

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.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/14/03

A Bill

HOUSE BILL 1325

5 By: Representative Mahony
6 By: Senator Faris
7
8

For An Act To Be Entitled

10 AN ACT TO REVISE VARIOUS CODE PROVISIONS
11 PERTAINING TO STATE BUILDING SERVICES OVERSIGHT,
12 AUTHORITY, AND RESPONSIBILITY OF CAPITAL
13 IMPROVEMENTS; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO AMEND VARIOUS ARKANSAS CODE
16 PROVISIONS PERTAINING TO THE AUTHORITY
17 AND RESPONSIBILITY OF STATE BUILDING
18 SERVICES OVERSIGHT OF CAPITAL
19 IMPROVEMENTS.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 13-8-205(a), concerning the Arkansas Public
27 Advisory Board, is amended to read as follows:

28 (a) There is established the "Arkansas Public Art Advisory Board" to
29 be composed of *seven (7)* members.
30

31 SECTION 2. Arkansas Code § 13-8-205(b)(2), concerning the Arkansas
32 Public Advisory Board, is amended to read as follows:

33 (2) The remaining members of the board shall be as follows: the
34 Executive Director of the Office of Arkansas State Arts and Humanities, ~~the~~
35 ~~State Architect within the Arkansas State Building Services, the~~
36 ~~Administrator of the Construction Section of Arkansas State Building~~



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1 Services, two (2) architects, registered and licensed within the state, who
2 shall be appointed by the Governor, and the Program Coordinator of the
3 Arkansas Public Art Program.

4
5 SECTION 3. Arkansas Code § 13-8-209 is amended to read as follows:
6 13-8-209. Award of contracts.

7 Arkansas State Building Services shall, pursuant to the instruction of
8 the selection committee for the project, award contracts for the purchase or
9 commission of art work for the Arkansas Public Art Program and the owner
10 agency shall administer payments.

11
12 SECTION 4. Arkansas Code § 19-4-1405(e), concerning bidding
13 procedures, is amended to read as follows:

14 (e)(1) Whenever it is obvious from examination of the bid document
15 that it was the intent of a bidder to submit a responsive bid, and the bid,
16 because of scriveners' error ~~such as transposition of figures~~, if accepted
17 would create a serious financial loss to the bidder, the Director of Arkansas
18 State Building Services has the authority to relieve the bidder from
19 responsibility under his bond and may reject his bid provided, for projects
20 undertaken by public institutions of higher education exempt from review and
21 approval of Arkansas State Building Services, the chief executive officer of
22 the institution of higher education or his or her designee has the authority
23 to relieve the bidder from responsibility under his or her bond and may
24 reject his or her bid in the same manner and within the same period as
25 allowed by Arkansas State Building Services.

26 (2) For purposes of this section, "scriveners' error" means:

27 (A) An error in the calculation of a bid which can be
28 documented by clear and convincing written evidence and which can be clearly
29 shown by objective evidence drawn from inspection of the original work
30 papers, documents, or materials used in the preparation of the bid sought to
31 be withdrawn; and

32 (B) In the case of a bid sought to be withdrawn, the bid
33 was submitted in good faith and the mistake was due to a calculation or
34 clerical error, an inadvertent omission, or a typographical error as opposed
35 to an error in judgment.

36 (3) To receive relief, under subdivision (e)(1), the bidder must

1 serve written notice to the Director of Arkansas State Building Services or
2 the chief executive officer or his or her designee of a public institution of
3 higher education exempt from review and approval of Arkansas State Building
4 Services any time after the bid opening, but no later than seventy-two (72)
5 hours after receiving the intent to award, excluding Saturdays, Sundays and
6 holidays. Failure to make a withdrawal request within seventy-two (72) hours
7 shall constitute a waiver by the bidder of the bidder's right to claim that
8 the mistake in his or her bid was a scrivener's error.

9 (4) In the event the Director of Arkansas State Building
10 Services or the chief executive officer or his or her designee of a public
11 institution of higher education exempt from review and approval of Arkansas
12 State Building Services has relieved the bidder from responsibility under his
13 bond, action on the remaining bids should be considered as though the
14 withdrawn bid had not been received.

