

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

**Act 1381 of the Regular Session**

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: H2/25/05 H3/16/05*

**A Bill**

HOUSE BILL 1867

5 By: Representatives Mahony, Blount, Bradford, Chesterfield, Elliott, Fite, J. Johnson, Saunders  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO RESTRICT SCHOOL DISTRICTS FROM  
10 EMPLOYING RELATIVES OF BOARD MEMBERS; AND FOR  
11 OTHER PURPOSES.  
12

**Subtitle**

14 AN ACT TO RESTRICT SCHOOL DISTRICTS FROM  
15 EMPLOYING RELATIVES OF BOARD MEMBERS.  
16  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code § 6-24-102 is amended to read as follows:  
21 6-24-102. Definitions.

22 Unless otherwise specifically stated herein, the term:

23 (1) "Administrator" means any superintendent, assistant  
24 superintendent or their equivalent, school district treasurer, business  
25 manager, or other individual directly responsible for entity-wide purchasing;

26 (2) "Board" means a local school board or other governing body  
27 of a public educational entity;

28 (3) "Board member" means any board member, director, or other  
29 member of a governing body of a public educational entity;

30 (4) "Board of Education" means the State Board of Education;

31 (5) "Commodities" means all supplies, goods, material,  
32 equipment, computers, software, machinery, facilities, personal property, and  
33 services, other than personal and professional services, purchased for or on  
34 behalf of a public educational entity;

35 (6) "Contract" means any transaction or agreement for the



1 purchase, lease, transfer, or use of real property or personal property and  
2 personal or professional services of an independent contractor, including,  
3 but not limited to, motor vehicles, equipment, commodities, materials,  
4 services, computers or other electronics, construction, capital improvements,  
5 deposits, and investments;

6 (7) "Directly" or "directly interested" means receiving  
7 compensation *or other benefits* personally or ~~to~~ a business or other entity in  
8 which the individual has a financial interest or receives other benefits;

9 (8) "Director" means the Director of the Department of Education  
10 or his or her designee;

11 (9) "Emergency purchase" means purchases mandated by unforeseen  
12 and unavoidable circumstances in which human life, health, or public property  
13 is in immediate jeopardy and the expenditure is necessary to preserve life,  
14 health, or public property;

15 (10) "Employee" means a full-time employee or part-time employee  
16 of a public educational entity;

17 (11) "Employment contract" means an agreement or contract  
18 between an employer an employee in which the terms and conditions of one's  
19 employment are provided;

20 ~~(11)~~(12) "Family" or "family members" means:

21 (A) An individual's spouse;

22 (B) Children of the individual or children of the  
23 individual's spouse;

24 (C) ~~A child~~ The spouse of a child of the individual or  
25 the spouse of a child of the individual's spouse;

26 (D) Parents of the individual or parents of the  
27 individual's ~~the~~ spouse;

28 (E) Brothers and sisters of the individual or brothers and  
29 sisters of the individual's spouse;

30 (F) Anyone living or residing in the same residence or  
31 household with the individual or in the same residence or household with the  
32 individual's spouse; or

33 (G) Anyone acting or serving as an agent of the individual  
34 or acting or serving as an agent of the individual's spouse;

35 ~~(12)(A)~~(13)(A) "Financial interest" in a business or other  
36 entity means:

1 (i) Ownership of more than a five percent (5%)  
2 interest;

3 (ii) Holding a position as an officer, director,  
4 trustee, partner, or other top level management; or

5 (iii) Being an employee, agent, independent  
6 contractor, or other arrangement where the individual's compensation is based  
7 in whole or in part on transactions with the public educational entity.

8 (B) Financial interest does not include the ownership of  
9 stock or other equity holdings in any publicly held company.

