

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 142**

As Agreed to May 5, 2006

**Brief\***

SB 142 would address election, campaign finance and ethics laws, as follows:

Advance Voting Ballots

- Revise statutes relating to advance voting ballots to accomplish the following:
  - Conform language regarding voters with disabilities to be consistent with amendments passed in 2004.
  - Revise voter security measures as follows:
    - Prohibit anyone other than the actual voter to sign an application for an advance voting ballot, except as otherwise provided by law.
    - Revise the provision addressing the authority of persons to mail or bring advance voting ballots to the county election officer upon request of advance voters. In place of the original language, the bill would grant the voter authority to return the voter's own advance voting ballot either by personal delivery or by mail. In addition, the bill would clarify that a person other than the voter may return the voter's advance voting ballot, by personal delivery or mail, only upon written designation by the voter. The person so designated would be required to sign a statement that he or she has agreed to deliver the ballot as directed and has exercised no undue influence on the voter's voting decisions.

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\*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. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

## **Brief (cont.)**

### Voting System Updates

- Update the laws dealing with direct recording electronic (DRE) voting systems and repeal laws that provided for lever machines and punch card ballots (all of Sub. for SB 143). A partial list follows:
  - Delete a provision authorizing a county's voters to petition and vote on whether to adopt a system using electronic or electromechanical voting systems in the county. Elimination of this provision would leave the decision to the board of county commissioners and county election officer.
  - Clarify that the Secretary of State's examination of electronic voting systems is to include operating systems, firmware and software, and that the Secretary of State must certify such a system before it is used at any election. (Current law requires the Secretary of State to "approve" the system before it is used.)
  - Clarify the exception to the requirement that voting in absolute secrecy be provided in relation to such voting systems, to indicate the exception applies to persons who request assistance due to temporary illness or disability or a lack of proficiency in reading the English language. (Current law states the exception applies to persons entitled to assistance.)
  - Require that electronic or electromechanical voting systems approved by the Secretary of State comply with the federal Help America Vote Act of 2002 (HAVA) and other related federal law.
  - Authorize the Secretary of State to acquire electronic voting systems only to assist counties in meeting the HAVA requirement that each polling place have at least one voting device accessible to individuals with disabilities.
  - Update the definition of "electronic or electromechanical voting system fraud."
  - Repeal Chapter 25, Article 13, which provides for lever machines and punch card ballots.

### **Brief (cont.)**

- Update statutes governing the requirements and certification of optical scanning voting systems (all of SB 132 as amended by House Governmental Organizations and Elections). A partial list of provisions follows:
  - Delete a provision authorizing a county's voters to petition and vote on whether to adopt a system using optical scanning equipment in the county. Elimination of this provision would leave the decision to the board of county commissioners and the county election officer.
  - Revise and update language addressing the public testing of voting equipment before and after each election.
  - Require the supervising judge to either ensure that the number of ballots equals the number of voters shown on the poll book or to report in writing a discrepancy to the county election officer. (Current law requires an election judge to ensure the number of ballots does not exceed the number of voters shown or report excess numbers to the county election officer.)
  - Update language regarding the crime of optical scanning equipment fraud.
  - Require that optical scanning equipment and related systems approved by the Secretary of State: (a) provide notification when the voter has cast more or fewer votes than authorized, and (b) meet the requirements of the federal Help America Vote Act of 2002 (HAVA) and other related federal laws and regulations.

### Election Crime Complaint Reporting (all of SB 409 with changes)

- Require the reporting of election crime complaint and conviction information as follows:
  - County election officers would be required to report sworn complaints of violations of election crimes (contained in KSA Chapter 25, Article 24) to the Secretary of State, within 30 days after receiving the complaint. In lieu of filing such a complaint with a county election officer, the bill would allow the complaint to be filed with the Secretary of State. The Secretary of State would be required to develop a reporting

## **Brief (cont.)**

form by October 1, 2006, and distribute the forms to the county election officers.

- Clerks of district courts would be required to notify the Secretary of State of any convictions for violating any election crime contained in KSA Chapter 25, Article 24.