15
16 SECTION 5. Arkansas Code § 19-4-1406 is repealed.

17 ~~19-4-1406. Concurrence by architects.~~

18 ~~(a) Any architect who submits a bid for any proposed project of a~~
19 ~~state agency as may be held out for bid shall concur, in writing, with the~~
20 ~~provisions of this subchapter, with such concurrence to be included in his~~
21 ~~bid proposal.~~

22 ~~(b) Failure to include such concurrence shall deem the bid proposal~~
23 ~~null and void.~~

24
25 SECTION 6. Arkansas Code § 19-4-1411(a)(1), concerning the processing
26 of payments, is amended to read as follows:

27 (a)(1) When a contractor submits a properly prepared request for
28 payment of work completed on state construction projects and the request for
29 payment conforms with the provisions of the contract award and laws of the
30 State of Arkansas, the following maximum time is allowed for the processing
31 of the payment requests by the various parties involved, excluding time
32 required for transmittal from one (1) party to another:

33 (A) Design professional - Five (5) working days;

34 (B) State agency or institutions of higher education
35 exempt from review and approval by Arkansas State Building Services - Five
36 (5) working days, including preparation of voucher and submission for

1 payment; and

2 ~~(C)(i) Arkansas State Building Services — Five (5) working~~
3 ~~days.~~

4 ~~(ii) that this time for processing a request for~~
5 ~~payment shall not apply to public institutions of higher education which are~~
6 ~~exempt from construction review and approval by Arkansas State Building~~
7 ~~Services, unless any such institution has entered into an agreement for~~
8 ~~Arkansas State Building Services to provide its construction review and~~
9 ~~approval; and~~

10 ~~(D)(C)~~ Department of Finance and Administration - Five (5)
11 working days.

12
13 SECTION 7. Arkansas Code § 19-4-1415(c), concerning projects exceeding
14 five million dollars, is amended to read as follows:

15 (c)(1) For all projects contemplated or contracted for, Arkansas State
16 Building Services shall:

17 (A) Review and approve the advertisement as stated in
18 subsection (d) of this section, the scope of work, the site selection,
19 funding review, and, to the extent available, all project drawings, plans,
20 and specifications prior to any solicitation of proposals for the project;

21 (B) Conduct on-site ~~inspections~~ observations of the
22 construction project on a regular basis ~~to ensure that the project complies~~
23 ~~with the contract documents and maintains~~ maintain project records; and

24 (C)(i) Review and approve all contract amendments ~~and~~
25 ~~payments.~~

26 (ii) State agencies shall submit a summary of all
27 contract amendments to the Legislative Council;

28 (2)(A) The institutions of higher education stated in
29 subdivision (b)(5) of this section shall perform all duties and
30 responsibilities stated in subdivision (c)(1) of this section under policies
31 and procedures adopted by their governing boards.

32 (B) They shall submit a summary of all contract amendments
33 to the Legislative Council.

34
35 SECTION 8. Arkansas Code § 22-2-102(1) is amended to read as follows:

36 (1) "Capital improvement" means all lands, buildings,

1 structures, utilities, on-site and off-site improvements, and other
 2 appertaining improvements, existing or future, and all construction, repairs,
 3 alterations, demolitions, and renovations thereof which are undertaken,
 4 owned, operated, or otherwise managed by a state agency, except that capital
 5 improvements shall not include construction and reconstruction of roads and
 6 bridges in the state highway system by the State Highway Commission, nor
 7 shall the term "capital improvements" include any building, facility, plant,
 8 structure, or other improvements constructed by or in behalf of the Arkansas
 9 State Highway and Transportation Department or the State Highway Commission,
 10 nor shall the term "capital improvement" include any lands, buildings or
 11 other structures or facilities now owned or hereafter acquired by an Arkansas
 12 state retirement system as an investment or as a result of the investment of
 13 assets of the system;

14

15 SECTION 9. Arkansas Code § 22-2-107(a)(1) is amended to read as
 16 follows:

17 (1) CONSTRUCTION SECTION. The Construction Section shall:

