

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senator Malone**

# A Bill

**ACT 1331 OF 1995**  
**SENATE BILL 512**

## For An Act To Be Entitled

8 "AN ACT TO AMEND SUBCHAPTER 8 OF CHAPTER 11 OF TITLE 19 OF  
9 THE ARKANSAS CODE TO PERMIT MORE FLEXIBLE PROCUREMENT OF  
10 PROFESSIONAL SERVICES BY THE STATE OF ARKANSAS AND ITS  
11 POLITICAL SUBDIVISIONS; TO ADD CONSTRUCTION MANAGEMENT  
12 SERVICES FOR PUBLIC SCHOOL DISTRICTS AS A PROFESSIONAL  
13 SERVICE SUBJECT TO THE PROFESSIONAL SERVICES PROCUREMENT  
14 REQUIREMENTS; TO DECLARE AN EMERGENCY; AND FOR OTHER  
15 PURPOSES."

### Subtitle

17  
18 "TO PERMIT MORE FLEXIBLE PROCUREMENT OF  
19 PROFESSIONAL SERVICES AND TO ADD  
20 CONSTRUCTION MANAGEMENT SERVICES FOR  
21 PUBLIC SCHOOL DISTRICTS AS A  
22 PROFESSIONAL SERVICE SUBJECT TO THE  
23 PROFESSIONAL SERVICES PROCUREMENT  
24 REQUIREMENTS."

25  
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27  
28 SECTION 1. Arkansas Code §19-11-801 is hereby amended to read as  
29 follows:

30 "19-11-801. Policy.

31 (a) It is the policy of the State of Arkansas and political  
32 subdivisions that the state and political subdivisions shall negotiate  
33 contracts for professional services on the basis of demonstrated competence  
34 and qualifications for the type of services required and at fair and  
35 reasonable prices and to prohibit the use of competitive bidding for the  
36 procurement of professional services. For purposes of this subchapter, the

1 term 'professional services' shall include legal, architectural, engineering,  
2 land surveying, and such other consulting services as the political  
3 subdivision shall designate by two-thirds (2/3rds) vote of its governing body.

4 (b) Public school districts shall negotiate contracts for construction  
5 management in the same manner as set forth in subsection (a), except that a  
6 two-thirds (2/3rds) vote of the board of directors of a public school district  
7 shall not be required for a school district to negotiate a contract for  
8 construction management."

9

10 SECTION 2. Arkansas Code §19-11-802 is hereby amended to read as  
11 follows:

12 "19-11-802. Annual statements of qualifications and performance data -  
13 Restrictions on competitive bidding.

14 (a) In the procurement of professional services, a political  
15 subdivision which utilizes such services may encourage firms engaged in the  
16 lawful practice of these professions to submit annual statements of  
17 qualifications and performance data to the political subdivision, or may  
18 request such information as needed for a particular public project.

19 (b) The political subdivision shall evaluate current statements of  
20 qualifications and performance data of firms on file, or may request such  
21 information as needed for a particular public project whenever a project  
22 requiring professional services is proposed.

23 (c) The political subdivision shall not use competitive bidding for the  
24 procurement of professional services.

25 (d)(1) A public school district that utilizes construction management  
26 services shall encourage construction management firms to submit to the school  
27 district annual statements of qualifications and performance data, or may  
28 request such information as needed for a particular public project.

29 (2) The public school district shall evaluate current statements  
30 of qualifications and performance data on file with the school district, or  
31 when submitted as requested whenever a project requiring professional services  
32 of a construction manager is proposed.

33 (3) The public school district shall not use competitive bidding  
34 for the procurement of professional services of a construction manager."

35

1 SECTION 3. Arkansas Code §19-11-805 is hereby amended to read as  
2 follows:

3 "19-11-805. Negotiation of contracts.

4 (a) For the basis of negotiations, the political subdivisions and the  
5 selected firm shall jointly prepare a detailed, written description of the  
6 scope of the proposed services.

7 (b) If the political subdivision is unable to negotiate a satisfactory  
8 contract with the firm selected, negotiations with that firm shall be  
9 terminated. The political subdivision shall then undertake negotiations with  
10 another of the qualified firms selected. If there is a failing of accord with  
11 the second firm, negotiations with such firm shall be terminated. The  
12 political subdivision shall undertake negotiations with the third qualified  
13 firm.

14 (c) If the political subdivision is unable to negotiate a contract with  
15 any of the selected firms, the agency shall reevaluate the necessary  
16 professional services, including the scope and reasonable fee requirements,  
17 again compile a list of qualified firms, and proceed in accordance with the  
18 provisions of this subchapter.

19 (d) When unable to negotiate a contract for construction management, a  
20 public school district shall also perform a reevaluation of services in  
21 accordance with subsection (c)."

22

23 SECTION 4. Subchapter 8 of Chapter 11 of Title 19 of the Arkansas Code  
24 is hereby amended to add the following section:

25 "19-11-806. (a) Any city of the first or second class, or any  
26 incorporated town, that defines a professional service pursuant to this  
27 subchapter must do so by ordinance. Any ordinances that define a professional  
28 service must be read publicly at two (2) regularly scheduled meetings. No  
29 ordinance that defines a professional service may be adopted with an emergency  
30 clause.

31 (b) In addition, in a city of the first or second class or an  
32 incorporated town which has delegated the operation of its water or sewer  
33 services to a Board of Public Utilities or Commission, it shall be the  
34 responsibility of that Board or Commission to define a professional service as  
35 used in this subchapter. It shall be defined by a motion or resolution of the

1 Board or Commission. The motion or resolution defining a professional service  
2 shall be read publicly at two (2) regularly scheduled meetings and shall be  
3 effective thirty (30) days after its second reading and passage."  
4

5 SECTION 5. All provisions of this act of a general and permanent nature  
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
7 Revision Commission shall incorporate the same in the Code.  
8

9 SECTION 6. If any provision of this act or the application thereof to  
10 any person or circumstance is held invalid, such invalidity shall not affect  
11 other provisions or applications of the act which can be given effect without  
12 the invalid provision or application, and to this end the provisions of this  
13 act are declared to be severable.  
14

15 SECTION 7. All laws and parts of laws in conflict with this act are  
16 hereby repealed.  
17

18 SECTION 8. EMERGENCY. It is hereby found and determined by the General  
19 Assembly that the state and its political subdivisions are hampered in the  
20 ability to select the most qualified professional services since the present  
21 statutory definition of professional services excludes many professions that  
22 are vital to the successful completion of important public projects. Since  
23 each public entity is better able to determine which professional services it  
24 will need and since the public health, safety and welfare require that many of  
25 these public projects proceed as soon as possible, an emergency is hereby  
26 declared to exist and this act being necessary for the preservation of the  
27 public peace, health and safety shall be in full force and effect from and  
28 after its passage and approval.  
29

30 /s/Malone  
31

32 BECAME LAW WITHOUT GOVERNOR'S SIGNATURE: 4-17-95  
33  
34  
35

1

2