

**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 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/7/01*

# A Bill

**Act 961 of 2001**  
SENATE BILL 512

5 By: Senator D. Malone  
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## **For An Act To Be Entitled**

9 TO AMEND VARIOUS ARKANSAS CODE SECTIONS  
10 PERTAINING TO ARKANSAS STATE BUILDING SERVICES  
11 REVIEW AND APPROVAL OF HIGHER EDUCATION  
12 INSTITUTION CAPITAL IMPROVEMENTS; AND FOR OTHER  
13 PURPOSES.  
14

## **Subtitle**

15  
16 TO AMEND VARIOUS ARKANSAS CODE SECTIONS  
17 PERTAINING TO ARKANSAS STATE BUILDING  
18 SERVICES REVIEW AND APPROVAL OF HIGHER  
19 EDUCATION INSTITUTION CAPITAL  
20 IMPROVEMENTS.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code 6-62-302 is amended to read as follows:

27 6-62-302. Building construction, purchase, etc., authorized.

28 (a) Subject to and in accordance with the terms of this subchapter, the  
29 Boards of Trustees of the University of Arkansas, Arkansas State University,  
30 University of Central Arkansas, Henderson State University, Arkansas Tech  
31 University, and Southern Arkansas University, respectively, are authorized and  
32 empowered as a public agency of the State of Arkansas to:

33 (1) Construct buildings, structures, parking facilities, or other  
34 improvements which the board deems proper or suitable for the school and to  
35 purchase sites therefor, if necessary;

36 (2) Purchase for such purpose buildings already constructed and

1 the tracts of land on which they are situated;

2 (3) Reconstruct, enlarge or repair, and equip any buildings or  
3 structures of the college, including, but not limited to, buildings or  
4 structures constructed or purchased under authority of this subchapter; and

5 (4) Purchase for such purposes and pay the expense of tearing  
6 down, removing to the school, reconstructing, and equipping houses, buildings,  
7 or structures.

8 (b) No board of trustees of such public institutions of higher  
9 education shall be required to obtain any prior review, consultation,  
10 approval, assistance or advice from Arkansas State Building Services for  
11 projects undertaken based on the foregoing powers and authority; provided,  
12 however, nothing herein shall prevent any board of trustees of such public  
13 institutions of higher education from entering into an agreement with Arkansas  
14 State Building Services to provide review, consultation, approval, assistance  
15 or advice for such projects. However, public institutions of higher education  
16 exempt from project review, consultation, approval, assistance or advice of  
17 Arkansas State Building Services shall remain subject to other laws governing  
18 public works including, without limitation, §§ 22-9-101 through 22-9-702 and  
19 §§ 19-4-1401 through 19-4-1413.

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21 SECTION 2. Arkansas Code 18-44-503(b) is amended to read as follows:

22 (b) All persons, firms, associations, and corporations who have valid  
23 claims against the bond may bring an action on the bond against the corporate  
24 surety, provided that no action shall be brought on the bond after twelve (12)  
25 months from the date on which the Arkansas State Building Services, or  
26 institutions exempt from construction review and approval by Arkansas State  
27 Building Services, approves final payment on the state contract, nor shall any  
28 action be brought outside the State of Arkansas.

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30 SECTION 3. Arkansas Code 19-4-1402 is amended to read as follows:

31 19-4-1402. Contracts to be filed.

32 Executed counterparts of all contracts entered into by any state agency  
33 with respect to proposed projects for new improvements or major repairs or  
34 additions to existing buildings and facilities shall be filed with the  
35 Arkansas State Building Services prior to the issuance of any vouchers making  
36 payments under any such contract, unless the contract is exempted from

1 Arkansas State Building Services jurisdiction by any law or regulation  
2 promulgated pursuant to the Arkansas Administrative Procedure Act. The Boards  
3 of Trustees of the University of Arkansas, Arkansas State University,  
4 University of Central Arkansas, Henderson State University, Arkansas Tech  
5 University, and Southern Arkansas University, respectively, are exempt from  
6 the requirements of this section requiring filing of such contracts with  
7 Arkansas State Building Services. The governing boards of all other public  
8 institutions of higher education shall, upon approval of the Department of  
9 Higher Education, be exempt from filing such contracts with Arkansas State  
10 Building Services; provided that prior to granting such approval, the  
11 Department of Higher Education shall have reviewed and approved policies and  
12 procedures adopted by such governing board with respect to bidding and  
13 construction of capital improvement projects. Nothing in this section shall  
14 prevent any of the foregoing institutions exempt from filing such contracts  
15 with State Building Services from entering into an agreement with State  
16 Building Services to file such contracts with it.