18 (A) Supervise the bidding and awarding of contracts for
 19 new construction and renovations for or by state agencies' capital
 20 improvements;

21 (B) ~~Approve methods of finance and establish~~ Establish and
 22 maintain complete construction files on all jobs, including plans and
 23 specifications for alterations, renovations, and repairs of all capital
 24 improvements;

25 (C) Approve all proposed contracts, change orders, and
 26 final payments requests;

27 (D) Ensure that on-site ~~inspection~~ observation of all
 28 construction projects, alterations, and repairs is accomplished on a regular
 29 basis and maintain records of those ~~inspections~~ observations;

30 (E) Obtain and maintain construction inspection reports
 31 from architects or engineers or their consultants from state agencies and
 32 institutions for all capital improvement construction projects;

33 (F)(i) Conduct visits ~~by~~ with the design professional to
 34 determine the responsibility and performance required by the contract
 35 documents.

36 (ii) On-site observations by design professionals

1 shall concur with the contractor's payment request and shall be submitted in
2 written form with the pay request.

3 (iii) The inspection reports shall be as adopted by
4 the council.

5 (iv) State agencies shall engage the services of
6 licensed architects or engineers for all projects covered by the Arkansas
7 Architectural Act, § 17-15-101 et seq., and the Arkansas Engineering Act, §
8 17-30-101 et seq.;

9 (G) Ensure that the construction of all projects complies
10 with the contract documents; and

11 (H)(i) Establish and manage a list of contractors desiring
12 written notice of invitations to bid and establish by regulation a fee, not
13 to exceed twenty-five dollars (\$25.00) annually, for receiving a written
14 notice of an invitation to bid.

15 (ii) Subscription fees collected pursuant to this
16 section shall be deposited in the State Building Services Fund;

17

18 SECTION 10. Arkansas Code § 22-2-107(a)(3) is amended to read as
19 follows:

20 (3) ARCHITECTURAL SECTION. The Architectural Section shall be
21 directed by an architect registered and licensed to practice architecture in
22 the state and who shall have had seven (7) years of experience as a
23 registered architect. The section shall:

24 (A) Establish procedures, as approved by the council, for
25 the selection of architectural and building design ~~consultant~~ consultants
26 services by state agencies and State Building Services, which procedures
27 shall ensure an equitable opportunity for all persons and firms;

28 (B) Encourage, within the rules and regulations of the
29 state, the timely and expedient commitment and expenditure of appropriations
30 for ~~construction~~ capital improvements;

31 (C) Establish standard fee schedules, as approved by the
32 council, for architectural and building design consultant services for
33 capital improvements;

34 (D) Develop and upon adoption by the council establish
35 minimum design standards and criteria, which shall be made available to all
36 architects in the state;

1 (E) Utilize, require, or undertake studies concerning the
2 needs for and costs of proposed capital improvements;

3 (F) Review and approve, consistent with the provisions of
4 this chapter, contracts for architectural and building design consultant
5 services, preliminary plans, cost estimates, building programs, feasibility
6 studies, and construction bid documents for capital improvements and mediate
7 architectural and design and construction-related problems;

8 (G) Assist in analyzing architectural design and
9 construction problems at state-owned facilities; and

10 (H) Ensure that state agencies shall engage the services
11 of licensed architects and licensed engineers for all appropriate capital
12 improvement projects contracted, not exempted by the requirements of the
13 Arkansas Architectural Act, § 17-15-101 et seq., the Arkansas Engineering
14 Act, § 17-30-101 et seq., and the Arkansas Public Works Act, § 22-9-101 et
15 seq.

16
17 SECTION 11. Arkansas Code § 22-2-108(9)-(11), which are powers of the
18 State Building Services Council, are amended to read as follows:

19 (9)(A) To establish, promulgate, and enforce minimum design and
20 construction standards and criteria for all capital improvements undertaken
21 by any state agency, including, but not limited to, procedures regarding the
22 bidding and awarding of capital improvements, and suspension and debarment of
23 contractors regarding projects under the jurisdiction of the Arkansas State
24 Building Services.