10 (C) Financial interest does not include clerical or other  
11 similar hourly compensated employees;

12 ~~(13)~~(14) "Gratuity" means a payment, loan, subscription,  
13 advance, deposit of money, travel, services or anything having a present  
14 market value of one hundred dollars (\$100) or more, unless consideration of  
15 substantially equal or greater value is received;

16 ~~(14)~~(15) "Indirectly" or "indirectly interested" means ~~receiving~~  
17 ~~compensation or other benefits personally, for a family member, or for a~~  
18 ~~business, or other entity in which the individual or a family member has a~~  
19 financial interest will receive compensation or benefits; and

20 (16) "Initially employed" means:

21 (A) Employed in either an interim or permanent position  
22 for the first time or following a severance in employment with the school  
23 district; or

24 (B) A change in the terms and conditions of an existing  
25 contract, excluding:

26 (i) Any renewal of a teacher contract under § 6-17-1506;

27 (ii) Renewal of a noncertified employee's contract that is  
28 required by law; or

29 (iii) Movement of an employee on the salary schedule which  
30 does not require board action.

31 ~~(15)~~(A)~~(17)~~(A) "Public educational entity" means Arkansas public  
32 school districts, charter schools, educational cooperatives, or any publicly  
33 supported entity having supervision over public educational entities.

34 (B) "Public educational entity" does not include  
35 institutions of higher education.

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1 SECTION 2. Arkansas Code § 6-24-105 is amended to read as follows:  
2 6-24-105. School boards.

3 (a) General Prohibition. Except as otherwise provided, it is a breach  
4 of the ethical standards of this chapter for a board member to contract with  
5 the public educational entity the member serves if the board member has  
6 knowledge that he or she is directly or indirectly interested in the  
7 contract.

8 (b)(1)(A)(i) Employment of Family Members. This chapter does not  
9 prohibit family members of board members from being employed by the public  
10 educational entity the board member serves if the board determines that the  
11 employment is in the best interest of the public educational entity. A board  
12 member's family member may not be initially employed by the public  
13 educational entity the member serves during the member's tenure of service on  
14 the local board for compensation in excess of five thousand dollars (\$5,000)  
15 unless the Director of the Department of Education issues a letter of  
16 exemption and approves the employment contract based on unusual and limited  
17 circumstances.

18 (ii) The determination of unusual and limited  
19 circumstances shall be at the sole discretion of the Director of the  
20 Department of Education and may be further defined by rule of the State Board  
21 of Education.

22 (B) A family member of a school board member who was  
23 employed by the public educational entity during the school year immediately  
24 preceding the election of the board member may continue employment with the  
25 public educational entity under the same terms and conditions of the  
26 previously executed contract and any renewal of the contract under § 6-17-  
27 1506.

28 (C) Subject to the local board's written policy, a  
29 qualified family member of a board member may be employed as a substitute  
30 teacher, substitute cafeteria worker, or substitute bus driver for a period  
31 of time not to exceed a total of thirty (30) days per fiscal year for the  
32 public educational entity served by the board member.

33 (2)(A)(i) No employment contract that is prohibited under  
34 subsection (b) of this section is valid or enforceable by any party to the  
35 employment contract until approved in writing by the Director of the  
36 Department of Education.

1                   (ii) The Director of the Department of Education's  
2 approval of an employment contract may include restrictions and limitations  
3 that are by this subsection incorporated as terms or conditions of the  
4 contract.

5                   (B) Excluding any renewal of a contract under § 6-17-1506,  
6 any change in the terms or conditions of an employment contract, a promotion,  
7 or a change in employment status for a family member of a school board member  
8 employed by a public educational entity that will result in an increase in  
9 compensation of more than two thousand five hundred dollars (\$2,500) must be  
10 approved in writing by the Director of the Department of Education before any  
11 change in the terms or conditions of the employment contract or promotion or  
12 changes in employment status are effective, valid, or enforceable.

13           (c) Exceptions.

14                   (1) Board Approval.

15                           (A)(i) In unusual and limited circumstances, a public  
16 educational entity's board may approve a contract, but not an employment  
17 contract, between the public educational entity and the board member or the  
18 member's family if the board determines that the contract is in the best  
19 interest of the public educational entity.

20                           (ii) In unusual and limited circumstances, a public  
21 educational entity's board may approve an employment contract as provided in  
22 this section.

