

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
4

As Engrossed: H2/25/05

A Bill

HOUSE BILL 1867

5 By: Representatives Mahony, Blount, Bradford, Chesterfield, Elliott, Fite, J. Johnson, Saunders
6
7

For An Act To Be Entitled

9 AN ACT TO RESTRICT SCHOOL DISTRICTS FROM
10 EMPLOYING RELATIVES OF BOARD MEMBERS; AND FOR
11 OTHER PURPOSES.
12

Subtitle

14 AN ACT TO RESTRICT SCHOOL DISTRICTS FROM
15 EMPLOYING RELATIVES OF BOARD MEMBERS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 6-24-102 is amended to read as follows:
21 6-24-102. Definitions.

22 Unless otherwise specifically stated herein, the term:

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

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

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

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

31 (5) "Commodities" means all supplies, goods, material,
32 equipment, computers, software, machinery, facilities, personal property, and
33 services, other than personal and professional services, purchased for or on
34 behalf of a public educational entity;

35 (6) "Contract" means any transaction or agreement for the
36 purchase, lease, transfer, or use of real property or personal property and



1 personal or professional services of an independent contractor, including,
 2 but not limited to, motor vehicles, equipment, commodities, materials,
 3 services, computers or other electronics, construction, capital improvements,
 4 deposits, and investments;

5 (7) "Directly" or "directly interested" means receiving
 6 compensation ~~or other benefits~~ personally or ~~to~~ a business or other entity in
 7 which the individual has a financial interest receives compensation;

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

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

14 (10) "Employee" means a full-time employee or part-time employee
 15 of a public educational entity;

16 (11) "Employment contract" means an agreement or contract
 17 between an employer an employee in which the terms and conditions of one's
 18 employment are provided;

19 ~~(11)~~(12) "Family" or "family members" means:

20 (A) An individual's spouse;

21 (B) Children of the individual or children of the
 22 individual's spouse;

23 (C) ~~A child~~ The spouse of a child of the individual or
 24 the spouse of a child of the individual's spouse;

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

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

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

32 (G) Anyone acting or serving as an agent of the individual
 33 or acting or serving as an agent of the individual's spouse;

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

36 (i) Ownership of more than a five percent (5%)

1 interest;

2 (ii) Holding a position as an officer, director,
3 trustee, partner, or other top level management; or

4 (iii) Being an employee, agent, independent
5 contractor, or other arrangement where the individual's compensation is based
6 in whole or in part on transactions with the public educational entity.

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

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

11 ~~(13)~~(14) "Gratuity" means a payment, loan, subscription,
12 advance, deposit of money, travel, services or anything having a present
13 market value of one hundred dollars (\$100) or more, unless consideration of
14 substantially equal or greater value is received;

15 ~~(14)~~(15) "Indirectly" or "indirectly interested" means ~~receiving~~
16 ~~compensation or other benefits personally, for a family member, or for a~~
17 ~~business, or other entity in which the individual or a family member has a~~
18 financial interest will receive compensation; and

19 (16) "Initially employed" means:

20 (A) Employed in either an interim or permanent position
21 for the first time or following a severance in employment with the school
22 district; or

23 (B) A change in the terms and conditions of an existing
24 contract, excluding any renewal of a teacher contract under § 6-17-1506 or
25 renewal of a noncertified employee's contract that is required by law;

26 ~~(15)~~(A)(17)(A) "Public educational entity" means Arkansas public
27 school districts, charter schools, educational cooperatives, or any publicly
28 supported entity having supervision over public educational entities.

29 (B) "Public educational entity" does not include
30 institutions of higher education.

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32 SECTION 2. Arkansas Code § 6-24-105 is amended to read as follows:
33 6-24-105. School boards.

34 (a) General Prohibition. Except as otherwise provided, it is a breach
35 of the ethical standards of this chapter for a board member to contract with
36 the public educational entity the member serves if the board member has

1 knowledge that he or she is directly or indirectly interested in the
2 contract.

3 (b)(1)(A)(i) Employment of Family Members. This chapter does not
4 prohibit family members of board members from being employed by the public
5 educational entity the board member serves if the board determines that the
6 employment is in the best interest of the public educational entity A board
7 member's family member may not be initially employed by the public
8 educational entity the member serves during the member's tenure of service on
9 the local board for compensation in excess of five thousand dollars (\$5,000)
10 unless the Director of the Department of Education issues a letter of
11 exemption and approves the employment contract based on unusual and limited
12 circumstances and only when other options are not practical.

13 (ii) The determination of unusual and limited
14 circumstances and when other options are not practical shall be at the sole
15 discretion of the Director of the Department of Education and may be further
16 defined by rule of the State Board of Education, if the State Board of
17 Education adopts a rule for that purpose.

18 (B) A family member of a school board member who was
19 employed by the public educational entity during the school year immediately
20 preceding the election of the board member may continue employment with the
21 public educational entity under the same terms and conditions of the
22 previously executed contract and any renewal of the contract under § 6-17-
23 1506.

