

February 16, 2023

The Honorable Pat Proctor, Chairperson
House Committee on Elections
300 SW 10th Avenue, Room 218-N
Topeka, Kansas 66612

Dear Representative Proctor:

SUBJECT: Fiscal Note for HB 2391 by House Committee on Elections

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2391 is respectfully submitted to your committee.

HB 2391 would specify that the provisions of the Kansas Administrative Procedures Act, the Kansas Code of Civil Procedure, the Kansas Judicial Review Act, and the Kansas Public Speech Protection Act would apply to actions by the Governmental Ethics Commission or Commission staff, including, but not limited to, applications for judicial relief in district court. All actions pursuant to the bill's provisions, including, but not limited to, investigative and enforcement actions and applications to the Commission would constitute a claim for purposes of the Kansas Public Speech Protection Act.

The bill would establish a two-year statute of limitations for bringing any action before the Commission. No Commission action could require the respondent to waive any civil or legal right to judicial recourse. A person would not be held responsible for any action on behalf of another person or entity subject to the bill's provisions unless the person is an agent as defined in KSA 25-4143. The Commission would provide by rules and regulations the standards by which any member of the Commission, the Executive Director, or any other person employed or engaged by the Commission would recuse themselves from any matter before the Commission by reason of a conflict of interest, appearance of impropriety, or other basis affecting the ability of the Commission to neutrally and fairly enforce the Governmental Ethics Act.

HB 2391 would remove the following disqualifications to serve on the Commission:

1. Held the position of chairperson, vice-chairperson, or treasurer of a county, district, or state political party committee;
2. Has been a candidate for, or holder of, any partisan political office within five years preceding appointment to the Commission;

3. Held elective state office within three years preceding appointment to the Commission;
4. Held Office of the Secretary of State in any state department within three years preceding appointment to the Commission;
5. Has been a lobbyist within three years preceding appointment to the Commission;
6. Has been an officer or employee directly involved in the making of a contract on behalf of a vendor with the state or any agency within three years preceding appointment to the Commission; and
7. Has provided services under contract to the state or any agency within three years preceding appointment to the Commission.

The bill would define “partisan political office,” “agent,” and would amend the definition of “political committee.” HB 2391 would establish an annual registration fee of \$300 for a political committee anticipating the receipt of more than \$10,000. Under current law, each political committee anticipating receipt of \$2,501 or more in any calendar year has to pay an annual registration fee of \$300. The bill would change the receipt requirements to \$2,501 or more, but less than \$10,001 in any calendar year. The annual registration fee would be lowered from \$300 to \$100.

Under current law, both civil penalties and civil fines are deposited into the Governmental Ethics Commission Fee Fund. The bill would credit both civil penalties and civil fines to the State General Fund. HB 2391 would create an exemption to the prohibition of soliciting contributions from registered lobbyists, political committees, or individuals during a legislative session if the solicitation is accompanied by a disclaimer that the contributions are not intended for lobbyists, political committees, or persons other than individuals. The bill would prohibit members and candidates for the Legislature from serving as the treasurer or chairperson of a political committee. However, the bill would not prohibit a member or candidate for the Legislature from soliciting funds for or participating in the activities of a party or political committee. The bill would define “contribution in the name of another.”

HB 2391 would add exceptions to the prohibition of personal use of contributions for the following: 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; payment of any civil penalty imposed by the Commission; payment of legal fees related to any matter under the bill’s provisions; and expenses incurred for family caregiving services when such expenses are the a result of the candidate’s candidacy for office or holding office and are directly related to or have an effect on the candidate’s campaign activities or duties as an office holder. The bill would define “personal use,” “family caregiving services,” and “immediate family member.”

The bill would allow candidates and their campaigns to contribute monies received to a party or political committee and would allow a party or political committee to receive contributions from candidates or their campaigns, unless the contribution was contractually restricted to uses for a specific purpose. The bill would define “contractually restricted to uses for a specific purpose.”

