

## Substitute for HB No. 4968 Proponent Testimony

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2. Joshua Nolan, Director and Legal Counsel, Interstate Informed Citizens Coalition, Blissfield, MI
3. Leo Sonck, Township Supervisor, Bridgehampton Township, Sanilac County
4. LouAnn Mogg, citizen, Denver Township, Isabella County
5. Norman Stephens, citizen, Almer Township, Tuscola County
6. Mike Lorencz, Brookfield Township Clerk, Brookfield Township, Huron County

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## Testimony of Kevon Martis re: Substitute for HB No. 4968

Good morning Chairman Glenn, Vice-Chairman Hauck and Minority Vice-Chairman Lasinski:

On the behalf of the thousands of bi-partisan supporters of the Interstate Informed Citizen's Coalition, I thank you for your attention to this important issue.

With your leave, my co-director and IICC attorney Joshua Nolan and I have some brief prefatory remarks that we hope will create a framework upon which to hang the statements by the local officials and citizens who will follow us. These folks are both private citizens and township officials from around the state who have experienced firsthand the ill effects of elected and appointed officials performing their official duties in a state of conflict of interest, particularly those officials who have secured wind leases.

But let us be clear: while it is undeniable that it is the wind energy issue that brings us before you today, we feel that improvements to our conflict of interest laws are critical for our communities no matter the source of financial entanglement creating the conflict.

And it should be understood that due to the tremendous quantities of land required to generate wind energy, the likelihood of conflict occurring is magnified many fold over nearly any other land use one might imagine.

With respect to conflict of interest, we have had 3 primary concerns. We are pleased to see this legislation addresses these concerns so I will list them with only a little detail.

1. There needs to be a very clear definition of conflict of interest. We continue to see conflicting legal opinions across the state as to what constitutes a conflict of interest. This bill makes a substantial improvement in the right direction.
2. There needs to be a clear penalty for operating in a state of conflict. And we are pleased that this substitute version no longer makes this a felony offense. Our proposed remedy is simply this: any decision rendered by a planning commission in which conflicted members participate in deliberation or cast a vote should be automatically vacated by statute.
3. Since we often see multiple wind leaseholders on a township planning commission, sometimes as many as 4 of 5, forcing all the conflicted members to recuse sometimes leaves the PC unable to perform their statutory duties due to lack of quorum. Under the

existing “rule of necessity” which permits conflicted members to have their privileges restored, we often see local attorneys advise that since 3 of 5 have leases, forcing a recusal of all 3 would end the quorum. So they simply permit all 5 to deliberate and vote. This is unacceptable. The solution in this bill before us allows the creation of voting alternates on the planning commission level. We do not object. But in smaller townships it may be a burden to find a suitable number of people to occupy this “alternate” position in addition to the many other people required to have a fully functioning township government. Another approach may be to permit only the minimum number of existing planning commissioners necessary to reconstitute a quorum to be re-enfranchised by simply drawing straws. There is no ideal solution. But either of these is a step forward

We recognize that this bill only applies to planning commission members. We are very pleased to see progress in this area and hope some form of this legislation becomes law. But we remain deeply troubled by pervasive conflict of interest at the trustee board and county commissioner level as well. You will hear some testimony about that shortly. We hope that this legislation leads to important and necessary legislative changes in that area as well.

This bill recognizes that good government works in the best interests of the citizens rather than the office holder. Likewise, good businesses recognize that employees have a responsibility to the shareholders to behave ethically in the realm of financial inducements leading to sometimes lucrative policy changes.

I will now read a short excerpt from the DTE Energy Way Code of Conduct<sup>1</sup>. For DTE employees who hold public office, their code states

“If you hold a public office, either elected or appointed, it may be appropriate to be involved in discussions that relate to DTE Energy or its competitors because of your expertise. But it is not appropriate to participate in the voting or decision-making processes. When these situations happen, you should disclose the potential conflict and remove yourself from any decisions or agreements.”

We agree and we see no reason that DTE’s policy of recusal for government officials does not likewise apply to DTE Energy wind leaseholders who are government officials.

