

ARKANSAS LOTTERY

OUTLINE



Provided by the Legal Division
of the
Bureau of Legislative Research

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PART ONE

**ARKANSAS LOTTERY
COMMISSION**

BACKGROUND

PURPOSE OF THE ARKANSAS LOTTERY COMMISSION

The purpose of the Arkansas Lottery Commission is to oversee the operation of a lottery whose net proceeds will provide scholarships and grants to Arkansas citizens for in-state colleges and universities. Scholarships are to be available for nonprofit, public and private, two and four-year colleges and universities. The commission may establish and oversee one or more lotteries to fund the scholarships as well as to fund the commission operations. A.C.A. §§ 23-115-102 and 23-115-801(a)(2)(A).

Under A.C.A. § 23-115-102, the lotteries are to be operated and managed in a manner that:

- Provides continuing entertainment to the public
- Maximizes the revenue generated
- Preserves the integrity and dignity of the process
- Accounts to the public and the General Assembly through reports and audits

TYPES OF LOTTERIES

The Arkansas Lottery Commission may choose the type of lottery or lotteries for the state. For example, the lottery may involve an instant scratch game ticket, a ticket purchase for a later public drawing, or a multistate game. A.C.A. §§ 23-115-103(12)(B), 23-115-201, and 23-115-207(a). The public will purchase the tickets from commission-authorized retailers in the state. A.C.A. § 23-115-402.

Common names for interstate lotteries include "Powerball", "Hot Lotto" and "Mega Millions".

A lottery under the Arkansas Scholarship Lottery Act does not include:

- Casino gambling A.C.A. § 23-115-103(4)
- Video lottery A.C.A. § 23-115-103(12)(C)
- Pari-mutuel wagering on horse racing A.C.A. § 23-110-101 et seq.
- Pari-mutuel wagering on greyhound racing A.C.A. § 23-111-101 et seq.
- Electronic games of skill under the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, A.C.A. § 23-113-101 et seq.
- Charitable bingo and raffles A.C.A. § 23-114-101 et seq.

ARKANSAS LOTTERY COMMISSION MEMBERS

The Arkansas Lottery Commission is composed of nine (9) voting members, appointed as follows:

- Three (3) members appointed by the Governor
- Three (3) members appointed by the Speaker of the House of Representatives
- Three (3) members appointed by the President Pro Tempore of the Senate

A commission member may be removed by the person who appointed him or her for:

- Misconduct
- Incompetence
- Any malfeasance in office

A.C.A. §§ 23-115-201 – 203.

ARKANSAS LOTTERY COMMISSION FUNDING

The Arkansas Lottery Commission is a self-supporting and revenue-raising agency of the state. A.C.A. § 23-115-201(b).

The commission is initially funded with an appropriation of six million dollars (\$6,000,000) for personal services and operating expenses of the commission for fiscal year ending June 30, 2009. This money is a loan from the state Budget Stabilization Trust Fund to the commission for start-up costs. The balance of any monies remaining on June 30, 2009, may be carried forward and are available for the commission to use for fiscal year 2009-2010. The loan must be repaid to the state and credited to the Budget Stabilization Trust Fund once lottery proceeds are generated. Act 1300 of 2009 § 3. Act 1237 of 2009.

For fiscal year 2009-2010, ending June 30, 2010, an appropriation of nine million five hundred thousand dollars (\$9,500,000) provides the commission with the authority to spend up to that amount, but does not fund that amount from state revenues. The unfunded appropriation is authorized to provide the commission with additional flexibility during startup.

Once the lottery is operating and receiving proceeds from sales of lottery tickets, the commission is a self-supporting agency and shall reimburse other governmental entities that provide goods or services to the commission. A.C.A. § 23-115-201(c).

All lottery proceeds are to be deposited into the Lottery Commission Trust Fund to be administered by the commission. A.C.A. § 23-115-205(a)(21).

EXPENDITURES

Before spending any funds, the commission will need to appoint a temporary dispersing officer to approve the expenditure of the funds.

The Office of Accounting Service Bureau of the Department of Finance and Administration, may provide general assistance to the commission until the commission is adequately staffed. Among the services that the DFA Service Bureau provides are:

- Data entry and reconciliation of cash receipts
- Expenditures and fixed asset recording
- Distribution of monthly accounting reports

ARKANSAS LOTTERY COMMISSION AS A STATE AGENCY

The Arkansas Lottery Commission is a state agency and is required to follow state laws regarding the operation of the commission. A.C.A. § 23-115-201(b). Because of the commission's unique nature, the commission may have special reporting, rulemaking, or contract procurement requirements.

