

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 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 183

4
5 By: Senator Altes
6
7

For An Act To Be Entitled

8
9 AN ACT TO PROVIDE THAT SCHOOL PURCHASING ETHICAL
10 GUIDELINES AND PROHIBITIONS APPLY TO CONTRACTORS
11 AND SUBCONTRACTORS; AND FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO PROVIDE THAT SCHOOL PURCHASING
15 ETHICAL GUIDELINES AND PROHIBITIONS
16 APPLY TO CONTRACTORS AND SUBCONTRACTORS.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 6-21-302 is amended to read as follows:
22 6-21-302. Penalty.

23 (a) A violation of the provisions of this subchapter shall be is a
24 Class C misdemeanor, except as provided in subsection (b) of this section.

25 (b) Any person who knowingly violates § 6-21-304(a) or § 6-21-305(a)
26 is guilty of a felony.

27 (c)(1) If a person pleads guilty or nolo contendere to or has been
28 found guilty of violating § 6-21-304(a) or § 6-21-305(a), the court shall
29 order the person to make restitution to the public educational entity.

30 (2) In addition, the court may fine the person in any sum not to
31 exceed the greater of ten thousand dollars (\$10,000) or double the dollar
32 amounts involved in the transactions, sentence the person to prison for not
33 more than five (5) years, or impose both a fine and imprisonment.
34

35 SECTION 2. Arkansas Code § 6-21-303(a) is amended to read as follows:

36 (a)(1) The board of directors of each school district shall prescribe



1 the method of soliciting bids by regulation and may adopt other rules and
2 regulations governing the procurement of commodities.

3 (2) The board of directors of each school district shall include
4 in rules governing the procurement of commodities provisions addressing the
5 ethical guidelines and prohibitions established in §§ 6-24-101 through 6-24-
6 120.

7
8 SECTION 3. Arkansas Code § 6-21-304(a) is amended to read as follows:

9 (a) All purchases of commodities by any school district, except those
10 specifically exempted by § 6-21-305, shall be made in accordance with the
11 ethical guidelines and prohibitions established in §§ 6-24-101 through 6-24-
12 120 and as follows:

13 (1) In each instance in which the estimated purchase price shall
14 equal or exceed ten thousand dollars (\$10,000), the commodity shall be
15 procured by soliciting bids, provided that the purchasing official may reject
16 all bids and may purchase the commodity by negotiating a contract. If the
17 purchasing official, after rejecting all bids, determines that the purchase
18 should be made by negotiation, then each responsible bidder who submitted a
19 bid shall be notified of the determination and shall be given a reasonable
20 opportunity to negotiate;

21 (2) Open market purchases may be made where the purchase price
22 is less than ten thousand dollars (\$10,000); and

23 (3) No purchasing official shall parcel or split any item or
24 items with the intent or purpose to enable the purchase to be made under a
25 less restrictive procedure.

26
27 SECTION 4. Arkansas Code § 6-21-305 is amended to read as follows:

28 6-21-305. Exemptions from bidding requirements.

29 (a) The following commodities may be purchased without soliciting
30 bids:

31 (1)(A) Commodities in instances of an unforeseen and unavoidable
32 emergency.

33 (B) Provided, no emergency purchase shall be approved by
34 the superintendent unless a statement in writing shall be attached to the
35 purchase order describing the emergency necessitating the purchase of the
36 commodity without competitive bidding;

1 (2) Commodities available only from the federal government;

2 (3) Utility services, the rates for which are subject to
 3 regulation by a state agency or a federal regulatory agency;

4 (4)(A) With the exception of used school buses, used equipment
 5 and machinery+.

6 (B) The purchase of used equipment and machinery shall not
 7 be completed unless the purchasing official attaches to the purchase order a
 8 written statement indicating that the purchase complies with §§ 6-24-101
 9 through 6-24-120; and

10 (5)(A) Commodities available only from a single source.

11 (B) A single source purchase shall not be completed unless
 12 the purchasing official attaches to the purchase order a written statement
 13 indicating that the purchase complies with §§ 6-24-101 through 6-24-120.

14 (b) ~~However,~~ In addition, the purchasing official must determine in
 15 writing that it is not practicable to use other than the required or
 16 designated commodity or service, and a copy of this statement shall be
 17 attached to the purchase order.

