

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

SENATE BILL

4 **By: Senators Hopkins and Chaffin**

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For An Act To Be Entitled

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"STATE EMPLOYEE GRIEVANCE PROCEDURE ACT."

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Subtitle

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"STATE EMPLOYEE GRIEVANCE PROCEDURE ACT."

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13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. This act may be cited as the "State Employee Grievance
16 Procedure Act".

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18 SECTION 2. To every extent possible, the grievance procedure required
19 by this act shall be designed to resolve the grievance quickly; settle the
20 disagreement informally at the employee-supervisor level when possible;
21 correct, if possible, the cause of the grievance to prevent future similar
22 complaints; and assure fair and equitable treatment of all employees and to
23 promote harmonious relations generally among employees, supervisors, and
24 administrative staff.

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26 SECTION 3. As used in this act:

27 (1) "State agency" means all departments, offices, boards, commissions,
28 and institutions of the state, including the state-supported institutions of
29 higher education.

30 (2) "Committee" means the State Grievance Review Committee, as
31 established in Executive Order 86-1.

32 (3) "Employer" means the State of Arkansas and all supervisory
33 personnel vested with the authority to implement and administer the state_s
34 personnel policies.

35 (4) "Grievance" means a complaint by an employee concerning any matter

1 touching upon the relationship between the employee and his employer and any
2 dispute between an employee and his employer including but not limited to
3 those disputes involving suspension, reduction in pay, transfer, layoff,
4 demotion and dismissal.

5 (5) "Probationary employee" means a full-time or part-time employee in
6 the initial test period of employment with the State of not more than six
7 months duration. The probationary period may be extended for not more than
8 three months based upon a less than satisfactory performance appraisal. At
9 the completion of the extended time period, the employee shall either become a
10 regular employee based on a satisfactory or higher performance appraisal or be
11 terminated. An employee who receives an unsatisfactory performance appraisal
12 during the probationary period shall be terminated prior to becoming a regular
13 employee.

14 (6) "Regular employee" means a full-time or part-time employee
15 occupying an established position whose retention has been approved at the
16 completion of the probationary period as determined by a satisfactory or
17 higher performance appraisal and who has appeal rights. If an employee does
18 not receive an appraisal on or prior to the official appraisal date, the
19 employee shall be considered to have performed in a satisfactory manner and to
20 have grievance rights.

21 (7) "Temporary employee" means a full-time or part-time employee hired
22 to fill a position for a period not to exceed six months or to fill a position
23 requiring seasonal or intermittent work for no more than fifteen hundred hours
24 during any twelve-month period.

25 (8) "Supervisor" means the person to whom an employee reports and who
26 assigns and oversees the employee_s work.

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28 SECTION 4. A regular state employee shall have the right to appeal to
29 the committee any grievance after all administrative remedies to secure relief
30 within the agency have been exhausted.

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32 SECTION 5. (1) Each agency shall establish a written agency grievance
33 procedure and submit it within ninety (90) calendar days after the effective
34 date of this act for approval by the Department of Finance and Administration,
35 Office of Personnel Management. The provisions of the Administrative

1 Procedures Act shall apply in proceedings before the State Employee Grievance
2 Committee. At other levels the Administrative Procedures Act shall not apply
3 but the grievant shall have the right to a representative, including counsel,
4 and when a final decision is rendered it shall be given to the grievant in
5 writing. If the grievant chooses to exercise the right to counsel, he shall
6 do so at his own expense. A copy of the approved agency grievance procedure
7 shall be furnished to each employee of the agency concerned.

8 (2) The procedure shall provide that all administrative appeals of
9 agency actions affecting an employee must be initiated internally by such
10 employee within twenty-one (21) calendar days after the effective date of the
11 action and that the agency shall make a final decision on a grievance appeal
12 within forty-five (45) calendar days after the filing of the grievance.
13 Failure by the agency to make a final decision on the appeal within forty-five
14 (45) calendar days after the filing of the grievance will be considered an
15 adverse decision. The employee may thereafter appeal to the State Employee
16 Grievance Committee. The internal time periods of the agency grievance
17 procedure may be waived upon the mutual written agreement of both parties;
18 provided, however, the forty-five (45) calendar day period for action by the
19 agency may not be waived except by mutual agreement when a court action is
20 pending.