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18 SECTION 4. Arkansas Code 19-4-1405(c)(2) is amended to read as follows:

19 (2) The bonds shall be both for the completion of the  
20 construction free of all liens and encumbrances, in an amount fixed by  
21 Arkansas State Building Services, and for the protection of the agency and its  
22 members against all liability for injury to persons or damage to, or loss of,  
23 property arising, or claimed to have arisen, in the course of the work  
24 project, within limits fixed by Arkansas State Building Services; provided,  
25 however, for projects undertaken by public institutions of higher education,  
26 the bonds shall be in an amount and within limits fixed by the governing board  
27 of such public institution of higher education.

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29 SECTION 5. Arkansas Code 19-4-1405(e) is amended to read as follows:

30 (e) Whenever it is obvious from examination of the bid document that it  
31 was the intent of a bidder to submit a responsive bid, and the bid, because of  
32 scrivener error such as transposition of figures, if accepted would create a  
33 serious financial loss to the bidder, the Director of Arkansas State Building  
34 Services has the authority to relieve the bidder from responsibility under his  
35 bond and may reject his bid in the same manner and within the same period as  
36 allowed by Arkansas State Building Services.

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SECTION 6. Arkansas Code 19-4-1411(a)(1) is amended to read as follows:

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

(A) Architect - Five (5) working days;

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

(C) Arkansas State Building Services - ~~Two (2)~~ Five (5) working days provided that this time for processing a request for payment shall not apply to public institutions of higher education which are exempt from construction review and approval by Arkansas State Building Services unless any such institution has entered into an agreement for Arkansas State Building Services to provide such construction review and approval;

(D) Department of Finance and Administration - Five (5) working days.

SECTION 7. Arkansas Code 19-11-203(23) is amended to read as follows:

(23) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or engineering contracts requiring approval of Arkansas State Building Services or public institutions of higher education;

SECTION 8. Arkansas Code 19-11-504(1)(G) is amended to read as follows:

(G) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements, collective bargaining agreements, or architectural or engineering contracts requiring approval of State Building

1 Services or public institutions of higher education;

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3 SECTION 9. Arkansas Code 22-2-113 is amended to read as follows:

4 22-2-113. Schedule of supervision – Type Three – All other cases.

5 (a) In all other cases, within or without Pulaski County, Arkansas,  
6 when the construction of public buildings or capital improvements is  
7 undertaken or is presently being undertaken or is authorized but not presently  
8 under contract by or for a state agency, then the State Building Services  
9 shall serve in a technical advisory capacity to advise an agency in relation  
10 to that agency's capital improvement and perform review and approval duties  
11 specifically including, but not limited to, the provision and performance of  
12 the following services and duties:

13 (1) Consult with the agency as to the need for and the type,  
14 cost, and design of the capital improvement;

15 (2) Assist the agency in reviewing architectural proposals and  
16 advising the agency in the selection of persons to perform architectural and  
17 engineering services, but the agency shall have the responsibility of  
18 selecting such persons. However, nothing in this subdivision shall affect the  
19 power and responsibility of the State Building Services to review and approve  
20 architectural and engineering design plans and to negotiate contracts for  
21 architects' and engineers' services as otherwise provided in this section;

22 (3) Review and approve architectural and engineering plans and  
23 designs to ensure compliance with minimum design and construction standards  
24 and criteria promulgated by the council pursuant to this chapter;

25 (4) As agent for the state agency, negotiate and approve any  
26 contractual terms, relationships, or responsibilities for architectural and  
27 engineering services;

28 (5) Assist the state agency in receipt of bids for construction  
29 contracts necessary for the capital improvement if bids are required by law;

30 (6) Advise and assist the agency in the selection of persons to  
31 perform construction services, but the agency shall have the responsibility of  
32 selecting the persons to perform the services. However, nothing in this  
33 subdivision shall affect the powers and responsibilities of the State Building  
34 Services consistent with subdivisions (7) and (8) of this section;

35 (7) Review and approve construction plans so as to ensure  
36 compliance with minimum construction standards and criteria promulgated by the

1 council as provided in this chapter;

2 (8) As agent for the agency, negotiate and approve all  
3 construction contracts and revisions and modifications thereto necessary for  
4 the capital improvement;

5 (9) Assist and advise the state agency as to the operation,  
6 management, and maintenance of the capital improvement. However, the  
7 operation, management, and maintenance shall be in accordance with minimum  
8 standards as promulgated by the council;

9 (10) Otherwise take such action as may be necessary to carry out  
10 the policies, standards, criteria, and other rules and regulations as may be  
11 adopted or promulgated by the council to implement the provisions of this  
12 chapter.

