

SENATE BILL No. 86

By Committee on Local Government

1-23

1 AN ACT concerning governmental ethics; relating to actions of local
2 governmental officials affecting the development, construction and
3 operation of certain renewable energy systems; requiring local
4 governmental officials and candidates for local office to disclose
5 substantial interests in a renewable energy system; prohibiting local
6 governmental officials who have a substantial interest from acting on
7 matters relating to the renewable energy system; amending K.S.A. 75-
8 4301a, 75-4303a and 75-4306 and repealing the existing sections.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 New Section 1. (a) Except as otherwise provided by this section, no
12 local governmental officer who has a substantial interest in a renewable
13 energy system as defined in K.S.A. 75-4301a(a)(6), and amendments
14 thereto, shall act on any matter or participate in the making of a contract
15 relating to such renewable energy system in such officer's official capacity.
16 This section shall apply regardless of whether a local governmental officer
17 has filed a disclosure of the substantial interest. Except as otherwise
18 provided, a local governmental officer shall not be deemed to have passed
19 or acted upon any matter or participated in the making of a contract
20 relating to the renewable energy system if the officer abstains from any
21 action regarding such matter. A local governmental officer who has a
22 substantial interest in a renewable energy system may only act to prohibit
23 the development, construction or operation of the renewable energy system
24 in such officer's jurisdiction.

25 (b) If any contract is made in violation of this section, the
26 governmental subdivision shall have a right to declare such contract void
27 and rescind the contract if such declaration is made within five years
28 following the date such contract was executed by the parties.

29 (c) Any violation of this section may be prosecuted by the attorney
30 general or the district attorney or county attorney of the county where the
31 renewable energy system is located or proposed to be located. If, by the
32 attorney general's or the county or district attorney's own inquiry or upon
33 receipt of a written notice or complaint that a local governmental officer
34 has engaged in, is engaging in or is about to engage in any act that violates
35 this section, the attorney general, the county attorney or district attorney
36 may:

- 1 (1) Subpoena witnesses or materials;
- 2 (2) take testimony under oath;
- 3 (3) examine or cause to be examined any documentary material of
- 4 whatever nature relevant to such alleged violations;
- 5 (4) require attendance during such examination of documentary
- 6 material and take testimony under oath or acknowledgment with respect to
- 7 any such material; or
- 8 (5) seek injunctive or any other equitable relief as may be required to
- 9 enforce the provisions of this section.

10 (d) In addition to any penalty provided by this section and K.S.A. 75-
11 4306, and amendments thereto, any local governmental officer who is
12 convicted of violating this section shall forfeit such office.

13 Sec. 2. K.S.A. 75-4301a is hereby amended to read as follows: 75-
14 4301a. As used in K.S.A. 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-
15 4306, and amendments thereto, *and section 1, and amendments thereto:*

16 (a) "Substantial interest" means any of the following:

17 (1) If an individual or an individual's spouse, either individually or
18 collectively, has owned within the preceding 12 months a legal or
19 equitable interest exceeding \$5,000 or 5% of any business, whichever is
20 less, the individual has a substantial interest in that business.

21 (2) If an individual or an individual's spouse, either individually or
22 collectively, has received during the preceding calendar year compensation
23 which is or will be required to be included as taxable income on federal
24 income tax returns of the individual and spouse in an aggregate amount of
25 \$2,000 from any business or combination of businesses, the individual has
26 a substantial interest in that business or combination of businesses.

27 (3) If an individual or an individual's spouse, either individually or
28 collectively, has received in the preceding 12 months, without reasonable
29 and valuable consideration, goods or services having an aggregate value of
30 \$500 or more from a business or combination of businesses, the individual
31 has a substantial interest in that business or combination of businesses.

32 (4) If an individual or an individual's spouse holds the position of
33 officer, director, associate, partner or proprietor of any business, other than
34 an organization exempt from federal taxation of corporations under section
35 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States
36 code, the individual has a substantial interest in that business, irrespective
37 of the amount of compensation received by the individual or individual's
38 spouse.

39 (5) If an individual or an individual's spouse receives compensation
40 ~~which~~ *that* is a portion or percentage of each separate fee or commission
41 paid to a business or combination of businesses, the individual has a
42 substantial interest in any client or customer who pays fees or
43 commissions to the business or combination of businesses from which fees

1 or commissions the individual or the individual's spouse, either
2 individually or collectively, received an aggregate of \$2,000 or more in the
3 preceding calendar year. As used in this ~~subsection~~ *paragraph*, "client or
4 customer" means a business or combination of businesses.