### Recall Election Mandamus Proceedings (all of SB 448)

- Amend the recall law applying to elected officials to clarify the time frame when mandamus or injunction proceeding must be brought to “within” 30 days of the completion of the review of the adequacy of the recall petition by the Secretary of State in regard to state elected officials or by the county or district attorney in regard to local elected officials. The bill also would require notice of this recall petition decision to the officer who is the subject of the recall.

### Satellite Advance Voting Sites (all of HB 2118 as amended by Senate Committee on Elections and Local Government)

- Expand to all counties the ability of county elections officers to designate places other than the central county elections office as satellite advance voting sites. Current law restricts this to counties with a population exceeding 250,000 (Sedgwick and Johnson counties).

### Campaign Finance

#### (A) Telephonic Messages (all of SB 67, as amended by Senate Committee on Elections and Local Government, with changes)

- Amend the Campaign Finance Act to (a) require the identification of who paid for any telephonic message expressly advocating for or against a specific candidate for a state or local office; and (b) require any vendor or other person to maintain, for one year, a detailed record of any services providing a published (via periodical or brochure-type document), broadcast, or telephonic campaign message in which the election or defeat of a specific candidate is expressly advocated.

## **Brief (cont.)**

(B) Reporting Immediately Prior to Elections (part of SB 65, as amended by Senate Committee of the Whole, with changes and all of SB 68, as amended by Senate Committee on Federal and State Affairs)

- Require the second-day filing of \$350-plus campaign contribution reports for the 11-day period preceding the actual day of an election, as follows:
  - Require every treasurer for state or local office file campaign contribution reports on a second-day basis as needed, *i.e.*, by the close of the second business day following the day on which any contribution is received.
    - For candidates for state office, including those elected on a statewide basis, the reports would be filed in the Secretary of State's Office.
    - For local office candidates, the reports would be filed with the county election officer of the county in which the candidate's name is on the ballot.
  - Require the report contain:
    - The name and address of each person who has made one or more contributions with an aggregate value of at least \$350, during the period beginning 11 days before a primary or general election for state or local officers and ending on the day before the election.
    - The amount and date of the contribution.
    - The name and address of every lender, guarantor, and endorser when the contribution is in the form of an advance or loan.
- Require party and political action committees to file independent expenditure reports with the Secretary of State on any expenditure in excess of \$1000 during the period commencing 11 days before a primary or general election and ending the day before the election that expressly advocated the election or defeat of a candidate.
  - In addition to the amount, date and purpose of each

## Brief (cont.)

expenditure, the committee would have to report the name of each party or political action committee which has made, or contracted to make, an independent expenditure in excess of \$1000 and the name of the candidate for whom the expenditure expressly advocated the election or defeat. These same reporting provisions would apply if the expenditure is made to an advertisement agency, public relations firm, or political consultant for distribution.

- Expenditure reports would have to be filed by hand delivery, express delivery service, facsimile transmission, or any electronic method authorized by the Secretary of State on or before the next business day in which the expenditure was made.

### (C) Transfer of Funds (part of SB 65 with changes)

- Authorize the transfer of campaign funds in certain circumstances, as follows:
  - 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 only after all debt is retired in the original candidate committee.
    - The original candidate committee must be either terminated or placed on inactive status when its residual funds are transferred.
    - Once the money is transferred, the candidate is prohibited from accepting any contributions to the original candidacy unless and until the *bona fide* successor committee or candidacy is terminated.
    - If a person who had made a contribution to the original candidate committee contributes to a *bona fide* successor committee or candidacy, the amount contributed to the *bona fide* successor committee or candidacy is limited to the difference between the new office's statutorily prescribed contribution limit and the aggregate amount of all contributions made by this person to the original candidate committee.

## Brief (cont.)

- Define the term "*bona fide* successor committee or candidacy" to mean the candidate's campaign committee or candidacy initiated when the original candidacy is either terminated or placed on inactive status. The "*bona fide* successor committee or candidacy" is established for the purpose of transferring funds from the original candidate committee.
- Prohibit the transfer of money from the *bona fide* successor committee or candidacy back to any campaign committee or candidacy for the office from which the original transfer was made.
- Clarify that the transfer of funds to a *bona fide* successor committee or candidacy is not considered a contribution.
- 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 December 12, 2003 (the date of the Kansas Supreme Court decision on *Cole v. Mayans and Kenton*) to be in compliance with the Campaign Finance Act in existence at the time of the transfer, regardless of when the original campaign fund was closed after the transfer was made.