Certain sections of Arkansas law that require reporting, rulemaking, or contract procurement that apply to other state agencies do not apply the commission. For instance, A.C.A. § 10-3-309, regarding the review of state agency rules, §§ 19-1-211, 19-1-301 et seq., 19-1-609, 19-4-1802, 19-5-206, 19-11-301 et seq., regarding fiscal reporting requirements, fund management and contract procurement, §§ 22-9-103, 22-9-104, regarding expenditures for construction, and §§ 25-1-104, 25-26-201 et seq, and 25-27-104, regarding reporting requirements and technology access.

Instead, the commission is required to submit reports to the Arkansas Lottery Legislative Oversight Committee to review. These reports involve accounting of commission expenditures and funds, procedures for procurement of certain contracts, review of rules, and procedures for expenditure of moneys for construction, among others. A.C.A. § 23-115-1101(d).

ARKANSAS LOTTERY COMMISSION STAFF

The initial Arkansas Lottery Commission staff may consist of twenty (20) employees, with the opportunity to expand the staff as needed up to an additional seventy-five (75) employees. A.C.A. §§ 23-115-305 and 23-115-307. The commission hires the director and an internal auditor. A.C.A. § 23-115-205(a)(11). The director hires the commission staff. A.C.A. § 23-115-302 (b)(4).

SPECIAL SALARY ALLOWANCES

There are special salary allowances for the director, the internal auditor, and the chief operating officer. The total compensation for a position subject to a special salary allowance shall not exceed an amount equal to two and one-half (2 1/2) times the salary for the position authorized by the General Assembly. A.C.A. § 23-115-306.

If the commission chooses to utilize the special salary allowance for a position, the Arkansas Lottery Commission Legislative Oversight Committee is first required to approve the action before the special salary allowance is granted. If the requirement for approval by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, then that requirement is no longer necessary. A.C.A. § 23-115-306(c)(2).

INITIAL STAFF

Item No.	Class Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate
(01)		LOTTERY CMSN DIRECTOR	1	\$141,603
(02)		LOTTERY CMSN INTERNAL AUDITOR	1	\$141,603
(03)		LOTTERY CMSN CHIEF OPERATING OFFICER	1	\$126,050
(04)		LOTTERY CMSN INFORMATION TECH DIR	1	GRADE N912
(05)		LOTTERY CMSN ADMIN & OPERATIONS DIR	1	GRADE N912
(06)		LOTTERY CMSN CHIEF LEGAL COUNSEL	1	GRADE N910
(07)		LOTTERY CMSN CHIEF FISCAL OFFICER	1	GRADE N910
(08)		LOTTERY CMSN MARKETING & PROD DEV DIR	1	GRADE N909
(09)		LOTTERY CMSN SALES/RETAIL RELATIONS DIR	1	GRADE N909
(10)		LOTTERY CMSN PROCUREMENT DIRECTOR	1	GRADE N908
(11)		LOTTERY CMSN ADMIN ANALYST	2	GRADE C115
(12)		LOTTERY CMSN ADMIN SUPPORT SUPERVISOR	2	GRADE C113
(13)		LOTTERY CMSN ADMIN SUPPORT SPEC III	6	GRADE C112

EXPANDED STAFF

The commission is authorized to expand the staff by an additional seventy-five (75) positions to address growth needs. Sixty (60) of those positions are career service grade positions and the remaining fifteen (15) of the positions are professional and executive grade. A.C.A. § 23-115-307.

TEMPORARY STAFFING

Under Acts 605 and 606 of 2009, as amended by Act 1405 of 2009, the commission may request the Bureau of Legislative Research to provide temporary staffing for the commission. The staffing includes research, legal, and administrative support. The staffing by the bureau expires on September 1, 2009.

AUDITING AND ACCOUNTING

The Arkansas Scholarship Lottery Act contains many auditing and accounting requirements, including requirements for an internal auditing system designed to detect and prevent fraud, such as:

- Employing an internal auditor to establish internal controls and procedures to fully account for the lottery proceeds and commission expenditures A.C.A. § 23-115-206
- Providing monthly reports and an annual report to the Governor and the Lottery Commission Legislative Oversight Committee A.C.A. § 23-115-206(a)(8)
- Conducting annual audits of the commission by the Division of Legislative Audit A.C.A. § 23-115-206(b)

RESEARCH AND RESOURCES

The Arkansas Lottery Commission may utilize the Bureau of Legislative Research as a temporary research and resource staff for the commission. The staffing includes research, legal, and administrative support. The staffing by the bureau expires on September 1, 2009. Acts 605 and 606 of 2009, as amended by Act 1405.

OTHER STATES AS A RESOURCE

Forty-three (43) states have lotteries, including neighboring states Louisiana, Oklahoma, Missouri, Texas, and Tennessee. Regionally, Mississippi and Alabama are the only states that do not currently have a lottery.

COMPANIES THAT ADMINISTER LOTTERY GAMES

There are private companies, or lottery vendors, that administer, manage, and market lotteries in the United States and worldwide. These companies offer to tailor the lottery program to the commission's objectives.