18
 19 SECTION 5. Arkansas Code § 6-24-101(c) is amended to read as follows:

20 (c) It is the specific intent of this chapter to prohibit self-dealing
 21 in transactions between public educational entities and board members,
 22 administrators, ~~or~~ employees, or contractors and subcontractors.

23
 24 SECTION 6. Arkansas Code § 6-24-102 is amended to read as follows:
 25 6-24-102. Definitions.

26 Unless otherwise specifically stated herein, the term:

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

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

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

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

35 (5) "Commodities" means all supplies, goods, material,
 36 equipment, computers, software, machinery, facilities, personal property, and

1 services, other than personal and professional services, purchased for or on
2 behalf of a public educational entity;

3 (6) "Contract" means any transaction or agreement for the
4 purchase, lease, transfer, or use of real property or personal property and
5 personal or professional services, including, but not limited to, motor
6 vehicles, equipment, commodities, materials, services, computers or other
7 electronics, construction, capital improvements, deposits, and investments;

8 (7) "Contractor" means any person or entity having a contract
9 with a public educational entity;

10 ~~(7)~~(8) "Directly" or "directly interested" means receiving
11 compensation or other benefits personally or to a business or other entity in
12 which the individual has a financial interest;

13 ~~(8)~~(9) "Director" means the Director of the Department of
14 Education or his or her designee;

15 ~~(9)~~(10) "Emergency purchase" means purchases mandated by
16 unforeseen and unavoidable circumstances in which human life, health, or
17 public property is in immediate jeopardy and the expenditure is necessary to
18 preserve life, health, or public property;

19 ~~(10)~~(11) "Employee" means a full-time employee or part-time
20 employee of a public educational entity;

21 ~~(11)~~(12) "Family" or "family members" means:

22 (A) An individual's spouse;

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

24 (C) A child's spouse;

25 (D) Parents of the individual or the individual's spouse;

26 (E) Brothers and sisters of the individual or the
27 individual's spouse;

28 (F) Grandparents of the individual or the individual's
29 spouse;

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

32 ~~(G)~~(H) Anyone acting or serving as an agent of the
33 individual;

34 ~~(12)~~(13)(A) "Financial interest" in a business or other entity
35 means:

36 (i) Ownership of any interest or involvement in any

1 relationship from which, or as a result of which, a person has received
 2 within the past year, or is presently or in the future entitled to receive,
 3 more than one thousand dollars (\$1,000) per year, or its equivalent;

4 ~~(i)~~(ii) Ownership of more than a five percent (5%)
 5 interest;

6 ~~(ii)~~(iii) Holding a position as an officer,
 7 director, trustee, partner, or other top level management; or

8 ~~(iii)~~(iv) Being an employee, agent, independent
 9 contractor, or other arrangement where the individual's compensation is based
 10 in whole or in part on transactions with the public educational entity.

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

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

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

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

23 ~~(15)~~(16)(A) "Public educational entity" means Arkansas public
 24 school districts, charter schools, educational cooperatives, or any publicly
 25 supported entity having supervision over public educational entities. ~~Public~~
 26 ~~educational entity does not include institutions of higher education.~~

27 (B) "Public educational entity" does not include
 28 institutions of higher education; ~~and~~

29 (17) "Subcontractor" means any person or entity performing work,
 30 providing personal or professional services, or providing commodities for a
 31 contractor or any tier of subcontractor of a public educational facility.

32
 33 SECTION 7. Arkansas Code § 6-24-107 is amended to read as follows:
 34 6-24-107. Employees.

35 (a) General Provision. Except as otherwise provided, it is a breach
 36 of the ethical standards of this chapter for an employee to contract with the

1 public educational entity employing him or her if the employee has knowledge
2 that he or she is directly or indirectly interested in the contract.

3 (b) Exceptions.

4 (1) Approval by Board.

5 (A) In unusual and limited circumstances, a public
6 educational entity's board may approve a contract between the public
7 educational entity and an employee, an employee's family member, or other
8 entity in which an employee has a financial interest, if the board determines
9 that the contract is in the best interest of the public educational entity.

10 (B) The approval by the public educational entity's board
11 shall be documented by written resolution after fully disclosing the reasons
12 justifying the contract in an open meeting. The resolution shall state the
13 unusual circumstances necessitating the contract and shall document the
14 restrictions and limitations of the contract.