### (D) Treasurer's Reports

- Allow a candidate to sign regular treasurer's reports in lieu of the treasurer (part of SB 65).
- Increase to \$100 the aggregate expenditure amount above which a treasurer's report must contain detailed information. (Current law requires such reporting for aggregate amounts above \$50.)

## **Brief (cont.)**

### (E) Online Transmission of Reports (part of SB 65)

- Require the Kansas Governmental Ethics Commission (KGEC) to develop and implement forms for Campaign Finance Act reports to be completed on-line and transmitted by e-mail or over the Internet.

### (F) Contribution Limits

- Change the following aggregate contribution limits by any political committee or any person except a party committee, the candidate or the candidate's spouse:
  - To \$750 for the office of member of the house of representatives, district judge, district magistrate judge, district attorney, member of the state board of education or a candidate for local office (current limit is \$500); and
  - To \$1,500 for the office of state senator (current limit is \$1,000).

### Judicial Branch Financial Disclosure (part of SB 419 as amended by Senate Committee of the Whole)

- Establish financial disclosure requirements for several members of the judicial branch. The bill would require submission to the Secretary of State of a "statement of substantial interests" by every Supreme Court justice, court of appeals judge, member of the Commission on Judicial Qualifications, member of the Supreme Court Nominating Commission, law clerks assigned to a court of appeals judge or justice of the Supreme Court, and nonjudicial appellate court employee listed officially as a "designee" (*i.e.*, performs significant duties such as contracting, purchasing, or procurement). In the case of the judicial branch individuals, "statement of substantial interests" would be defined as the judicial financial disclosure report required by the Supreme Court.

### Membership on the Kansas Governmental Ethics Commission (KGEC)

- Limit to a period of five years, immediately prior to appointment, the prohibition against serving on the KGEC of anyone who has held the office of chairperson, vice chairperson or treasurer of



any county, district or state political party committee. Current law permanently prohibits anyone from serving who has held any of these offices.

- Clarify that the five-year prohibition against KGEC membership of anyone who has been a candidate for or the holder of any “partisan political office” does not apply to precinct committeemen or committeewomen.

### **Conference Committee Action**

In Conference Committee, the Senate conferees agreed to the House amendments to the bill, with the following exceptions, additions, and revisions:

- With respect to advance voting ballots, require that the written designation of someone other than the voter to transmit the ballot be on the ballot envelope;
- Add the contents of Substitute for SB 143, as amended by the House Committee on Governmental Organization and Elections, concerning direct recording electronic voting systems. The Conference Committee further eliminated requirements related to voter verified paper audit trails for electronic or computerized voting machines;
- Add the contents of SB 132, as amended by the House Committee on Governmental Organization and Elections, concerning optical scanning voting systems;
- Add the contents of SB 409 with changes, relating to the reporting of complaints and convictions of violations of election crimes. The changes to the introduced bill are summarized as follows:
  - Add a definition of “complaint” to mean a written statement made under oath of the essential facts constituting a crime.
  - Authorize complaints to be filed with the Secretary of State, in lieu of filing with a county election officer.
- Add the contents of SB 448, as recommended by the Senate Committee on Elections and Local Government, regarding the

timing of recall election mandamus proceedings.

- Add the contents of HB 2118, as amended by the Senate Committee on Elections and Local Government, relating to satellite advance voting sites.
- Add the contents of SB 67, as amended by Senate Committee on Elections and Local Government, requiring the identification of those who paid for telephonic messages expressly advocating for or against a specific candidate for a state or local office. The Conference Committee removed the specific requirement that this information appear at the end of the message.
- Add the contents of SB 65, as amended by the Senate Committee of the Whole, as follows:
  - Requiring the second-day filing of \$350-plus campaign contribution reports for the 11-day period preceding the actual day of an election (SB 65 set the amount at \$300).
    - The Conference Committee revised the methods by which these reports must be filed to include hand delivery, express delivery service, facsimile transmission or any electronic method authorized by the Secretary of State.
  - Authorizing the transfer of campaign funds in certain circumstances. The Conference Committee revised the language to:
    - Prohibit the transfer of money unless all debt had been paid in the original campaign committee;
    - Require the original campaign committee be either terminated or placed on inactive status once its residual funds have been transferred;
    - Prohibit acceptance of contributions in the original campaign committee once it is placed on inactive status (or terminated);
    - Allow for reactivation of the original campaign committee only after the *bona fide* successor committee or candidacy is terminated;