21 (3) A state employee who wishes to appeal the decision of the agency to
22 the State Employee Grievance Committee shall file an appeal within ten (10)
23 calendar days after receipt of the decision from the agency head or within
24 fifty-five (55) calendar days after the employee files the grievance with the
25 agency, whichever occurs first. The employee or his representative shall file
26 the appeal in writing with the committee. Failure to file an appeal with the
27 committee within ten (10) calendar days of the agency's final decision or
28 fifty-five (55) calendar days from the initial appeal, whichever occurs first,
29 shall constitute a waiver of the right to appeal.

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31 SECTION 6. (1) The committee chairman, or his designee, shall conduct
32 the grievance hearing in an equitable, orderly, and expeditious fashion. The
33 committee chairman, or his designee, is authorized to administer oaths; to
34 issue subpoenas for files, records, and papers deemed pertinent to any
35 investigation; to call additional witnesses; and to subpoena witnesses at the

1 request of either party. The Office of Personnel Management shall be
2 authorized to request assignment by the Attorney General of one or more of his
3 staff attorneys admitted to practice law in Arkansas to serve in the capacity
4 of committee attorney. If the Attorney General is not able to provide
5 sufficient legal staff for this purpose, the Office of Personnel Management,
6 with the approval of the Attorney General, shall be authorized to secure other
7 qualified attorneys to serve as committee counsel. The committee attorney
8 shall determine the order and relevance of the testimony and the appearance of
9 witnesses, and shall rule on all motions and legal issues. The parties shall
10 be bound by the decisions of the committee chairman or committee attorney
11 insofar as the hearings are concerned.

12 (2) At such hearings the employee and the agency may be represented by
13 counsel or other representatives. During the course of the hearing, the
14 parties and witnesses shall respond to questions asked by the committee
15 attorney or the committee members. Upon request of the presiding officer, the
16 committee attorney may assist the committee in the preparation of its findings
17 of fact, statements of policy, and conclusions of law. The committee attorney
18 may be present during the committee_s deliberations on its decision only upon
19 the request of the presiding officer. Within twenty (20) calendar days of the
20 conclusion of the hearing, the committee shall render its decision on the
21 appeal. The decision shall include the committee_s findings of fact,
22 statements of policy, and conclusions of law.

23 (3) The committee may sustain, reject, or modify a grievance hearing
24 decision of any agency except that in cases involving actual or threatened
25 mental or physical abuse of a patient or inmate by an employee, the agency_s
26 decision shall not be altered or overruled by the committee, unless:

27 (a) the agency_s findings of facts are not sustained by the
28 committee;

29 (b) the committee finds that the agency_s disciplinary action was
30 not within its established personnel policies, procedures, and regulations; or

31 (c) the committee finds that the agency_s action was arbitrary or
32 capricious.

33 (4) The decision of the committee shall be transmitted in writing to
34 the employee and the employing agency.

35 (5) Notwithstanding another provision of law, the decision of the

1 committee shall be final in terms of administrative adjudication and review.

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3 SECTION 7. (1) When an appeal is filed with the committee, it shall
4 assemble all records, reports, and documentation of the earlier proceedings on
5 the grievance and review the case to ascertain that there has been full
6 compliance with established grievance policies, procedures, and regulations
7 within the agency.

8 (2) The director of the Office of Personnel Management shall notify
9 committee members, the committee attorney, and all other parties concerned of
10 the date, time, and place of grievance hearings and request their presence.

11 (3) The director of the Office of Personnel Management shall arrange
12 for the reproduction of pertinent records and papers and distribute copies to
13 the members of the committee that will hear the grievance and to the committee
14 attorney prior to the date of the hearing. The director of the Office of
15 Personnel Management shall be responsible for recording the grievance hearings
16 and shall provide to the committee from the resources of the Office of
17 Personnel Management such administrative and clerical services as may be
18 required.

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20 SECTION 8. No employee shall be disciplined or otherwise prejudiced in
21 employment for exercising rights or testifying under the procedure, and agency
22 directors shall encourage the use of the procedure in the resolution of
23 grievances arising in the course of public employment.

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25 SECTION 9. The State Employees Grievance Committee shall establish such
26 rules and regulations as necessary to give effect to the provisions of this
27 act.

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29 SECTION 10. All provisions of this act of a general and permanent
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
31 Code Revision Commission shall incorporate the same in the Code.

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33 SECTION 11. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 12. All laws and parts of laws in conflict with this act are
5 hereby repealed.