

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2642**

As Agreed to April 6, 2018

Brief*

HB 2642 would maintain an exemption for attributions on certain social media providers; remove the requirement to include the name of the chairperson or treasurer of a political or other organization in an attribution; establish new penalties for late-filed candidates' campaign finance reports, certain political committees' reports; address lobbyists' reporting formats and penalties; and require the Office of the Secretary of State (Office) to publish precinct level primary and general election results for certain races.

Attributions

The bill would maintain an exemption for attributions on social media providers (e.g. Twitter) by increasing the character limit of communications made over any social media provider from 200 to 280 characters or fewer. The bill would remove the requirement to include the name of the chairperson or treasurer of a political or other organization in an attribution.

***Penalties for Late Filing of Campaign Finance Reports
and Lobbyist Report Formats and Penalties***

The bill would establish new penalties for late-filed candidates' campaign finance reports that were due

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

immediately prior to a primary or general election. The bill would also require similar penalties for the late filing of certain political committees' reports. The bill would address lobbyists' reporting format and penalties.

Penalties for Late Filing of Candidates' Last-minute Reports

Under the bill, candidates' reports due the eighth day preceding a primary or general election and filed more than 48 hours late would be subject to a civil penalty. The bill would specify the candidate would be liable for a penalty of \$100 for the first day such report was more than 48 hours late and \$50 for each subsequent day the report was late. The civil penalty would be capped at \$1,000. Notice requirements regarding late reports in current law would be unchanged. The bill would authorize the Kansas Governmental Ethics Commission (KGEC) to waive these penalties for good cause.

Penalties for Late Filing of Certain Political Committees' Reports

The bill would apply the same civil penalty schedule for late filing of reports—\$100 for the first day and \$50 for each subsequent day—to each political committee that anticipates receiving \$2,501 or more in any calendar year and is more than 48 hours late in submitting the reports required under KSA 2017 Supp. 25-4145 (reporting of organizational information and contribution receipts) and KSA 2017 Supp. 25-4148 (reporting of contributions made to candidates). The civil penalty would also be capped at \$1,000 for political committees. The bill would authorize KGEC to waive these penalties for good cause.

Changes Regarding Lobbyist Reporting

The bill would require every lobbyist electronically file the required reports of employment and expenditures.

(Current law does not specify the filing format.) The bill would also make late filing of these reports subject to the same civil penalty amounts as applied under the bill to late last-minute campaign finance reports (*i.e.*, \$100 for the first day such report was more than 48 hours late, \$50 for each subsequent day the report was late, with a cap of \$1,000). The bill would authorize KGEC to waive these penalties for good cause.

Publishing of Precinct Level Election Results for Certain Races

The bill would also require the Office to publish precinct level primary and general election results for all statewide offices, state legislative offices, and federal offices on the Office's official website no later than 30 days after the final canvass of the election has been completed.

Conference Committee Action

The Conference Committee agreed to the contents of HB 2642, as amended by the House Committee of the Whole, with the following changes:

- Add the contents of Sub. for HB 2223, as amended by the Senate Committee on Senate Ethics, Elections and Local Government;
- Add the contents of HB 2604, as amended by the Senate Committee on Senate Ethics, Elections and Local Government;
- Include technical changes; and
- Change the effective date to upon publication the statute book.

Background

The bill contains the contents of HB 2642, as amended by the House Committee of the Whole; Sub. for HB 2223, as amended by the Senate Committee on Senate Ethics, Elections and Local Government; and HB 2604, as amended by the Senate Committee on Senate Ethics, Elections and Local Government.

HB 2642 (Social Media Attribution)

HB 2642 was introduced by Representative Esau. In the House Committee on Elections hearing, the Executive Director of KGEC appeared as a neutral conferee and provided an overview of the proposed changes to current law. He noted the bill does not contain a definition of “clear and conspicuous” as it relates to text communications, which could allow attribution to still be buried on a social media site. The Executive Director also stated removing the words “or end” in reference to the placement of attribution in audio communications would be worth considering, as other types of audio communications are required to place attributions at the beginning. No other testimony was provided.

The House Committee amended the bill to remove one of the time requirements a written disclosure must appear in a video communication and the time requirement a spoken attribution must appear in an audio communication. The House Committee also amended the bill to remove the requirement to include the name of the chairperson or treasurer of a political or other organization in an attribution.

The House Committee of the Whole amended the bill by removing provisions related to “paid for” or “sponsored by” attributions *via* video and audio communications.