15 (C) Any board member directly or indirectly interested in
16 the proposed contract shall leave the meeting until the voting on the issue
17 is concluded, and the absent member shall not be counted as having voted.

18 (2) Independent Approval.

19 (A) If it appears that the total transactions for a fiscal
20 year with an employee, an employee's family member, or other entity in which
21 an employee has a financial interest ~~for a fiscal year~~ total, or will total,
22 five thousand dollars (\$5,000) or more, the superintendent or other chief
23 administrator of the public educational entity shall forward the resolution
24 along with all relevant data to the Director of the Department of Education
25 for independent review and approval. The resolution and other relevant data
26 shall be furnished by certified mail with return receipt requested or other
27 method approved by the State Board of Education to assure adequate notice of
28 receipt by the Department of Education and to provide a record for the school
29 sending the approval request.

30 (B)(i) Upon review of the submitted data, the director
31 shall, within ten (10) days of receipt of the resolution and other relevant
32 data, approve or disapprove in writing the board's request.

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

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

5 (C) If approved, the director shall issue an approval
6 letter stating all relevant facts and circumstances considered and any
7 restrictions or limitations pertaining to the approval. The director may
8 grant the approval for a particular transaction or a series of related
9 transactions. However, no approval shall be granted for a period greater than
10 two (2) years.

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

15 (c) Documentation. The department and the public educational entity
16 shall maintain a record and copy of all documentation relating to
17 transactions with employees, employees' family members, and other entities in
18 which employees have a financial interest.

19 (d) Providing false or incomplete information. Any employee,
20 employee's family member, or other person knowingly furnishing false
21 information or knowingly not fully disclosing relevant information necessary
22 for a proper determination by the public educational entity or the director
23 shall be guilty of violating the provisions of this chapter.

24 (e) "Contract" defined. For the purposes of this section, the term
25 "contract" does not apply to employment contracts issued to public
26 educational entity employees or other transactions for the performance of
27 teaching or other related duties such as, but not limited to, bus driving,
28 sponsorship of clubs or activities, or working at school sponsored events.

29 ~~(f) Technology Employees. All transactions involving the purchase,~~
30 ~~lease, acquisition, or other use of computers, software, copiers, or other~~
31 ~~electronic devices from family members of an employee responsible for~~
32 ~~establishing specifications or approving purchases of such equipment shall be~~
33 ~~approved according to the requirements of this section regarding the purchase~~
34 ~~from an employee with a direct interest in the transaction.~~

35
36 SECTION 8. Arkansas Code § 6-24-110 is amended to read as follows:

1 6-24-110. General ethical standards for nonemployees.

2 (a) Any effort by a nonemployee, contractor, or subcontractor to
3 influence any public educational entity board member, administrator, or
4 employee to breach the standards of ethical conduct stated in this chapter is
5 a breach of ethical standards and punishable under the criminal penalties set
6 forth in this chapter.

7 (b) This chapter does not prohibit family members of a contractor or
8 subcontractor from being employed by the public educational entity that a
9 contractor or subcontractor serves if the board determines that the
10 employment is in the best interest of the public educational entity.

11 (c) All public educational entities shall be alert to organizational
12 conflicts of interest as well as noncompetitive practices among contractors
13 and subcontractors that may restrict or eliminate competition or otherwise
14 restrain trade.

15 (d)(1) A person who develops or drafts specifications, requirements,
16 statements of work, invitations for bids, requests for proposals, requests
17 for qualifications, or similar documents for a public educational facility
18 shall not be eligible to bid, submit proposals, statements of work or
19 qualifications, contract, or subcontract on a procurement or other similar
20 transaction for which the person developed or drafted specifications,
21 requirements, statements of work, invitations for bids, requests for
22 proposals, requests for qualifications, or other similar document. Any
23 entity in which the person has a direct or indirect financial interest shall
24 not be eligible to bid, submit proposals, statements of work or
25 qualifications, contract, or subcontract on a procurement or other similar
26 transaction for which the person developed or drafted specifications,
27 requirements, statements of work, invitations for bids, requests for
28 proposals, requests for qualifications, or other similar document.

29 (2) Before being awarded a contract with a public educational
30 entity, a contractor shall represent, in writing, that the contractor has not
31 retained and will not retain any subcontractor in violation of subsection (d)
32 of this section.