25 (B) However, Arkansas State Building Services shall not
26 engage in the production of architectural plans and specifications, with the
27 exception that the architects and engineers employed by Arkansas State
28 Building Services may provide and make available technical assistance to
29 Arkansas State Building Services' sections listed in § 22-2-107 and other
30 agencies regarding capital improvements involving roofing projects, repairs,
31 alterations, or renovations;

32 (10) To establish and enforce minimum standards and criteria for
33 the management, maintenance, and operation of all public buildings and
34 capital improvements;

35 (11) To establish and enforce minimum standards and criteria for
36 the leasing and renting of space for and by state agencies;

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SECTION 12. Arkansas Code § 22-2-116 is amended to read as follows:

22-2-116. Maintenance responsibilities generally.

(a) The State Building Services shall provide for the management, maintenance, and operation of public buildings as may be required by the provisions and implementation of this chapter, or as may otherwise be required by law.

(b) Arkansas State Building Services may enter into agreements with agencies to provide for the management, maintenance, and operation of those public buildings, which are not owned by Arkansas State Building Services.

SECTION 13. Arkansas Code § 22-2-121 is amended to read as follows:

22-2-121. Real estate compilation.

(a) The Arkansas State Building Services shall:

(1) Perform a compilation of all real property owned by state agencies, including boards, commissions, and institutions of higher education, the Arkansas Game and Fish Commission, the Arkansas State Highway and Transportation Department, and the State Highway Commission;

(2) Create a database that shall include a description of each piece of real property owned; and

(3) Maintain the database with current information.

(b) The initial compilation of all real property shall be completed by January 1, 2002.

(c) All state agencies identified in subdivision (a)(1) of this section, including ~~boards, commissions, and institutions of higher education,~~ shall provide the necessary information to State Building Services.

(d) State Building Services, in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., may adopt rules and regulations necessary to administer the provisions of this section.

SECTION 14. Arkansas Code § 22-3-405(b), concerning the capitol parking control committee, is amended to read as follows:

(b) The committee shall be composed of three (3) members, as follows:

(1) The Secretary of State or designee;

(2) The Director of the State Building Services or designee; and

1 (3) A state employee designated by the Secretary of State who is
 2 employed on the State Capitol grounds in a position of administrator or
 3 higher by an agency or office other than that of the Secretary of State or of
 4 the State Building Services.

5
 6 SECTION 15. Arkansas Code § 22-3-923 is amended to read as follows:
 7 22-3-923. Allocation of space.

8 (a)(1) It is found and determined by the General Assembly that the
 9 Justice Building was constructed primarily to house the higher appellate
 10 courts and that other agencies were permitted to occupy portions of the
 11 building only because the space was not needed by the courts at that time;
 12 that since construction of the building, the electors of the state authorized
 13 the establishment of a new appellate court, the Court of Appeals; that the
 14 Court of Appeals is in urgent need of additional space in the Justice
 15 Building in order to perform its responsibilities; that it is essential that
 16 the additional space to be provided the Court of Appeals is contiguous to the
 17 space now assigned to that court.

18 (2) Further, it is the purpose and intent of this section to
 19 establish specific priorities for use of space in the Justice Building and to
 20 specifically authorize the Arkansas ~~Justice Building Commission~~ State
 21 Building Services to allocate space in the Justice Building in accordance
 22 with those priorities to assure that the appellate courts and the services
 23 and facilities essential to the effective and efficient operation of the
 24 courts, such as library facilities, are given first priority in the use of
 25 space in the building.

26 (b)(1) Space in the Justice Building shall be allocated by the
 27 Arkansas ~~Justice Building Commission~~ State Building Services, ~~after obtaining~~
 28 ~~the technical assistance and concurrence of the State Building Services~~ and
 29 after seeking the advice of the Joint Interim Committee on Legislative
 30 Facilities, to the following courts, library, and offices in the order of
 31 priority listed:

- 32 ~~(1)~~(A) The Supreme Court;
 33 ~~(2)~~(B) The Court of Appeals;
 34 ~~(3)~~(C) The offices of the Clerk of the Supreme Court;
 35 ~~(4)~~(D) The Supreme Court Library; and
 36 ~~(5) The offices of the Attorney General; and~~

1 ~~(6)~~(E) The ~~Judicial Department~~ Administrative Office of the
2 Courts.