13 (b)(1) The Boards of Trustees of the University of Arkansas, Arkansas  
14 State University, University of Central Arkansas, Henderson State University,  
15 Arkansas Tech University, and Southern Arkansas University, respectively, are  
16 exempt from review, consultation, assistance, advice and approval by Arkansas  
17 State Building Services for those items listed in subsection (a) of this  
18 section. The governing boards of all other public institutions of higher  
19 education shall, upon approval of the Department of Higher Education, be  
20 exempt from review and approval by Arkansas State Building Services for those  
21 items listed in subsection (a) of this section; provided that prior to  
22 granting such approval, the Department of Higher Education shall have reviewed  
23 and approved policies and procedures adopted by such governing board with  
24 respect to bidding and construction of capital improvement projects. Nothing  
25 in this subdivision shall prevent any of the foregoing institutions exempt  
26 from review and approval of Arkansas State Building Services from entering  
27 into an agreement with Arkansas State Building Services to provide reviews and  
28 approval of all items listed in subsection (a) of this section.

29 (2) However, any of the foregoing boards, which are exempt as set forth  
30 hereinabove and which do not enter into an agreement with Arkansas State  
31 Building Services, shall adopt policies and procedures involving the bidding  
32 and awarding of capital improvement contracts and shall furnish such policies  
33 and procedures to the Department of Higher Education for its review and  
34 advice. It is the intention of this section that any and all adopted policies  
35 and procedures pertaining to the bidding and awarding of capital improvement  
36 contracts from public funds as stated herein shall provide a uniformity among

1 the foregoing institutions with respect to the policies and procedures to be  
2 followed.

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4 SECTION 10. Arkansas Code 22-9-208(a)(3) is amended to read as follows:

5 (3) The procedures provided in subdivision (a)(2) of this section  
6 should be applicable for specific projects only after review and approval by  
7 the Chief Fiscal Officer of the State, the State Building Services Council,  
8 and the Legislative Council; provided, however, projects undertaken by public  
9 institutions of higher education exempt from review and approval of Arkansas  
10 State Building Services shall not require review and approval by the State  
11 Building Services Council. ~~The state or entities of the state shall make an~~  
12 ~~assessment regarding the applicability of those procedures provided in~~  
13 ~~subdivision (a)(2) of this section on a project by project basis.~~

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15 SECTION 11. Arkansas Code 22-9-209(d) is amended to read as follows:

16 (d) No agency shall advertise for bids under the provisions of this  
17 section and §§ 22-9-208, 22-9-210, and 22-9-211 without seeking the advice of  
18 the Legislative Council and the State Building Services Council; provided,  
19 however, public institutions of higher education exempt from review and  
20 approval of Arkansas State Building Services shall not be required to seek  
21 advice of the State Building Services Council; provided further, nothing  
22 herein shall prevent an institution of higher education exempt from review and  
23 approval of Arkansas State Building Services from entering into an agreement  
24 with Arkansas State Building Services to provide such advice.

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26 SECTION 12. Arkansas Code 22-9-403(b)(2) is amended to read as follows:

27 (2) However, with respect to public works contracts where final  
28 approval for payment is given by Arkansas State Building Services or by an  
29 institution of higher education exempt from construction review and approval  
30 by Arkansas State Building Services, all persons, firms, associations, and  
31 corporations having valid claims against the bond may bring an action on the  
32 bond against the corporate surety, provided that no action shall be brought on  
33 the bond after twelve (12) months from the date on which Arkansas State  
34 Building Services or the public institution of higher education approves final  
35 payment on the state contract, nor shall any action be brought outside the  
36 State of Arkansas in accordance with § 18-44-503.

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*/s/ D. Malone*

APPROVED: 3/20/2001