- Allowing a candidate to sign regular treasurer's reports in lieu of the treasurer; and
- Requiring the KGEC to develop and implement on-line forms for Campaign Finance Act reports.

The provision of SB 65 requiring reporting of express advocacy contributions for precinct committeemen or committeewomen was not included.

- Add the contents of SB 419, as amended by the Senate Committee of the Whole but with changes, related to judicial financial disclosure requirements. The provision of SB 419 was deleted that would have made the listed judicial branch officials and employees subject to the entire Governmental Ethics Act.
- Increase the aggregate expenditure amount for campaign treasurers' reporting purposes.
- Increase aggregate contribution limits for certain offices.
- Make changes with respect to membership on the KGEC.
- Add the contents of SB 68, as amended by Senate Committee on Federal and State Affairs, related to requiring party and political committees to file independent expenditure reports during the period beginning 11 days before an election.

## **Background**

### The Original SB 142 (Advance Voting Ballots)

A representative of the Secretary of State testified in favor of the original SB 142, stating the bill was proposed as an advance voting ballot security bill. Representatives of the Disability Rights Center of Kansas, the Topeka Independent Living Resource Center, and the Kansas Association for the Blind and Visually Impaired, Inc., provided testimony in opposition to or stating concerns about SB 142. The concerns focused generally on the bill's reliance on voter signature comparison with respect to disabled individuals, whose signatures might change frequently.

The bill has no fiscal impact at the state level, but the fiscal note indicated county election offices could realize additional administrative

expenses associated with SB 142.

#### SB 143 (Electronic Voting Systems)

With respect to SB 143, representatives of the Secretary of State, the Disability Rights Center of Kansas and Independence, Inc., and the Johnson County Election Commissioner provided testimony in favor of the original bill. Several conferees indicated the bill's purpose was, in part, to bring laws regarding direct recording electronic (DRE) voting systems into compliance with HAVA. The official from the Secretary of State's Office also indicated that lever voting machines have not been used in Kansas since 1995 and, to his knowledge, punch card ballots have never been used in the state.

A fiscal note on the bill as introduced stated the revenues and expenditures relating to SB 143 are reflected in *The FY 2006 Governor's Budget Report*.

#### SB 132 (Optical Scanning Voting Systems)

A representative of the Secretary of State testified in favor of SB 132. The conferee stated the bill's purpose was to bring state laws governing the requirements and certification of optical scanning voting systems up to date and into compliance with HAVA.

The SB 132 fiscal note stated that passage of the bill would not affect state expenditures or revenues. The Secretary of State already reviews and certifies voting equipment, though the associated procedures would change.

#### SB 448 (Recall Election Mandamus Proceedings)

The bill was supported by the Secretary of State's Office. The issues addressed by SB 448 are currently before the Kansas Court of Appeals in the case of *Collins v. Mitchell County*. The bill would have no fiscal impact on the state, according to the fiscal note.

#### HB 2118 (Satellite Advance Voting Sites)

\_\_\_\_\_The bill was amended to delete its original contents (related to cemeteries) and insert the provisions of HB 2744. The fiscal note for HB 2744 stated there would be no fiscal impact on the state. As amended, HB 2118 was supported by the Secretary of State's Office, the Kansas County Clerks Association, and election officers from Sedgwick, Johnson, Saline, Douglas, Crawford, and Hamilton

counties.