3 (2) The space requirements of each court, library, or office
4 listed in this subsection must be adequately met before any space is
5 allocated to any other office or agency.

6 (c) If the space requirements of the courts, library, and offices
7 listed in subsection (b) of this section are adequately met, the Arkansas
8 ~~Justice Building Commission~~ State Building Services may, after seeking the
9 ~~technical assistance and concurrence of the State Building Services and the~~
10 advice of the Joint Interim Committee on Legislative Facilities, allocate any
11 additional space to such other offices or agencies as it deems appropriate.

12 (d) The Arkansas ~~Justice Building Commission~~ State Building Services
13 shall allocate space in accordance with the priorities prescribed in this
14 section as soon as practicable after April 3, 1985, in order that the
15 additional space allocated to the courts, library, and offices enumerated in
16 this section shall be available on or before July 1, 1985.

17 ~~(e) The commission shall conduct yearly reviews of the space~~
18 ~~requirements of the courts, library, and offices listed in this section to~~
19 ~~determine if their space requirements are being adequately met.~~

20 ~~(f)(1) If the Arkansas Justice Building Commission determines, after a~~
21 ~~review conducted pursuant to subsection (e) of this section, that the space~~
22 ~~requirements of a court, library, or office listed in this section are not~~
23 ~~being adequately met, it shall reallocate space occupied by the Workers'~~
24 ~~Compensation Commission or the Arkansas Transportation Commission to those~~
25 ~~courts, library, and offices to assure that adequate suitable space is~~
26 ~~provided them in the Justice Building.~~

27 ~~(2) Before reallocating space occupied by the Workers'~~
28 ~~Compensation Commission or the Arkansas Transportation Commission, the~~
29 ~~Arkansas Justice Building Commission must receive certification from the~~
30 ~~State Building Services that suitable space to house either or both of the~~
31 ~~agencies has been arranged in accordance with the rental terms suitable to~~
32 ~~the agencies, and that plan must be submitted to the Joint Interim Committee~~
33 ~~on Legislative Facilities for its review and advice.~~

34 ~~(g)(1) When the allocation of space contemplated by this section is~~
35 ~~accomplished, the tenant receiving that additional space shall assume any~~
36 ~~obligation for the rentals owed for that acquired space in the Justice~~

1 ~~Building pursuant to any lease agreement existing between the lessor, the~~
 2 ~~Arkansas Justice Building Commission, and the lessee tenant who loses the~~
 3 ~~space.~~

4 ~~(2) The Arkansas Justice Building Commission is to supervise the~~
 5 ~~execution of the lease and documents necessary to protect, and not impair,~~
 6 ~~the obligation of the Arkansas Justice Building Commission under any existing~~
 7 ~~bonded indebtedness it may have previously entered into for the purpose of~~
 8 ~~building and maintaining the Justice Building.~~

9 ~~(h)(1)(e)(1)~~ The provisions of §§ 22-3-901 - 22-3-922, and the
 10 covenants and obligations of the Arkansas ~~Justice Building Commission~~ State
 11 Building Services entered into in connection with the issuance of bonds
 12 pursuant thereto are ratified and confirmed.

13 (2) Nothing in this section is intended, or shall be
 14 interpreted, to alter the amounts of, due dates for, or obligors of lease
 15 rentals payable pursuant to leases entered into between the ~~commission~~
 16 Arkansas State Building Services and any lessee identified in §§ 22-3-901 -
 17 22-3-922, or any successor thereto, or to alter the handling, deposit, or
 18 application of the lease rentals.

