure Act (KAPA), the Kansas Code of Civil Procedure, and the Kansas Judicial Review Act (KJRA) to actions by the Commission or Commission staff. This includes, but is not limited to, investigative and enforcement actions of the Commission and applications to the Commission. The bill applies provisions of the Kansas Public Speech Protection Act to all actions filed by the Commission in district court pursuant to this act.

The bill establishes the deadline for bringing any action before the Commission at five years after the first act giving rise to the cause of action or complaint.

The bill requires the Commission to provide through rules and regulations the standards by which any member of the Commission, the Executive Director, or other person employed or engaged by the Commission is to recuse themselves from any matter before the Commission for a reason affecting the ability of the Commission to neutrally and fairly enforce the Act.

### ***Commission Hearings, Procedures, and Findings***

#### ***Respondent Rights***

The bill clarifies no action by the Commission shall require a respondent to waive any civil or legal rights to judicial recourse in any manner.

#### ***Hearing Procedures***

The bill requires all hearings conducted under the Act to be conducted in accordance with the provisions of KAPA and the Kansas Code of Civil Procedure. The bill authorizes the respondent to request any hearing and pre-hearing procedure under this act to be removed for a hearing before a presiding officer from the Office of Administrative Hearings and conducted as prescribed by KAPA. The bill prohibits the Commission from conducting another hearing on the matter and requires the Commission to make its final determination based on the record.

#### ***Commission Procedures***

The bill authorizes the Commission to apply to the Shawnee County District Court for an order to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any documents or records that the Commission deems

relevant or material to the investigation. The bill requires all applications for a court order to be made under the seal of the court. The bill requires a 2/3, rather than 3/4, majority vote to issue a subpoena or subpoena *duces tecum* and removes the requirement that the commissioners must be physically present in order to vote. The bill requires that no subpoena or other process issued by the Commission pursuant to this section shall be served upon any person unless an application has been filed in the district court of Shawnee County pursuant to this section and requires the Commission to provide a copy of written findings of fact and conclusions of law to the persons under investigation (this section pertains to investigation by the Commission, KSA 25-4158 amendments).

The bill states the court shall issue the order requiring appearance after review of the sufficiency of the written findings of fact and conclusions of law provided by the Commission, the Commission record, and the reasonableness and scope of the subpoena. The bill allows a person responding to a subpoena to apply to a court for relief from a subpoena.

The bill requires every subpoena so issued to include notices regarding the rights of the person to whom the subpoena was issued. The bill requires any person ordered to testify or produce documents to be informed that the person has a right to be advised by counsel and may not be required to make any self-incriminating statement. The bill directs the judge to appoint counsel if the person is indigent and requests counsel. The bill authorizes said counsel to be present while the witness is testifying and interpose objections on behalf of the witness, but does not authorize counsel to examine or cross-examine any witness.

The bill also requires the Commission to take reasonable steps to avoid imposing undue burden or expense on a person subject to subpoena and requires the court to enforce this duty against the Commission by imposing appropriate sanctions when required.

The bill prohibits any attorney or staff member representing the complainant before the Commission from engaging in *ex parte* communication with the Commission, as well as advising, representing, or assisting the Commission regarding the same or related matter before the Commission. The bill requires the Commission to obtain separate independent legal counsel when needed to comply with these requirements.

The bill authorizes the Commission to enter into a contract with the Office of Administrative Hearings and provide reimbursement for actual and necessary expenses and compensation for such person serving as a presiding officer, and adds duties of confidentiality for hearings to members of the Commission, the Executive Director, or any person employed or engaged by the Commission.

The bill applies duties of confidentiality of complaints and allegations therein only to members of the Commission, Executive Director, or any person employed or engaged by the Commission. The confidentiality statute on records, complaints, documents, reports filed with or submitted to the Commission, and all transcripts of any investigation, inquiries, or hearings of the Commission applies only to members of the Commission, the Executive Director, or any person employed or engaged by the Commission.

## *Penalties and Fines*

The bill caps the fine the Commission could impose to not exceed an amount triple the applicable fine for a single violation of the matter. If the respondent derived pecuniary gain from the specific violations, the bill authorizes a larger fine but not to exceed double the pecuniary gain derived from the violation. The bill's provisions do not prevent a court from imposing a separate fine in a criminal proceeding. Further, the bill directs civil fines assessed by the Commission to the State General Fund instead of the Governmental Ethics Commission Fund.

The bill prohibits the Commission from:

- Ordering community service or any other specified performance in lieu of a civil fine as part of a consent decree or final order; and
- Entering into any agreement with any person that legally binds the Commission from enforcing any law against that person in exchange for the person's cooperation with or assistance of the Commission in any matter unless that person has received immunity from criminal prosecution in the matter from a county or district attorney or the Attorney General.

These provisions do not prohibit the Commission from requiring training regarding or compliance with any provision of the Act as part of a consent decree or final order.

## ***Campaign Finance***

### *Definitions*

The bill defines "agent" to mean an individual who is a candidate; a chairperson of a candidate, political, or party committee; a treasurer; or any director, officer, employee, paid consultant, or other person authorized in writing to act on behalf of a person previously listed.

### *Filing Fees and Requirements*

The bill creates a new category of registration by a political committee and changes the thresholds for annual registration fees for political committees. A political committee anticipating receiving within a calendar year:

- More than \$15,001, a new category, is required to pay a \$750 registration fee;
- At least \$7,500 and less than \$15,001 is required to pay a \$500 registration fee;
- At least \$2,500 and less than \$7,501 is required to pay a \$250 registration fee; and
- Less than \$2,500 is required to pay a \$50 registration fee.

The bill makes technical amendments to continue requiring a political committee that receives more contributions than anticipated, up to \$7,501, to pay the difference between the fee owed and the amount of the fee accompanied by current registration.

### *Campaign Solicitation*

The bill states no solicitation from January 1 through *Sine Die* is a violation if it is a general public solicitation and accompanied with a disclaimer that it is not intended for lobbyists, political committees, or persons other than individuals.

### *Campaign Expenditures and Contributions*

The bill expands allowable personal use of moneys received by any candidate or candidate committee to include:

- Expenses, compensation, or gifts provided to any volunteer, staff member, or contractor of the candidate's campaign or provided to any volunteer or staff of the candidate's political office, provided that the total amount provided from all sources does not exceed the total fair market value of services provided;
- Payment of any civil penalty imposed by the Commission pursuant to the Act related to the candidate's campaign and that is incurred by the candidate, candidate committee, treasurer, or other agent of the candidate; and
- Payment of legal fees related to any matter under the Act.