

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 394

As Recommended by Senate Committee on
Ethics, Elections and Local Government

Brief*

SB 394 would expand the definition of “lobbying” to include lobbying of the executive and judicial branches and make related changes.

The bill would amend law to:

- Expand the definition of lobbying to include lobbying of the executive and judicial branches;
- Increase the aggregate cap for gifts to an individual in a calendar year from \$40 to \$100, applicable to the executive, judicial, and legislative branches;
- Equalize the treatment of meals provided by lobbyists between the legislative and executive branches; and
- Change lobbyist reporting and registration requirements in accordance with the above.

Definition of Lobbying [Sections 1 and 2]

The bill would add any independent contractor compensated by an executive agency for the purpose of evaluation, management, consulting, or acting as a liaison for the executive agency and who engages in lobbying to the definition of “lobbyist.” Attorneys and law firms representing

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the agency in any legal matter would not be included in the definition.

The bill would include promoting or opposing any action or inaction of any executive agency on any executive administrative matter or judicial agency on any judicial administrative matter to the definition of lobbying.

Exemptions from Lobbying Definition [Section 2]

The following would be exempted from the definition of lobbying:

- Written communications from an employee of a private business attempting to sell, or preparing a bid or proposal related to a contract, agreement, or lease;
- Communications by an attorney regarding an executive administrative matter or judicial administrative matter, communication between parties in litigation, witness testimony in an administrative hearing, and investigation communications;
- Communications between and among members of the Legislature or executive or judicial officials or employees;
- Providing written information at the written request of an executive agency, or from a judicial agency regarding a procurement;
- Communications regarding a contract, lease, or agreement of \$5,000 or less;
- Communications made by or on behalf of a private business for the purpose of securing a grant, loan, or tax benefit under a Kansas economic development program; and

- Communications made by officers or employees of a certified business or disabled veteran business as defined in a statute governing competitive bids.

Additional Definitions [Section 2]

The bill would also define the following terms:

- Executive administrative matter—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;
- Judicial administrative matter—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, or lease; or any other administrative procurement or contractual matter;
- Executive agency—any state agency, state office or state officer, state officer elect, or employee of the executive branch including, but not limited to, the Board of Regents and State Board of Education but excluding local boards of education of school districts or municipalities or other political subdivisions;
- Judicial agency—any department, institution, office, officer, employee, commission, board or bureau, or any agency, division, or unit thereof, of the judicial branch of government including 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; and

- “Written communications or written information” would include email or other electronic forms of communication that are retained as a record by the executive agency or judicial agency.

Gifts and Meals [Sections 3 and 4]

The bill would increase from \$40 to \$100 the amount of economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service that could be accepted by any state officer or employee, candidate for state office, or state officer or could be offered by a person with a special interest or licensed, inspected, or regulated by a state agency. The bill would also increase from \$40 to \$100 the aggregate value of any gift that could be solicited or accepted by the Governor, the Lieutenant Governor, the Governor’s spouse, officers and employees of the executive branch, and members of boards, commissions, and authorities of the executive branch.

A member, member elect, or employee of the judicial branch would be included among those who could not be given or paid hospitality in the form of recreation having an aggregate value of \$100 or more, or in the form of food and beverages given to influence the performance of official duties pertaining to a judicial administrative member.

The bill would extend to members, members elect, and employees of the judicial branch a provision that hospitality in the form of food and beverages is presumed not to be given to influence an official matter; in current law, state officers and employees, candidates for state office, and state officers are included.

The bill would increase the value of a meal that could be accepted by any member of the executive branch from \$25 to \$100 per occurrence. A lobbyist could provide a meal, except when a particular official action must be taken as a condition of accepting the meal.

Receipt of a meal by a member of the executive branch from a lobbyist who is not registered or fails to report providing the meal would not be considered a violation, unless the recipient knew the lobbyist was not registered or requested the lobbyist not report the meal.

Lobbyist Reporting and Registration Requirements
[Sections 5 - 7]

The bill would require a lobbyist registration show the name of each executive and judicial agency, office, and any agency, division, unit, department, institution, office, commission, board, bureau, or other division. Lobbyists would also be required to note whether they will lobby the legislative branch on the form as well. *[Section 5]*

A lobbyist currently is required to disclose the aggregate value of gift, entertainment, or hospitality provided when the lobbyist expends \$100 or more for lobbying in any reporting period. Lobbyists are also required to disclose the full name of the legislator, member of the judicial branch, or legislative or judicial employee who received the gift, entertainment, or hospitality, and the amount expended. The bill would extend these requirements to include state officers, state officers elect, state employees, members elect of the judicial branch, and legislators elect. *[Section 6]*

The bill would require a lobbyist to report expenditures for any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service to any officer or candidate for office or employee of the judicial branch, as well as to the legislative branch as in current law. *[Section 7]*

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by Senators Wagle and Hensley. In the Senate Ethics, Elections and Local Government Committee hearing, Senators Wagle and Hensley appeared as proponents, stating the bill would ensure transparency in government actions and decision making.

The Executive Director of the Kansas Governmental Ethics Commission provided neutral testimony. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Kansas Governmental Ethics Commission (Commission) indicated enactment of the bill would have a negligible fiscal effect on expenditures, which would be absorbed within existing resources. The Commission also indicated the bill would increase revenues due to an increase in lobbyist registrations. However, the increase could not be estimated because the increase in lobbyist registrations is unknown. Any fiscal effect associated with the bill is not reflected in *The FY 2019 Governor's Budget Report*.