5 (6) (A) *An individual has a substantial interest in a renewable energy*
6 *system if the individual, relative of such individual, person who is involved*
7 *in an intimate relationship with such individual or person residing in the*
8 *household of such individual receives or knowingly will receive*
9 *compensation, derives or knowingly will derive profit or has or knowingly*
10 *will obtain a pecuniary interest from any contract, including, but not*
11 *limited to, any lease, easement or option agreement, relating to the*
12 *development, construction or operation of a renewable energy system in*
13 *the local governmental subdivision where such individual is a local*
14 *governmental officer or candidate for local office.*

15 (B) *This paragraph shall apply regardless of the form by which such*
16 *compensation, profit or pecuniary interest is obtained, including, but not*
17 *limited to, compensation, profit or pecuniary interest obtained through any*
18 *business or combination of businesses that the individual, relative of such*
19 *individual, person who is involved in an intimate relationship with such*
20 *individual or person residing in the household of such individual, either*
21 *individually or collectively:*

22 (i) *Holds the position of officer, director, member, associate, partner*
23 *or proprietor;*

24 (ii) *owns a legal or equitable interest; or*

25 (iii) *receives compensation that is required to be included as taxable*
26 *income on federal income tax returns.*

27 (b) "Business" means any corporation, association, partnership,
28 proprietorship, trust, joint venture, and every other business interest,
29 including ownership or use of land for income.

30 (c) "Local governmental employee" means any employee of any
31 governmental subdivision or any of its agencies.

32 (d) "Local governmental officer" means any elected or appointed
33 officer of any governmental subdivision or any of its agencies.

34 (e) "Candidate for local office" means any candidate for nomination
35 or election to any elective office of a governmental subdivision.

36 (f) "Governmental subdivision" means any city, county, township,
37 school district, drainage district or other governmental subdivision of the
38 state having authority to receive or hold public moneys or funds.

39 (g) "Contracts" means agreements including but not limited to sales
40 and conveyances of real and personal property and agreements for the
41 performance of services.

42 (h) "Acts" means the exercise of power or authority or performance
43 of any duty incident to public office or employment.

1 (i) "Compensation" means any money, thing of value or economic
2 benefit conferred on, or received by, any person in return for services
3 rendered, or to be rendered, by that person or another, but shall not mean
4 nor include reimbursement of reasonable expenses if the reimbursement
5 does not exceed the amount actually expended for the expenses and it is
6 substantiated by an itemization of expenses.

7 (j) "Preceding calendar year" has its usual meaning, except that in the
8 case of candidates and individuals newly appointed to office or
9 employment, it means the 12 months immediately preceding a required
10 filing date.

11 (k) *"Relative" means, with respect to an individual, any spouse,*
12 *former spouse, parent, stepparent, child, stepchild, daughter-in-law, son-*
13 *in-law, grandparent of any degree, grandchild of any degree, brother,*
14 *sister, half-brother, half-sister, uncle, aunt, cousin of the first or second*
15 *degree, nephew or niece.*

16 (l) *"Renewable energy system" means any wind energy conversion*
17 *system or any solar energy conversion system.*

18 (m) *"Solar energy conversion system" means an electric generation*
19 *facility that converts radiant energy from the sun into thermal or electrical*
20 *energy for the production of electricity and has a system generating*
21 *capacity of 500 kilowatts or greater.*

22 (n) *"Wind energy conversion system" means an electric generation*
23 *facility consisting of one or more wind turbines that have a generating*
24 *capacity of 500 kilowatts or greater and any accessory structures,*
25 *buildings, electrical infrastructure, transmission lines and other*
26 *appurtenant structures.*

27 Sec. 3. K.S.A. 75-4303a is hereby amended to read as follows: 75-
28 4303a. (a) The governmental ethics commission shall render advisory
29 opinions on the interpretation or application of K.S.A. 75-4301a, 75-
30 4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and amendments
31 thereto, *and section 1, and amendments thereto.* The opinions shall be
32 rendered after receipt of a written request therefor by a local governmental
33 officer or employee or by any person who has filed as a candidate for local
34 office. Any person who requests and receives an advisory opinion and who
35 acts in accordance with its provisions shall be presumed to have complied
36 with the provisions of the general conflict of interests law. A copy of any
37 advisory opinion rendered by the commission shall be filed by the
38 commission in the office of the secretary of state, and any opinion so filed
39 shall be open to public inspection. All requests for advisory opinions shall
40 be directed to the secretary of state who shall notify the commission
41 thereof.

42 (b) The governmental ethics commission shall administer K.S.A. 75-
43 4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and

1 amendments thereto, *and section 1, and amendments thereto*, and may
2 adopt rules and regulations therefor.

3 Sec. 4. K.S.A. 75-4306 is hereby amended to read as follows: 75-
4 4306. (a) Violation of K.S.A. 75-4304 or 75-4305, and amendments
5 thereto, *or section 1, and amendments thereto*, or failure to make any
6 disclosure of substantial interests required by K.S.A. 75-4302a, *and*
7 *amendments thereto*, is a class B misdemeanor.

8 (b) If any ~~clause, paragraph, subsection or section~~ *provision* of this
9 act is held invalid or unconstitutional, it shall be conclusively presumed
10 that the legislature would have enacted the remainder of this act without
11 the invalid or unconstitutional ~~clause, paragraph, subsection or section~~
12 *provision*.

13 Sec. 5. K.S.A. 75-4301a, 75-4303a and 75-4306 are hereby repealed.

14 Sec. 6. This act shall take effect and be in force from and after its
15 publication in the statute book.