



GOVERNMENTAL ETHICS COMMISSION

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Neutral Testimony on SB 373
Monday, February 12, 2024
Senate Committee on Federal and State Affairs

Thank you for the opportunity to provide testimony regarding SB 373. This testimony is neutral, though it includes caution about current language in the bill.

This legislation removes the current Public Funds Lobbying Report and replaces it with a broad ban on using public funds for lobbying or for certain expenses that could be involved in lobbying. This prohibition would fall to the Ethics Commission's jurisdiction to enforce, with lower fines than would exist for other offenses.

CURRENT LAW

The way regulation of lobbying works in Kansas is that there are two definitions – “lobbying” and “lobbyist.” The definition for lobbying is exceptionally broad, intentionally so, since that activity does not become regulated unless the person in question falls under the definition of “lobbyist” which is very narrow. By law, “lobbying” includes “promoting or opposing in any manner action or nonaction by the legislature on any legislative matter” or “promoting or opposing in any manner an action or nonaction by any executive agency on any executive administrative matter.” This language encompasses virtually all activity involved in discussing issues with a legislator or an executive branch agency employee. The full statute has been attached to this testimony for reference.

The broad language in the definition of “lobbying” is intentional because that conduct does not generally become regulated unless it is activity conducted by someone who is defined as a “lobbyist.” SB 373's prohibition relates to lobbying, which means that even the wide-ranging language in SB 373 may be broader than intended.

EXCEPTION LANGUAGE

The exception that is carved out in SB 373 allows for a state or local employee to communicate with legislators if the legislator requests it, or “requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of such officer's or employee's official duties,” if such communication occurs through “the proper official channels.” This exception lacks specificity, making it very difficult to enforce. For example, it is unclear when a requested action used “proper official channels” or when a request actually implicates “operations” of the state or a municipality.

46-225. "Lobbying" defined; exceptions; employment of legislator as a lobbyist prohibited.

- (a) Except as otherwise provided, "lobbying" means:
- (1) Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter;
 - (2) promoting or opposing in any manner an action or nonaction by any executive agency on any executive administrative matter;
 - (3) promoting or opposing in any manner an action or nonaction by any judicial agency on any judicial administrative matter; or
 - (4) entertaining any state officer or employee or giving any gift, honorarium or payment to a state officer or employee in an aggregate value of \$40 or more within any calendar year, if at any time during such year the person supplying the entertainment, gifts, honoraria or payments has a financial interest in any contract with, or action, proceeding or other matter before the state agency in which such state officer or employee serves, or if such person is the representative of a person having such a financial interest.
- (c) "Lobbying" does not include any expenditure from amounts appropriated by the legislature for official hospitality.
- (d) "Lobbying" does not include representation of a claimant on a claim filed by the claimant under K.S.A. 46-907 and 46-912 through 46-919, and amendments thereto, in proceedings before the joint committee on special claims against the state.
- (e) "Lobbying" does not include bona fide personal or business entertaining.
- (f) No legislator may be hired as a lobbyist to represent anyone before any state agency.
- (g) "Lobbying" does not include:
- (1) Written communications by an employee of a private business seeking a contract, agreement or lease with an executive agency or judicial agency solely for the purpose of describing goods or services to be provided or for preparing a bid, proposal or other document relating to a contract, agreement or lease, such as factual information, specifications, terms, conditions, timing or similar technical or commercial information or communications by an employee of a private business awarded a bid or contract for the purpose of carrying out ongoing negotiations following the award of the bid or contract;
 - (2) communications by an attorney representing a client involving ongoing legal work with respect to an executive administrative matter or judicial administrative matter, or an administrative proceeding or hearing and negotiations conducted by and with attorneys for executive agencies or judicial agencies, or interactions between parties in litigation or other contested matters, and testimony by a witness in an administrative hearing or communications to or by investigators or authorities in the course of any investigation;
 - (3) communications among and between members of the legislature or executive or judicial officials or employees;
 - (4) providing written information in response to a written request from an executive agency for technical advice or factual information regarding a standard, rate, rule or regulation, policy or procurement or from a judicial agency regarding a procurement;
 - (5) communications regarding a contract, lease or agreement of \$5,000 or less;
 - (6) communications made by or on behalf of a private business for the purpose of securing a grant, loan or tax benefit pursuant to a Kansas economic development program for the purpose of locating, relocating or expanding a private business within or into Kansas; or

(7) communications made by officers or employees of a certified business or disabled veteran business, as defined in K.S.A. 75-3740, and amendments thereto.

(h) As used in this section, "executive administrative matter" means any rule and regulation, utility ratemaking decision, any agreement, contract, bid or bid process, or any procurement decision, including, but not limited to, any financial services agreement, software licensing, servicing or procurement agreement, any lease, grant, award, loan, bond issue, certificate, license, permit, administrative order or any other matter that is within the official jurisdiction or cognizance of the executive agency.

(i) As used in this section, "judicial administrative matter" means any administrative matter regarding an agreement, contract, bid or bid process, any procurement decision, including, but not limited to, any financial services agreement, software licensing, servicing or procurement agreement, lease, or any other administrative procurement or contractual matter.

(j) As used in this section, "executive agency" means any state agency, state office or state officer, state officer elect, or employee of the executive branch and includes, but is not limited to, the board of regents and state board of education, but does not include local boards of education of school districts or municipalities or other political subdivisions.

(k) As used in this section, "judicial agency" means any department, institution, office, officer, employee, commission, board or bureau, or any agency, division or unit thereof, of the judicial branch of government and includes any justice or commissioner of the supreme court or judge or judge elect of the judicial branch, or any member of a board, council or commission who is appointed by the supreme court or who is elected and is performing a function or duty of the judicial branch that constitutes a judicial administrative matter.

(l) As used in this section, "written communications" or "written information" includes email or other electronic forms of communication that are retained as a record by the executive agency or judicial agency.