DTE is not alone in recognizing conflict of interest issues. NextEra Energy, a Florida-based firm that builds wind generation in Michigan, also publishes a “Code of Business Conduct and Ethics”<sup>2</sup>. I will read a brief excerpt that is right on point:

“As part of our commitment to winning business the right way, NextEra Energy will never tolerate bribery in any form...” It goes on to define bribery: “[A] *bribe*... is an offer or gift of anything of value or advantage that is intended to improperly influence the actions of the recipient. Bribes may include money, gifts...hospitality ...favors, business... opportunities...and any benefit or consideration, direct or indirect.”

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<sup>1</sup> <https://www.newlook.dteenergy.com/wps/wcm/connect/dte-web/home/about-dte/common/corporate-governance/code-of-ethics>

<sup>2</sup> <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTk4MjU2fENoaWxkSUQ9LTF8VHlwZT0z&t=1>

It adds this caution: "If you are working with a government official, be especially cautious."

A reasonable question follows: how can the offering of a NextEra wind lease to township or county officials who wield often-critical regulatory power over their proposed projects not be construed as a bribe engendering conflict of interest?

Here is my point: two major wind developers operating in Michigan-DTE Energy and NextEra Energy- understand, at least in theory, that money is a powerful inducement for elected officials to betray their sworn duty to their constituents in exchange for personal financial gain.

I cannot explain how they reconcile the actions of their lease holding officials with their own ethical guidelines. But it is clear that such behavior can bring harm to their own shareholders.

The bill before us today is clearly in the best interest of Michigan residents,

But as these two ethics statements make clear, it is also good for the shareholders of DTE, NextEra and their peers in the wind industry.

Sincerely,

Kevon Martis  
Director  
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### Conflict of Interest:

When I started my career, first job in the Construction Industry was working as a draftsman for a design build contractor. The first thing I was taught was that none of us could accept gifts, or money from anyone, we were involved in Public bids for jobs building Schools, Factories, City Buildings etc. None of us could accept gifts of any kind as it could be viewed as a Conflict of Interest, and could impact our integrity as a Construction firm. I was 21 years old at that time.

When I was first appointed to my townships planning commission, (about 20 years ago) I remembered it was my job to ensure I did not violate conflict of interest, it was my duty to serve the public, not myself. We did not have official bylaws that I was aware of, but assumed it was actual law, with penalties if violated.

Flash forward to the end of 2014. Our Township was working on our wind ordinance, I had realized that there were a few issues that needed adjustment. Our Planning Commission started working on some amendments that we thought were reasonable. We were getting push back from our Township Supervisor which was not understood, until we found out that He and two others on our township board had wind contracts, and that our supervisor had been having private meetings with the developer that no one else was aware of.

The Supervisor showed up at a planning commission meeting where we were finalizing our update and were going to schedule a public hearing, he disagreed with the changes, he took a poll of each planning commission member asking if we were willing to change our recommendation, everyone stated we were not willing to change. He suddenly stated he believed that at least two members terms were up for renewal. Terms expire April 1, this meeting was in May. We found out that at the next Board meeting, the Supervisor did not reappoint the two members and purposely appointed two people who have wind contracts, one of these people openly stated at a previous planning commission meeting "He didn't give a damned about his neighbors, he wanted his wind turbine." Clearly the Supervisor was stacking the deck with conflicted members.

The outcome was the next few meetings the ordinance recommendations were sadly reduced to what the wind developer wanted, every vote was 4 to 3 against reason. The Planning Chair at one of the public hearings actually asked the developers representative, if the proposed changes will make them happy. Many angry residents were there, and again, what the developer wanted was voted in 4 to 3. 3 of the 4 had wind contracts, one was just swayed by the intimidation of the other 3, and the Township supervisor, who was at every meeting, and was using his authority to intimidate.

Many residents spoke to the Planning Commission saying what they were doing was violating conflict of interest, they also spoke to the Township Board, They submitted over 100 signatures on a petition requesting they observe conflict of interest. All on deaf ears.

I became Planning Commission Chair in April of 2016, The tide started to turn, I implemented bylaws for the Planning commission, with a very clear Conflict of Interest policy, including if there is not a quorum due to too many with conflict, names will be put in a hat and only enough names drawn to make a quorum to be able to conduct business.

