

SENATE BILL No. 66

By Committee on Federal and State Affairs

1-23

1 AN ACT concerning governmental ethics; relating to actions of certain
2 local governmental officials affecting the development, construction
3 and operation of major development projects; requiring such local
4 governmental officials to disclose substantial interests in such projects;
5 prohibiting such local governmental officials who have a substantial
6 interest from acting on matters relating to such projects; amending
7 K.S.A. 75-4301a, 75-4303a and 75-4306 and repealing the existing
8 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 major
13 development project shall act on any matter or participate in the making of
14 a contract relating to such project in such officer's official capacity. This
15 section shall apply regardless of whether a local governmental officer has
16 filed a disclosure of the substantial interest. Except as otherwise provided,
17 a local governmental officer shall not be deemed to have passed or acted
18 upon any matter or participated in the making of a contract relating to a
19 major development project if the officer abstains from any action
20 regarding such matter.

21 (b) If any contract is made in violation of this section, the
22 governmental subdivision shall have a right to declare such contract void
23 and rescind the contract if such declaration is made within two years
24 following the date such contract was executed by the parties.

25 (c) Any violation of this section may be prosecuted by the attorney
26 general or the district attorney or county attorney of the county where the
27 major development project is located or proposed to be located. If, by the
28 attorney general's or the county or district attorney's own inquiry or upon
29 receipt of a written notice or complaint that a local governmental officer
30 has engaged in, is engaging in or is about to engage in any act that violates
31 this section, the attorney general, the county attorney or district attorney
32 may:

- 33 (1) Subpoena witnesses or materials;
- 34 (2) take testimony under oath;
- 35 (3) examine or cause to be examined any documentary material of
36 whatever nature relevant to such alleged violations;

1 (4) require attendance during such examination of documentary
2 material and take testimony under oath or acknowledgment with respect to
3 any such material; or

4 (5) seek injunctive or any other equitable relief as may be required to
5 enforce the provisions of this section.

6 (d) In addition to any penalty provided by this section and K.S.A. 75-
7 4306, and amendments thereto, any local governmental officer who is
8 convicted of violating this section shall forfeit such office.

9 (e) As used in this section, "local governmental officer" means:

10 (1) Any member of the governing body of a governmental
11 subdivision;

12 (2) any individual who has discretionary approval authority for a
13 major development project; or

14 (3) any member of an agency of a governmental subdivision that has
15 discretionary approval authority for a major development project.

16 Sec. 2. K.S.A. 75-4301a is hereby amended to read as follows: 75-
17 4301a. As used in K.S.A. 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-
18 4306, and amendments thereto, *and section 1, and amendments thereto*:

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

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

24 (2) If an individual or an individual's spouse, either individually or
25 collectively, has received during the preceding calendar year compensation
26 which is or will be required to be included as taxable income on federal
27 income tax returns of the individual and spouse in an aggregate amount of
28 \$2,000 from any business or combination of businesses, the individual has
29 a substantial interest in that business or combination of businesses.

30 (3) If an individual or an individual's spouse, either individually or
31 collectively, has received in the preceding 12 months, without reasonable
32 and valuable consideration, goods or services having an aggregate value of
33 \$500 or more from a business or combination of businesses, the individual
34 has a substantial interest in that business or combination of businesses.

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

42 (5) If an individual or an individual's spouse receives compensation
43 ~~which~~ *that* is a portion or percentage of each separate fee or commission

1 paid to a business or combination of businesses, the individual has a
2 substantial interest in any client or customer who pays fees or
3 commissions to the business or combination of businesses from which fees
4 or commissions the individual or the individual's spouse, either
5 individually or collectively, received an aggregate of \$2,000 or more in the
6 preceding calendar year. As used in this ~~subsection~~ *paragraph*, "client or
7 customer" means a business or combination of businesses.

8 (6) (A) *An individual has a substantial interest in a major*
9 *development project if the individual, relative of such individual or person*
10 *who is involved in an intimate relationship with such individual receives*
11 *or knowingly will receive compensation, derives or knowingly will derive*
12 *profit or has or knowingly will obtain a pecuniary interest from any*
13 *contract, including, but not limited to, any lease, easement or option*
14 *agreement, relating to the development or construction of a major*
15 *development project or the operation of any facility located within a major*
16 *development project in the local governmental subdivision where such*
17 *individual is a local governmental officer.*

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

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

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

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

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

32 (c) "Local governmental employee" means any employee of any
33 governmental subdivision or any of its agencies.

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

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

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

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

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

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

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

13 (k) *"Relative" means, with respect to an individual, any spouse,*
14 *former spouse, parent, child or sibling.*

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

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

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

26 (o) *"Intimate partner" means, with respect to an individual, another*
27 *individual who is a parent of a child of the individual or another*
28 *individual who cohabitates or has cohabitated with the individual.*

29 (p) *"Major development project" means any project to develop one or*
30 *more parcels of land that involves the construction, reconstruction or*
31 *remodeling of facilities, utilities or infrastructure that has a total project*
32 *cost of not less than \$250,000, including, but not limited to, renewable*
33 *energy systems.*

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

1 advisory opinion rendered by the commission shall be filed by the
2 commission in the office of the secretary of state, and any opinion so filed
3 shall be open to public inspection. All requests for advisory opinions shall
4 be directed to the secretary of state who shall notify the commission
5 thereof.

6 (b) The governmental ethics commission shall administer K.S.A. 75-
7 4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and
8 amendments thereto, *and section 1, and amendments thereto*, and may
9 adopt rules and regulations therefor.

10 Sec. 4. K.S.A. 75-4306 is hereby amended to read as follows: 75-
11 4306. (a) Violation of K.S.A. 75-4304 or 75-4305, and amendments
12 thereto, *or section 1, and amendments thereto*, or failure to make any
13 disclosure of substantial interests required by K.S.A. 75-4302a, *and*
14 *amendments thereto*, is a class B misdemeanor.

15 (b) If any ~~clause, paragraph, subsection or section~~ *provision* of this
16 act is held invalid or unconstitutional, it shall be conclusively presumed
17 that the legislature would have enacted the remainder of this act without
18 the invalid or unconstitutional ~~clause, paragraph, subsection or section~~
19 *provision*.

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

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