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**MEMORANDUM ON AMENDMENTS TO STATUTES GOVERNING THE
GOVERNMENTAL ETHICS COMMISSION**

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During the 2023 Legislative Session, the Legislature passed House Substitute for Senate Bill No. 208 (SB 208) enacting various changes to the laws governing political candidates and the actions of the Kansas Governmental Ethics Commission (GEC). This memorandum provides a summary of these statutory changes, which became effective on April 20, 2023. Other amendments to the GEC statutes were proposed during the consideration of SB 208. Such proposals are also briefly summarized.

Summary of House Substitute for Senate Bill No. 208

First, SB 208 created a new statute, codified at K.S.A. 25-4119h, governing actions taken by the GEC. Under the new statute, all actions of the GEC and its employees are subject to the Kansas Administrative Procedure Act, the Kansas code of civil procedure, and the Kansas Judicial Review Act. Additionally, any action filed in state district court by the GEC now constitutes a claim for purposes of the Kansas Public Speech Protection Act.

The new statute also imposes a five-year statute of limitations on actions brought before the GEC. The action must be brought before the GEC within five years after the conduct that led to the action or complaint. Further, the GEC cannot require a respondent to waive any civil or legal rights to judicial review as a part of any order or other action by the GEC.

Finally, the new statute requires the GEC to adopt new rules and regulations concerning recusal of its members and staff. The new regulations must establish the standards for when members of the commission and its employees must recuse themselves from a matter before the GEC because of a conflict or the appearance of impropriety.

SB 208 amended K.S.A. 25-4143 to add the definition of “agent” to specify those individuals who can be considered an agent of a candidate or political party. The term “agent” is included in the new provisions allowing contributions to be used to pay fines and penalties imposed on agents of candidates.

Next, SB 208 amended K.S.A. 25-4145 by revising the scheme for registering political committees with the GEC. This included establishing a new tiered system for registration based on annual contributions and modifying the registration fees accordingly. The new tiered system is as follows:

- Annual contributions in excess of \$15,000 will require a \$750 registration fee;
- Annual contributions of \$15,000 or less but more than \$7,500 will require a \$500 registration fee;
- Annual contributions of \$7,500 or less but more than \$2,500 will require a \$250 registration fee; and
- Annual contributions of \$2,500 or less will require a \$50 registration fee.

The legislation amended K.S.A. 25-4153a regarding contributions for candidates for legislative seats and state offices. Registered lobbyists, political committees, and other organizations are prohibited from making contributions to legislators, state officers, and candidates for those offices during legislative sessions. The statute also prohibits those officers and candidates from accepting or soliciting such contributions. SB 208 created a safe harbor from violating this second prohibition as long as the solicitation for contributions is for individuals and includes a disclaimer that it is not intended for lobbyists, political committees, or other organizations.

Next, SB 208 amended K.S.A. 25-4157a to expand the list of expenditures that may be paid from campaign contributions. The list now includes:

- Expenses, compensation, and gifts for volunteers, employees, and contractors of a political candidate's campaign if the total of such remuneration does not exceed the fair market value of the services provided;
- Payment of any civil fines imposed by the GEC for actions taken by the candidate, candidate committee, treasurer, or other agent of the candidate; and
- Payment of any legal expenses related to an investigation or action brought under the state campaign finance laws.

The next set of statutory amendments in SB 208 govern the issuance of subpoenas by the GEC and how hearings are to be conducted. First, any action by the GEC to issue a subpoena or proceed with a hearing on a complaint requires an affirmative vote of at least $\frac{2}{3}$ of the members of the GEC. Prior law required a more stringent $\frac{3}{4}$ vote of the members.

Second, the GEC must apply to the Shawnee County District Court for an order to serve any subpoena on a person. When filing an application, the GEC must also transmit a copy of the written findings of fact and conclusions of law relating to the alleged violation and the persons under investigation to the person being served the subpoena. The recipient of a subpoena cannot be unduly burdened by the subpoena request, including unreasonable expenses to comply, and the recipient has the right to seek legal counsel. Each subpoena issued by the GEC must include information regarding the recipient's rights and a specific statutory statement regarding the enforceability of the subpoena.