24 (C) Subject to the local board's written policy, a
25 qualified family member of a board member may be employed as a substitute
26 teacher, substitute cafeteria worker, or substitute bus driver for a period
27 of time not to exceed a total of thirty (30) days for the public educational
28 entity served by the board member.

29 (2)(A)(i) No employment contract that is prohibited under
30 subsection (b) of this section is valid or enforceable by any party to the
31 employment contract until approved in writing by the Director of the
32 Department of Education.

33 (ii) The Director of the Department of Education's
34 approval of an employment contract may include restrictions and limitations
35 that are by this subsection incorporated as terms or conditions of the
36 contract.

1 (B) Excluding any renewal of a contract under § 6-17-1506,
2 any change in the terms or conditions of an employment contract, a promotion,
3 or a change in employment status for a family member of a school board member
4 employed by a public educational entity that will result in an increase in
5 compensation of more than one thousand dollars (\$1,000) must be approved in
6 writing by the Director of the Department of Education before any change in
7 the terms or conditions of the employment contract or promotion or changes in
8 employment status are effective, valid, or enforceable.

9 (c) Exceptions.

10 (1) Board Approval.

11 (A)(i) In unusual and limited circumstances, a public
12 educational entity's board may approve a contract, but not an employment
13 contract, between the public educational entity and the board member or the
14 member's family if the board determines that the contract is in the best
15 interest of the public educational entity.

16 (ii) In unusual and limited circumstances, a public
17 educational entity's board may approve an employment contract as provided in
18 this section.

19 (B) The approval by the public educational entity's board
20 shall be documented by written resolution after fully disclosing the reasons
21 justifying the contract or employment contract in an open meeting. The
22 resolution shall state the unusual or limited circumstances necessitating the
23 contract or employment contract and shall document the restrictions and
24 limitations of the contract or employment contract.

25 (C) ~~Any~~ If any proposed contract or employment contract is
26 with a family member of a board member or a board member directly or
27 indirectly interested in the proposed contract or employment contract, then
28 the board member shall leave the meeting until the voting on the issue is
29 concluded, and the absent member shall not be counted as having voted.

30 (2) Independent Approval.

31 (A) If it appears the total transactions or contracts with
32 the board member or a family member for a fiscal year total, or will total,
33 five thousand dollars (\$5,000) or more, the superintendent or other chief
34 administrator of the public educational entity shall forward the resolution
35 along with all relevant data to the Director of the Department of Education
36 for independent review and approval. The resolution and other relevant data

1 shall be furnished by certified mail with return receipt requested or other
2 method approved by the State Board of Education to assure adequate notice of
3 receipt by the Department of Education and to provide a record for the school
4 sending the approval request.

5 (B)(i)(a) Upon review of the submitted data for any
6 contract, excluding an employment contract as provided in subsection (b) of
7 this section, the director shall, within ten (10) days of receipt of the
8 resolution and other relevant data, approve or disapprove in writing the
9 board's request.

10 (b) Upon review of the submitted data for any
11 employment contract as provided in subsection (b) of this section, the
12 director shall, within sixty (60) days of receipt of the resolution and other
13 relevant data, approve or disapprove in writing the board's request.

14 (ii) The director may request additional information
15 or testimony before ruling on a request. If additional data is needed for a
16 proper determination, the director shall approve or disapprove the contract
17 within ten (10) days of receipt of the additional requested data or within
18 sixty (60) days of receipt of the additional requested data for employment
19 contracts.

20 (iii) If the director does not respond to the public
21 educational entity within the ten-day period for contracts or the sixty-day
22 period for employment contracts or request additional time or data for a
23 proper review of the contract excluding an employment contract that is
24 prohibited under subsection (b) of this section, the contract shall be deemed
25 to be approved by the director.

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

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

36 (d) Records. The department and the public educational entity shall

1 maintain a record and copy of all documentation relating to transactions or
2 contracts with board members or members of their family.

3 (e) Providing false or incomplete information. Any board member or
4 other person knowingly furnishing false information or knowingly not fully
5 disclosing relevant information necessary for a proper determination by the
6 public educational entity or the director shall be guilty of violating the
7 provisions of this chapter.

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9 SECTION 3. The provisions of this act shall be applicable to any
10 employment contract entered into with a public educational entity on February
11 21, 2005, and thereafter.

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13 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
14 General Assembly of the State of Arkansas that public educational entities
15 will need to have sufficient time to hire personnel necessary for the
16 upcoming school year; that public educational entities and employees need
17 clarity in the law to ensure their ability to enter into contracts; and that
18 this act is immediately necessary because public educational entities will be
19 entering into employment contracts on May 1 for the 2005-2006 school year.
20 Therefore, an emergency is declared to exist and this act being immediately
21 necessary for the preservation of the public peace, health, and safety shall
22 become effective on:

23 (1) The date of its approval by the Governor;

24 (2) If the bill is neither approved nor vetoed by the Governor,
25 the expiration of the period of time during which the Governor may veto the
26 bill; or

27 (3) If the bill is vetoed by the Governor and the veto is
28 overridden, the date the last house overrides the veto.

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30 /s/ Mahony, et al
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