19
 20 SECTION 16. Arkansas Code § 22-6-601(a), concerning sale procedures of
 21 land, is amended to read as follows:

22 (a)(1)(A) The several state boards or commissions having supervision
 23 of the affairs of the charitable, penal, correctional, educational, and other
 24 institutions of the State of Arkansas, and all other state boards and
 25 commissions, except the State Highway Commission, the Arkansas State Game and
 26 Fish Commission, the Arkansas Natural Heritage Commission, the State Parks,
 27 Recreation, and Travel Commission, the Department of Higher Education, and
 28 institutions of higher education, and the executive heads of all state
 29 offices, departments, and agencies, all referred to separately as "state
 30 agency", may sell or purchase, for cash in hand and upon compliance with the
 31 provisions of this section, the lands, in whole or in part, belonging to or
 32 under the supervision or control of the respective state agency, or belonging
 33 to the state and held for the use or benefit of the state agency.

34 (B) State agencies may purchase lands, so that the lands,
 35 in whole or in part, shall belong to or be under the supervision or control
 36 of the respective state agency or belong to the state and be held for the use

1 or benefit of the state agency.

2 (2) The provisions of this section shall not apply to:

3 (A) The sale of land by the Commissioner of State Lands;

4 (B) The transfer of state lands to political subdivisions
5 of the State of Arkansas;

6 (C) The transfer of state lands between state entities; or

7 (D) The exchange of state lands for other lands which are
8 suitable for state purposes if the Director of Arkansas State Building
9 Services ~~director~~ has made a recommendation to the Governor that the exchange
10 be made and if the Governor has approved the exchange.

11
12 SECTION 17. Arkansas Code § 22-6-601(h), concerning bidding for state
13 lands, is amended to read as follows:

14 (h)(1) The lands shall be sold for the highest aggregate responsible
15 bid, and no such sale shall be otherwise than for cash, nor for less than the
16 amount of the appraisal.

17 (2)(A) Upon approval by the Governor, lands may be sold to the
18 highest responsible bidder for less than the amount of the appraisal if the
19 bid process has been utilized and it has been determined and recommended by
20 the agency director and the Director of Arkansas State Building Services that
21 further solicitation of bids is unnecessary. Upon such approval the agency
22 may enter into negotiations with the highest responsible bidder for the sale
23 of the lands. If negotiations are unsuccessful, the agency may enter into
24 negotiations with the next highest responsible bidder. Nothing shall
25 preclude an agency from reletting bids under this section if the negotiations
26 as stated in subdivision (h)(2)(A) are unsuccessful.

27 (B) The Legislative Council shall review the sale of the
28 land before the agency finalizes the sale.

29
30 SECTION 18. Arkansas Code § 22-9-204(a), concerning use of
31 subcontractors, is amended to read as follows:

32 (a) As a condition to performing construction work for and in the
33 State of Arkansas, all prime contractors shall use no other subcontractors
34 when the subcontractors' portion of the project is twenty thousand dollars
35 (\$20,000) or more, except those licensed by the Contractors Licensing Board
36 and qualified in:

1 (1) Mechanical, indicative of heating, air conditioning,
2 ventilation, and refrigeration;

3 (2) Plumbing;

4 (3) Electrical, ~~indicative of wiring and illuminating fixtures;~~
5 and

6 (4) Roofing ~~and sheet metal work, indicative of roofing~~
7 ~~application.~~

8 SECTION 19. Arkansas Code 19-4-1405(d) is amended to read as follows:

9 "(d)(1)(A) Every bid submitted on state agency construction contracts
10 shall be void unless accompanied by a cashier's check drawn upon a bank or
11 trust company doing business in this state or by a corporate bid bond and the
12 agent's power of attorney as his authority for projects over the amount of
13 twenty thousand dollars (\$20,000).

14 (B) No bid bond shall be required for projects under or equal to the amount
15 of twenty thousand dollars (\$20,000).

16 (2) Such bid security shall indemnify the public against failure of the
17 contractor to execute and deliver the contract and necessary bonds for
18 faithful performance of the contract.

19 (3) The bid security shall provide that the contractor or surety must pay
20 the damage, loss, cost, and expense subject to the amount of the bid security
21 directly arising out of the contractor's default in failing to execute and
22 deliver the contract and bonds.

23 (4) Liability under this bid security shall be limited to five percent (5%)
24 of the amount of the bid."

25 /s/ Mahony
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