Third, a respondent may request that the hearing be conducted by an administrative law judge instead of the GEC. This request may be made by the respondent whenever the GEC has determined there is probable cause to proceed in the matter. The respondent also may have all pre-hearing procedures conducted before the administrative law judge. If such an administrative hearing is requested, the GEC must make its final determination on the matter based on the hearing and cannot hold a separate hearing on the matter.

Finally, any attorney or employee of the GEC representing the complainant before the GEC cannot advise or assist the GEC in the matter. The GEC is required to obtain independent legal counsel in such instances.

The final amendments made by SB 208 concern penalties imposed by the GEC for violations of the law. K.S.A. 25-4181 is amended to set limits on fine amounts and restrictions on the GEC's imposition of penalties. Unless pecuniary gain is involved, the fine amount cannot exceed three times the fine amount for a single violation. If pecuniary gain is involved, then the fine amount cannot exceed twice the amount of such gain. All fines paid to the GEC are to be credited to the State General Fund. Additionally, the GEC cannot order community service or other specific performance as an alternative to payment of a fine. The GEC also cannot agree to provide immunity from liability in exchange for cooperation in an investigation unless the GEC offers full immunity from both civil and criminal liability.

Other Proposed Amendments to GEC Statutes

House Bill No. 2391 (HB 2391) was also introduced during the 2023 Legislative Session. HB 2391 was the basis for the legislation that eventually became SB 208 and includes many of the same amendments to the statutes governing the operations of the GEC that were enacted as part of SB 208. However, there were additional amendments proposed in HB 2391 that were not included in SB 208. The following is a brief summary of those additional proposed amendments:

- A two-year statute of limitations was proposed for bringing an action before the GEC. (SB 208 enacted a five-year limit on bringing such actions.)
- It was proposed that individuals could not be held liable for actions conducted on behalf of another individual or entity unless the individual was acting as an agent for the other individual or entity.
- K.S.A. 25-4119a would be amended to require the executive director of the GEC have the same qualifications to hold the office as the GEC members.
- K.S.A. 25-4119d would be amended to allow individuals to serve as GEC members despite having recently held state office, been a state officer, or been involved in state contracting. The statute would also be amended to include a definition of “partisan political office” to exclude offices and positions in political parties or affiliated organizations.
- K.S.A. 25-4143 would be amended to change the definition of “political committee” to:
(1) Specify that if a committee consists of two individuals, the individuals cannot be married to one another; (2) only include entities that spend more than \$2,500 on express advocacy during a calendar year and have the major purpose of contributing to candidates, candidate committees, and political committees; and (3) expressly include political action committees, separate segregated funds established by a membership organization, and independent expenditure-only political committees.
- K.S.A. 25-4145 would be amended to establish a different tiered system for registering political committees as follows:
 - Annual contributions in excess of \$10,000 will require a \$300 registration fee;
 - Annual contributions of \$10,000 or less but more than \$2,500 will require a \$100 registration fee;
 - Annual contributions of \$2,500 or less but more than \$500 will require a \$50 registration fee; and
 - Annual contributions of \$500 or less will require a registration fee of \$25.
- K.S.A. 25-4152 would be amended to direct civil penalty payments to be credited to the State General Fund instead of the Governmental Ethics Commission Fee Fund.
- K.S.A. 25-4153b would be amended to prohibit members and candidates for legislative offices from holding the office of treasurer of a political committee.

- K.S.A. 25-4154 would be amended to define “contribution in the name of another” with respect to the prohibition on such contributions under current law. A conforming amendment was also proposed to K.S.A. 25-4170.
- K.S.A. 25-4157a would be amended to allow expenditure of contributions for family caregiving services. This provision was also proposed in HB 2297. The statute would also be amended to clarify that a candidate or candidate committee can contribute money received by such candidate or committee to another party or political committee.
- K.S.A. 25-4158 would be amended to prohibit the GEC from providing immunity in exchange the individual providing evidence of violations committed by other individuals or entities.
- K.S.A. 25-4185 would be amended to direct that any appeal of a GEC decision to the district court is to be reviewed under a trial *de novo*, rather than with any deference to the GEC.