23                   (B) The approval by the public educational entity's board  
24 shall be documented by written resolution after fully disclosing the reasons  
25 justifying the contract or employment contract in an open meeting. The  
26 resolution shall state the unusual and limited circumstances necessitating  
27 the contract or employment contract and shall document the restrictions and  
28 limitations of the contract or employment contract.

29                   (C) ~~Any~~ If any proposed contract or employment contract is  
30 with a family member of a board member or a board member directly or  
31 indirectly interested in the proposed contract or employment contract, then  
32 the board member shall leave the meeting until the voting on the issue is  
33 concluded, and the absent member shall not be counted as having voted.

34                   (2) Independent Approval.

35                           (A) If it appears the total transactions or contracts with  
36 the board member or a family member for a fiscal year total, or will total,

1 five thousand dollars (\$5,000) or more, the superintendent or other chief  
2 administrator of the public educational entity shall forward the resolution  
3 along with all relevant data to the Director of the Department of Education  
4 for independent review and approval. The resolution and other relevant data  
5 shall be furnished by certified mail with return receipt requested or other  
6 method approved by the State Board of Education to assure adequate notice of  
7 receipt by the Department of Education and to provide a record for the school  
8 sending the approval request.

9 (B)(i) Upon review of the submitted data for any contract,  
10 including an employment contract as provided in subsection (b) of this  
11 section, the director shall, within ten (10) days of receipt of the  
12 resolution and other relevant data, approve or disapprove in writing the  
13 board's request.

14 (ii) The director may request additional information  
15 or testimony before ruling on a request. If additional data is needed for a  
16 proper determination, the director shall approve or disapprove the contract  
17 *within ten (10) days of receipt of the additional requested data.*

18 (iii) If the director does not respond to the public  
19 educational entity within the ten-day period or request additional time or  
20 data for a proper review of the contract, the contract shall be deemed to be  
21 approved by the director.

22 (C) If approved, the director shall issue an approval  
23 letter stating all relevant facts and circumstances considered and any  
24 restrictions or limitations pertaining to the approval. The director may  
25 grant the approval for a particular transaction or contract, ~~or~~ a series of  
26 related transactions or contracts, or employment contracts. However, no  
27 approval shall be granted for a period greater than two (2) years, excluding  
28 employment contracts.

29 (D) No contract subject to the director's review and  
30 approval shall be valid or enforceable until an approval letter has been  
31 issued by the director or the director fails to respond to the public  
32 educational entity within the time periods specified in this section.

33 (d) Records. The department and the public educational entity shall  
34 maintain a record and copy of all documentation relating to transactions or  
35 contracts with board members or members of their family.

36 (e) Providing false or incomplete information. Any board member or

1 other person knowingly furnishing false information or knowingly not fully  
2 disclosing relevant information necessary for a proper determination by the  
3 public educational entity or the director shall be guilty of violating the  
4 provisions of this chapter.

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6 SECTION 3. The provisions of this act shall be applicable to any  
7 employment contract entered into with a public educational entity on February  
8 21, 2005, and thereafter.

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10 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
11 General Assembly of the State of Arkansas that public educational entities  
12 will need to have sufficient time to hire personnel necessary for the  
13 upcoming school year; that public educational entities and employees need  
14 clarity in the law to ensure their ability to enter into contracts; and that  
15 this act is immediately necessary because public educational entities will be  
16 entering into employment contracts on May 1 for the 2005-2006 school year.  
17 Therefore, an emergency is declared to exist and this act being immediately  
18 necessary for the preservation of the public peace, health, and safety shall  
19 become effective on:

20 (1) The date of its approval by the Governor;

21 (2) If the bill is neither approved nor vetoed by the Governor,  
22 the expiration of the period of time during which the Governor may veto the  
23 bill; or

24 (3) If the bill is vetoed by the Governor and the veto is  
25 overridden, the date the last house overrides the veto.

26  
27 /s/ Mahony, et al  
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30 APPROVED: 3/30/2005  
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