Luckily for our community the people fought for their rights. I had never considered running for any public office, but realized, we can not always rely on someone else to do it. I ran for office, and won 70 percent of the vote in November 2016. We replaced 3 of the 5 on the Township Board, only 1 remaining still has a wind contract and will not be allowed to vote on any wind related issues going forward. I am now Township Supervisor, and was also able to finally put a safe and fair ordinance in place. I have never understood how conflict of interest law does not apply to County or Township Officials, Legislators like you all have stiff penalties if you are caught violating this, why does it not apply to people like myself? I welcome the idea of some serious penalties for those who choose to fill their own pockets instead of leading their community properly.

Leo Sonck

Bridgehampton Township Supervisor

Isabella Wind LLC date of qualification in Michigan 3-4-2016. Apex Clean Energy is the developer. This date is important because it shows that Apex was spinning its web long before the summer of 2017 which is when the majority of residents in the proposed 7 township footprint started to realize what was happening. In the summer of 2016, private, by invitation only meetings were being held. These meetings put on by Apex reps and 6 steering committee members..2 of which hold elected positions in their townships and a 3rd was the MSU County Extension agent. In June 2017 county planners held a public meeting to discuss their new wind ordinance, most who attended were lease holders, because the general public had no idea what was being secretly done in the months prior. By November 2017, opposition had begun and it was growing. People began attending their township meetings to express concern, only to be countered by Apex claims that everything had been out in the open since day one. Township officials would defend Apex, accuse the opposition of being uninformed and generally disregard everything we had to say. Soon petitions were circulating. The residents want zoning removed from county control and placed in the hands of their townships. This move has been met with some township officials contacting petition signers and threatening them with increased property taxes if they vote in favor of township zoning. One Apex rep used the threat of a lawsuit at a township meeting if their board tried to form its own planning commission. The county attempted to appease opposition by considering changes to the setbacks. On February 8, 2018 a public comment forum was held. At least 200 people attended. This time the opposition was equal to if not greater then the number of people defending the project. After 3 hours of public comment, mostly in favor of the proposed changes, it took the planners only 3 minutes to vote against the changes stating that the county legacy fund is empty and they need the revenue this wind farm will create. During the county planning meeting, 3 county commissioners, 2 of whom have wind leases sat in the crowded hallway cheering and clapping every time a comment was made in favor of the project. One goes so far as to wear an Isabella Wind cap to these meetings. They are an embarrassment to their office. The county planning director claims they became aware that a wind developer was in the area shortly before the ordinance was approved in June of 2017. However, 1 township trustee, one county planner and the MSU extension agent all had leases recorded on 10-5-2016. Four of the 6 steering committee members had leases recorded on that date as well. Our communities are now divided. People are fed up with the greed and corruption we are witnessing. Elected officials are so outright biased that they even take to social media to refer to the opposition as "stupid". This needs to end. They need to be held accountable for their actions. The people opposing the project should not have to "get over it" because our elected officials

have been bought out.  
LouAnn Mogg  
Concerned Resident  
Denver Township, Isabella County MI



Mr. Chairman, members of the Committee, my name is Norm Stephens. I'm not a township official, but I am a resident of Almer Township which is located near Caro about 30 miles east of Saginaw in the middle of the THUMB--the same Almer Township that's presently being sued in Federal Court by wind energy giant, NextEra. I'd like to thank you for not holding this hearing this morning on the Capitol lawn. I'll address that comment later in my presentation.

Conflict-of-interest is pervasive state-wide and it is the *major* reason that industrial wind turbines exist in Michigan today. After attending ten months of planning commission and regular Board meetings in Almer Township and in other neighboring townships in 2016, I realized that townships on the cusp of approving wind energy-friendly wind ordinances had some level of conflict-of-interest: meaning, one, two, three and sometimes more officials of the planning commission, the regular Board, or the zoning board of appeals had wind-leases. Some of these "conflicted" officials recused themselves during their township meetings, but many did not.