#### SB 67 (Telephonic Campaign Messages)

SB 67 was one of five bills requested by the Kansas Governmental Ethics Commission (KGEC) for the 2005 Session. According to the testimony of a KGEC official, current law does not require identification of who paid for or sponsored messages, delivered via telephonic means, which expressly advocate the election or defeat of a clearly identified candidate for state or local office. On the other hand, such advertisements placed in a newspaper or other periodical, broadcast on radio or television, or printed in a brochure or similar document must identify the chairperson or treasurer of the organization sponsoring the advertisement or the name of the individual responsible for the advertisement.

The bill's fiscal note indicated that passage of SB 67 would have a negligible fiscal effect and could be implemented within the KGEC's and the Secretary of State's budgeted staffing and operating expenditures.

#### SB 65 (Other Campaign Finance Changes)

With respect to SB 65, as passed by the Senate Committee, KSA 25-4148 requires candidates' treasurers to submit periodic receipts and expenditures reports. The statutorily prescribed deadlines leave a period of several days, prior to both primary and general elections, for which campaign receipt and expenditure information is not available to the public until *after* the election in question.

An official from the KGEC testified in favor of the original bill, noting it was one of the KGEC's legislative recommendations for the 2005 Session. In her testimony, the KGEC official explained that any contribution received during the time periods referred to in the preceding paragraph cannot be disclosed to Kansas citizens in time to assist them in their voting decisions. The KGEC official reported that, in the 2004 primary, Senate candidates received 304 contributions in the amount of \$300 or more the last 11 days before the primary, for a total of approximately \$236,000. In the 2002 election, she said, statewide candidates received 825 such contributions totaling approximately \$932,500, which went unreported until after the primary and general elections. According to her testimony, 35 states currently require the reporting of last-minute contributions, as does the Federal Election Commission.

A representative of an ad hoc group of individual lobbyists also testified in favor of the bill. The representative indicated his group intended to provide their testimony as private citizens.

A fiscal note on the original bill indicated the fiscal effect of the bill would be negligible, and both the KGEC and the Office of the Secretary of State could implement it within budgeted staffing and operating expenditures for FY 2006. No fiscal note is available on the bill as amended.

With respect to the portions of SB 65 regarding campaign funds transfer, 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.” The related provisions, originally introduced as HB 2041, contain the campaign finance language in House Substitute for SB 376 that was submitted to the Governor.

On December 12, 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 currently is 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.

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.

SB 409 (Reporting of Election Crime Complaints and Convictions)

The bill was supported by Senator O’Connor, and by residents of Johnson and Wyandotte counties.

The fiscal note states that costs associated with the bill would be negligible.

SB 419 (Judicial Branch Financial Disclosure)

KSA Chapter 46, Article 2, contains the State Governmental Ethics Law. Among other items, the article requires a number of state officers and employees to file a statement of substantial interests with the Secretary of State. Failure to file the statement is deemed a class B misdemeanor.

The Rules of the Supreme Court now require financial disclosure for all judges. The definition of “judges” includes any judicial officer

who performs the functions of a judge in Kansas courts including Kansas Supreme Court justices. It does not include members of the Commission on Judicial Qualifications or the Supreme Court Nominating Commission, law clerks assigned to a court of appeals judge or justice of the Supreme Court, or nonjudicial appellate court employees designated by law as one who performs significant duties. Contained in Canon 4 of the Supreme Court Rules pertaining to judicial conduct, the requirement directs judges to file their reports with the Clerk of the Appellate Courts. This bill would require that a copy of the report be filed with the Secretary of State and be deemed, for the purposes of this act, to be a statement of substantial interests.

Testifying in favor of the bill was Senator Tim Huelskamp. A representative of the Office of Judicial Administration presented information on the financial statements currently required by Supreme Court rule.

The fiscal note indicates passage of the bill would have no fiscal effect on the state budget.

#### SB 68 (11-Day Reporting by Party and Political Committees)

The Executive Director of the Governmental Ethics Commission testified that reports that are made 11 days before the general election through the date of the general election are not disclosed until the January 10 Receipts and Expenditures Report, therefore the public would not know who made expenditures 11 days prior to an election.

The proponents were: the Executive Director of the Kansas Governmental Ethics Commission, and a representative of an ad hoc Lobbyist Campaign Finance committee.

There were no opponents to the bill.

The fiscal note indicates that passage of the bill would have no fiscal impact on the Governmental Ethics Commission.