HB 2391 would limit the power of the Governmental Ethics Commission to issue subpoenas concerning the Campaign Finance Act. The bill specifies that the Commission would not have the power to issue any subpoena prior to the determination of probable cause on a filed complaint pursuant to KSA 25-4161(e). The Commission could request the Attorney General or county or district attorney file an application for an inquisition in a district court to investigate potential violations of the Campaign Finance Act.

The bill would prohibit any attorney or staff member representing the complainant before the Commission from engaging in ex parte communications with or otherwise advise, represent, or assist the Commission regarding any matter before the Commission. The Commission would be required to obtain separate legal counsel in the event any attorney or staff member employed by the Commission represents the complainant in any matter before the Commission. All hearings would be required to be conducted pursuant to the Kansas Administrative Procedure Act and Code of Civil Procedure. Upon the request of the respondent, any hearing would be held before the Office of Administrative Hearings instead of the Commission. The Commission would be authorized to enter into a contract with the Office of Administrative Hearings and provide reimbursement for expenses and compensation for the person serving as a presiding officer. The duties of confidentiality would apply only to Commission members, the Executive Director, and any person employed or engaged by the Commission.

Any party may request a hearing be conducted by the Office of Administrative Hearings under the Kansas Administrative Procedure Act and the Commission's decision must be based on the hearing held by the Office of Administrative Hearings. A fine imposed by the Commission in any one matter would not be allowed to exceed an amount that is double the applicable fine for a single violation in such matter. Nothing in the bill's provisions would prevent the imposition of a separate fine by a court in a criminal proceeding.

The Commission would not be allowed to reduce, waive, or modify any fine previously imposed pursuant to a consent decree or final order. The Commission would be prohibited from ordering community service or any other specific performance in lieu of a civil fine as part of a consent decree or final order. The Commission would not be allowed to enter into any agreement with any person that legally binds the Commission from enforcing any law against a person in exchange for the person's cooperation with or assistance of the Commission in any matter.

The Governmental Ethics Commission estimates additional expenditures of \$200,659 from the State General Fund, along with an additional 3.00 FTE positions in both FY 2024 and FY 2025 would be required to implement the bill's provisions. Of that amount, \$170,976 would be for salaries and wages for the FTE positions and \$29,683 would be for other operating expenditures. The Commission also estimates a loss of revenue to the Governmental Ethics Commission Fee Fund of \$80,671 in FY 2024 and \$75,971 in FY 2025 from the reduction of fees and changes to the disposition of fines and penalties.

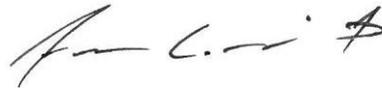
The Office of Judicial Administration states enactment of HB 2391 could increase the number of cases filed in district court because the Commission's decisions would be subject to the Kansas Judicial Review Act. The bill could create additional work for district court chief judges

if they are requested to preside over an inquisition to investigate violations of the Campaign Finance Act. Criminal cases could be filed if the inquisition results in charges, which would increase the time spent by judges and court employees processing and hearing these cases. The Office indicates enactment of the bill could result in the collection of docket fees in those cases filed under the bill's provisions, which would be credited to the State General Fund. According to the Office, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

The Office of the Attorney General estimates additional expenditures of \$91,914 from the State General Fund, along with an additional 0.25 Attorney FTE position and a 0.50 Investigator FTE position in FY 2024 if the bill is enacted. Of that amount, \$72,407 would be for salaries and wages and \$19,507 would be for other operating expenditures. The agency states the bill's provisions regarding investigations would increase the workload for the Office.

The Office of Administrative Hearings estimates any additional workload resulting from the enactment of the bill would be absorbed within existing resources. Any fiscal effect associated with HB 2391 is not reflected in *The FY 2024 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Vicki Jacobsen, Judiciary
Mark Skoglund, Governmental Ethics Commission
Jay Hall, Kansas Association of Counties
John Milburn, Office of the Attorney General
Matt Spurgin, Administrative Hearings