Through social media and at several large meetings that I've attended in four different counties, I've asked residents if they were aware of *any* townships or counties that didn't have any conflicted officials at the helm that still hosted wind turbines. Those meetings, by the way, were attended by people from all over the state.

Of the 25 townships and counties hosting wind turbines in Michigan, every single one of those 25 townships has conflicted officials. It wasn't 15 out of 25 townships and it wasn't 20 out of 25 townships! It was every----single-----township! If you can find a township or a county without conflicted officials, you will *not* find wind development.

Now, to respond to my comment about holding a meeting on the Capitol lawn. Juniata Township, located just west of Caro held a public hearing on wind development on December 9<sup>th</sup> which was a Saturday, at 9 a.m., outside, in a tent, a tent that had a capacity 40 of people while their township hall with a capacity of 47 people located immediately next to the tent sat vacant. One hundred people were packed into the tent while about 75 people standing outside the tent in 20 degree temperatures, while it was snowing, were yelling, "We can't hear. We can't hear!"

Juniata officials had no intention of stopping the meeting. But, after about 30 minutes, thank heavens the local Fire Marshall showed up and shut down the meeting because two 7 foot tall portable propane heaters used to heat the tent created a fire hazard in the *way* over-capacity tent. And, this township had only one conflicted official-----as far as we know it was only one official. Non-disclosure of signed wind-leases is part of the problem.

In conclusion, I urge you to develop a strong conflict-of-interest policy, one that defines conflict-of-interest, one that requires township officials and/or wind energy companies to disclose that conflict upon signing a wind-lease, and one with an effective consequence, a consequence that can and *will* be enforced.

A four year prison term may be a bit harsh, but a fine of a few thousand dollars and brief jail time or the threat of such would certainly be a step in the right direction. I believe just the threat of a consequence for a FOIA violation and for an OPEN MEETINGS ACT violation, for example, often helped our township overcome ineffective and suspicious government actions in our area.

The only township or county officials that need to be worried about fines and jail time are the ones who have something to hide. That same deterrent for conflict of interest is needed because today's conflict laws are barely worth the paper they are printed on. I thank you for your time.

Norm Stephens  
Almer Township  
Caro, Michigan

My name is Mike Lorencz, Brookfield township clerk, Huron County, currently in my fifth term. I'd like to tell you about my experience with "Conflict of Interest" in my township.

In 2012, NextEra Energy proposed the construction of a wind project in Brookfield. Four out of the five board members had lease agreements with wind developers. Our existing wind ordinance required amendments to permit the project to proceed. Due to the conflict of interest however, the trustees were afraid to amend the ordinance due to the appearance of impropriety. Since Huron County had permissive wind zoning in place, the leaseholders on the board decided that it would be easier to abandon township zoning which could be done without appearance of conflict since technically they were not voting on wind, they were voting on whether to keep township zoning.

In March of 2012, Brookfield Township voted to repeal the zoning ordinance by a 3-2 vote. A letter of intent was filed, which put it on the November 2012 ballot. The residents voted 119-118 to overrule the township board's decision. Not happy with the results of the election, in January 2013, the township board passed a simple resolution to repeal the zoning ordinance and turn zoning over to Huron County. I filed a complaint in Huron county circuit court on the basis that equal dignity had not been met, in that, an ordinance can only be repealed with an ordinance and not by resolution.

At the time I filed my complaint it stopped the development of a 200 million dollar wind development from progressing. Permits could not be approved because no one knew who had the zoning. Initially the Huron County Circuit Court sided with the Township. But in April 2015, the Michigan Court of Appeals overruled the Circuit Court ruling.

My complaint was against Brookfield Township for giving up our zoning illegally, which the Appeals court recognized. My complaint against Huron County was that they wanted to take zoning away from Brookfield Township without proper authority. It was done in an unethical manner from the township level to the county and circuit court level.

Because of widespread conflict of interest among Huron County officials as well as among my fellow trustees at Brookfield Township, I was compelled to seek relief in the courts at my own expense.

We need clearer regulations and a clear penalty for acting in conflict so that more citizens will not have to do what I did.

Mike Lorencz  
Brookfield Township Clerk  
Huron County Michigan