In the Senate Committee on Ethics, Elections and Local Government hearing, Representative Esau presented proponent testimony, stating the bill addresses a change in

the character limits of certain social media providers (e.g., Twitter) and explaining the House Committee amendment. The Executive Director of KGEC provided neutral testimony, including an overview of the proposed changes to current law. No opponent testimony was presented.

The Senate Committee amended the bill to reinstate the requirement removed by the House Committee to include the name of the chairperson or treasurer of a political or other organization in an attribution. The Senate Committee maintained the House Committee of the Whole amendment. [Note: The Conference Committee retained the House Committee of the Whole amendment and did not retain the Senate Committee amendment.]

According to the fiscal note prepared by the Division of the Budget on HB 2642, as introduced, KGEC indicates the bill would have no fiscal effect.

Sub. for HB 2223 (Penalties for Late Filing of Campaign Finance and Lobbyists' Reports)

HB 2223 was introduced in the House Committee on Elections during the 2017 Legislative Session at the request of Representative Carpenter. In the House Committee hearing, Representative Carpenter appeared in support of the bill. He testified the bill would add more accountability and transparency to the election process by encouraging candidates to turn reports in on time, giving the public and the media access to the information before the election. A private citizen provided written-only testimony in support of the bill.

The Executive Director of KGEC testified as neutral on the bill. She provided a summary of current law and some background information on late reports and associated civil penalties during the 2016 election cycle. No other testimony was provided.

The House Committee recommended adoption of a substitute bill with the following changes from the original language of the bill: reducing the amount of the civil penalties that could be assessed for reports filed more than 48 hours late, specifying that candidates and not treasurers would be liable for the civil fines, imposing the fines only for candidates in current primary and general election races (as opposed to any person required to make a report as in the bill, as introduced), requiring electronic filing of reports by candidates to the Kansas House of Representatives and Senate, and making the provisions of the bill also applicable to lobbyists.

Upon re-referral, the House Committee amended the bill to remove the requirement that Kansas Senate and House of Representatives candidates file their reports electronically and only with the Secretary of State, and add penalties for late reporting by certain political committees.

In the Senate Committee on Ethics, Elections and Local Government 2018 hearing, Representative Carpenter presented proponent testimony, stating the importance of candidates, lobbyists, and political committees submitting their campaign finance and expenditure reports on time to promote transparency and fairness.

The Executive Director of KGEC provided neutral testimony, stating the bill has one departure from current enforcement: increasing the penalty and shortening the notification period for candidates, but not their treasurers. No other testimony was provided.

The Senate Committee amended the bill to cap civil penalties at \$1,000 for the late filing of candidate reports due the eighth day preceding a primary or general election, reports of political committees that anticipate receiving \$2,501 or more in any calendar year, and lobbyist reports on employment and expenditures. [Note: The Conference Committee retained Senate amendments.]

According to the fiscal note prepared by the Division of the Budget on HB 2223 in 2017, as introduced, KGEC indicates the bill would have a fiscal effect on the agency due to fines assessed. KGEC is unable to estimate how many civil fines would be assessed or the amount of fines that would go into KGEC's fee fund. Any fiscal effect associated with enactment of the bill, as introduced, is not reflected in *The FY 2018 Governor's Budget Report*.

HB 2604 (Publishing Precinct Level Results)

HB 2604 was introduced at the request of Representative Esau. In the House Committee on Elections hearing, a private citizen provided neutral testimony, stating he supported requiring the Office to publish precinct-level election results. However, he had three concerns with the bill: federal election results were not included; the bill's language of "as soon as practicable" is subjective; and the format in which data would be published was not specified. No other testimony was provided.

The House Committee amended the bill to include primary and general election results for federal offices, and to specify the Office must publish the results on its official website no later than 30 days after the final canvass of the election has been completed.

In the Senate Committee on Ethics, Elections and Local Government hearing, Representative Esau provided proponent testimony, stating the Office had provided precinct-level election results for many years, until 2010, and stressing the importance of providing this information to the public. A private citizen provided written-only proponent testimony. No other testimony was provided.

The Senate Committee amended the bill to change the effective date from publication in the statute book to publication in the *Kansas Register*. [Note: The Conference Committee did not retain the Senate Committee amendment;

the bill will be effective upon its publication in the Statute book.]

According to the fiscal note on HB 2604, as introduced, which was prepared by the Division of the Budget (Division) after the House Committee took action on the bill, the Division estimates any additional responsibilities resulting from enactment of the bill could be performed within the existing budget resources of the Office. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

elections; social media; attribution; Office of the Secretary of State; campaign finance report; lobbyist reporting

ccrb_hb2642_01_4519.odt