33 (3)(A) In unusual and limited circumstances, a public
34 educational entity's board may approve a contract in contravention of
35 subsection (d) of this section if the board determines that the contract is
36 in the best interest of the public educational entity.

1 (B) The public educational entity's board shall document
2 the approval by written resolution after fully disclosing the reasons
3 justifying the contract in an open meeting. The resolution shall state the
4 unusual circumstances necessitating the contract and shall document the
5 restrictions and limitations of the contract.

6 (C) Any board member directly or indirectly interested in
7 the proposed contract shall leave the meeting until the voting on the issue
8 is concluded, and the absent member shall not be counted as having voted.

9 (4)(A) If it appears the total transactions for a fiscal year
10 with a contractor or subcontractor in contravention of subsection (d) of this
11 section total, or will total, five thousand dollars (\$5,000) or more, the
12 superintendent or other chief administrator of the public educational entity
13 shall forward the resolution along with all relevant data to the Director of
14 the Department of Education for independent review and approval. The
15 resolution and other relevant data shall be furnished by certified mail with
16 return receipt requested or other method approved by the State Board of
17 Education to provide adequate notice of receipt by the Department of
18 Education and a record for the school sending the approval request.

19 (B)(i) Upon review of the submitted data, the director
20 shall, within ten (10) days of receipt of the resolution and other relevant
21 data, approve or disapprove in writing the board's request.

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

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

30 (C) If approved, the director shall issue an approval
31 letter stating all relevant facts and circumstances considered and any
32 restrictions or limitations pertaining to the approval. The director may
33 grant the approval for a particular transaction or a series of related
34 transactions. However, no approval shall be granted for a period greater
35 than two (2) years.

36 (D) No contract subject to the director's review and

1 approval shall be valid or enforceable until an approval letter has been
 2 issued by the director or the director fails to respond to the public
 3 educational entity within the time periods specified in this section.

4 (e) If a contractor or subcontractor is charged by the prosecuting
 5 attorney for a possible violation of this chapter, the public educational
 6 entity's board shall terminate any contracts with the public educational
 7 entity held by the contractor or subcontractor. The contracts shall be
 8 deemed void from the date of the action of the board.

9 (f) The department and the public educational entity shall maintain a
 10 record and copy of all documentation relating to contracts in contravention
 11 of subsection (b) of this section.

12 (g) Any contractor, subcontractor, or other person knowingly
 13 furnishing false information or knowingly not fully disclosing relevant
 14 information necessary for a proper determination by the public educational
 15 entity or the director, under this section, is guilty of a felony under § 6-
 16 24-115.

17
 18 SECTION 9. Arkansas Code § 6-24-112 is amended to read as follows:
 19 6-24-112. Gratuities and kickbacks.

20 (a) It is a breach of the ethical standards for any person to offer,
 21 give, or agree to give any board member, administrator, ~~or~~ employee,
 22 contractor, or subcontractor a gratuity or an offer of employment in
 23 connection with any contract or transaction of a public educational entity.

24 (b) It is a breach of the ethical standards for any board member,
 25 administrator, ~~or~~ employee, contractor, or subcontractor to solicit, demand,
 26 accept, or agree to accept from another person or entity a gratuity or an
 27 offer of employment in connection with any contract or transaction of a
 28 public educational entity.

29 (c) It is a breach of the ethical standards for any payment, gratuity,
 30 or offer of employment to be made by or on behalf of a person or entity as an
 31 inducement for the award of a contract or transaction with a public
 32 educational entity.

33 (d) The State Board of Education shall issue specific rules and
 34 regulations regarding educational or work-related travel, conventions,
 35 seminars, and other benefits provided by vendors.

36

1 SECTION 10. Arkansas Code § 6-24-115 is amended to read as follows:
2 6-24-115. Criminal penalties.

3 (a) Any board member, administrator, employee, ~~or non-employee,~~
4 contractor, or subcontractor who shall knowingly violate the provisions of
5 this chapter shall be guilty of a felony.

6 (b)(1) Upon pleading guilty or nolo contendere to or being found
7 guilty of violating this chapter, the court shall order restitution to the
8 public educational entity.

9 (2) In addition, the court may fine the violator in any sum not
10 to exceed the greater of ten thousand dollars (\$10,000) or double the dollar
11 amounts involved in the transactions, sentence the violator to prison for not
12 more than five (5) years, or impose both a fine and imprisonment.

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