

# **House Joint Resolution 186**

## **House Bill 2621 Work Group Overview**

As introduced, House Bill 2621 would prohibit state and local officers and employees from having any personal interest in a comprehensive agreement entered into under the Public-Private Education Facilities and Infrastructure Act (PPEA). The patron of the bill, Delegate Kathy Byron, has indicated that it was her intent through the legislation to include legislators under the prohibition against having a personal interest in such a comprehensive agreement and to include comprehensive agreements under the Public Private Transportation Act (PPTA) as well.

A substitute including these provisions was offered by Delegate Byron to the House General Laws Committee. The bill was ultimately tabled by the Committee without approving the substitute. The HJR 186 Joint Subcommittee has agreed to review the bill and its affect on the conflict of interest statutes, the PPEA and the PPTA.

### **Background**

From an overall standpoint, the concept of impermissible conflicts of interest is based on this three-part rationale:

- Citizens give their elected representatives the authority to exercise their best judgment and make decisions on their behalf.
- Elected representatives in turn delegate a degree of that authority to appointed officials and employees, many of whom become career civil servants.
- In return for the grant of this power, elected or appointed public officials are expected to provide their undivided loyalty to the public interests and not put their own interests or other private interest ahead of those interests.

Over the years, legislative attempts to properly regulate conflicts of interest have evolved into two comprehensive acts: (i) the State and Local Government Conflict of Interests Act and (ii) the General Assembly Conflict of Interest Act.

### **State and Local Government Conflict of Interests Act**

For state and local officers and employees, the State and Local Government Conflict of Interest Act (SL-COIA) defines and prohibits inappropriate relationships that may be considered conflicts of interest related to the position an individual holds with state or local government. Three provisions define relevant interests for the purposes of the Act: "personal interest," "personal interest in a contract," and "personal interest in a transaction." The personal interest definition is the basis for the other two definitions, which are applied to more specific situations. It is also the most important definition because it is personal interest that the statute seeks to regulate. "Personal interest" is defined as a financial benefit or liability accruing to an officer or employee or to a member of the immediate family of the officer or employee.<sup>1</sup> Six relationships or affiliations are listed as creating a personal interest:

- (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business;
- (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business;
- (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually;
- (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property;
- (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or
- (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv).

A "personal interest in a contract" is a personal interest that an officer or employer has in a contract with a governmental agency. The personal interest may be present if the officer or employee is a party to the contract or if there is a personal interest in a business that is a party to the contract.

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<sup>1</sup> "Immediate family" is defined as a spouse and any other person residing in the same household as the officer or employee who is a dependent of the officer or employee or of whom the officer or employee is dependent.

"Personal interest in a transaction" is a personal interest of an officer or employee in any matter considered by his agency.<sup>2</sup> A personal interest in a transaction exists if an officer or employee or a member of the immediate family of an officer or employee has a personal interest in property or a business and the property or business (i) is the subject of the transaction, or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the agency considering the transaction. The same result is reached if the public officer, employee or immediate family member represents an individual or business that is either the subject of the transaction or may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the agency considering the transaction.

### **General Assembly Conflict of Interests Act**

For members of the General Assembly, the General Assembly Conflict of Interests Act (GA-COIA) defines and prohibits inappropriate relationships that may be considered conflicts of interest. The definition of personal interest is identical to the definition included in the SL-COIA, with the exception that the GA-COIA does not have a provision equivalent to item (vi) of the SL-COIA's definition.

"Personal interest in a contract" is defined as a personal interest that a legislator has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" is a personal interest of a legislator in any matter considered by the General Assembly. The GA-COIA definition is similar to the SL-COIA definition; however, the GA-COIA provides that a "personal interest in a transaction" exists only if the legislator or member of his immediate family or an individual or business represented by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and generally recognizable class or group of which he or the individual or business he represents is a member.

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<sup>2</sup> "Transaction" is defined as any matter considered by any governmental or advisory agency, whether in committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.