LOTTERY ASSOCIATIONS AND LOTTERY CONSULTANTS

There are gaming standards associations and consultants whose purpose is to facilitate the development, promotion, and implementation of standards for lottery commissions as well as to share information and ideas for innovative lottery games, marketing, and education of the public about the lottery.

ETHICS

Arkansas Lottery Commission members and employees, retailers, and vendors must adhere to a code of ethics and are subject to a state and federal criminal background check. A.C.A. §§ 23-115-203, 23-115-301(b) – (c), 23-115-303, 23-115-501, 23-115-605.

Standards of moral and ethical behavior for commissioners, commission employees, and vendors are delineated in the Arkansas Scholarship Lottery Act, including the prohibition of:

- A financial conflict of interest with a gaming retailer or lottery vendor
- Nepotism
- Prior history of felony or gambling offenses
- Moral turpitude

A.C.A. § 23-115-203(c).

There are provisions in the act to discourage commission members from a conflict of interest or undue influence after completing a term as a commission member. For instance, a commission member is prohibited from:

- Representing a vendor or retailer before the commission for a period of two (2) years after the end of the former member's term
- Lobbying on any matter related to the operation or conduct of lotteries for a period of two (2) years after the end of the former member's term

A.C.A. § 23-115-203(e).

FREEDOM OF INFORMATION ACT

The Arkansas Lottery Commission must comply with the state Freedom of Information Act of 1967, § 25-19-101 et seq. when disclosing information to the public. A.C.A. § 23-115-404.

Certain information is exempt from FOI:

- Information regarding security for lottery games and operations
- Information provided under an agreement with the United States Government, a law enforcement agency, a lottery regulation agency, or a gaming enforcement agency of another jurisdiction that provides for and regulates the use of the information
- A scholarship applicant's personal information

The Division of Legislative Audit shall have access to all the records of the commission, including information that is otherwise exempt from FOI. A.C.A. § 23-115-404(b).

A copy of the Freedom of Information Act of 1967, § 25-19-101 et seq. is provided in Appendix A.

EQUAL EMPLOYMENT OPPORTUNITY LAWS

The Arkansas Lottery Commission is subject to state equal employment opportunity laws. The Arkansas Scholarship Lottery Act also prescribes accountability for balanced racial and gender hiring of commission staff, lottery vendors, and contractors through reports and advertising. A.C.A. §§ 23-115-203(a), 23-115-204(a)(2), 23-115-206(a)(10), and 23-115-401.

Arkansas's equal opportunity laws are attached as Appendix B.

PART TWO

ARKANSAS LOTTERY COMMISSION

POWERS AND ACTIONS

**ARKANSAS LOTTERY COMMISSION POWERS
GENERALLY**

The Arkansas Lottery Commission has broad authority to engage in all conduct necessary to engage and operate a lottery and to regulate its affairs. A.C.A. § 23-115-205.

The commission may delegate to one (1) or more of its members, to the Director of the Arkansas Lottery Commission, or to any agent or employee of the commission powers and duties as it deems proper. A.C.A. § 23-115-205(c).

The commission also acts as a quasi-judicial body by issuing administrative orders upon hearing claims in contract or tort that are brought against the commission or its employees. A.C.A. § 23-115-208.

The commission may hire an hearing officer to hear claims and issue administrative orders concerning the decision of the director to close a retailer's business. A.C.A. § 23-115-608.

ARKANSAS LOTTERY COMMISSION ACTIONS

ELECTING A CHAIR

The commission may decide the procedure for electing a chair. The chair may be elected at the first meeting. A.C.A. § 23-115-205(a)(2) and (26).

ADOPTING RULES

The commission has broad authority to promulgate rules under the Arkansas Scholarship Lottery Act. A.C.A. § 23-115-612.

The commission has specific authority to adopt rules to:

- Regulate its affairs A.C.A. § 23-115-205(a)(2)
- Prescribe the duties of officers and employees of the commission A.C.A. § 23-115-205(a)(2)
- Regulate and operate lotteries A.C.A. § 23-115-207
- Consider claims in contract or in tort A.C.A. § 23-115-208(b)(2)
- Establish a procurement process for major procurement contracts A.C.A. § 23-115-701(c)(1)
- Verify the validity of tickets or shares claimed to win lottery prizes A.C.A. § 23-115-403(c)
- Regulate payment of claims to a lottery winner that has debt A.C.A. § 23-115-1004(f)
- Require the publication on a ticket or share of the odds of winning a particular lottery game A.C.A. § 23-115-207(b)
- Perform any function necessary or desirable for the efficient and effective operation of lotteries for the convenience of the public A.C.A. § 23-115-205(a)(26)
- Perform any other matter that the commission determines A.C.A. § 23-115-205(a)(26)

The commission files its rules with the Arkansas Lottery Commission Legislative Oversight Committee for review. A.C.A. § 23-115-207(c)(2)(B).

APPOINTING A DISPERSING OFFICER

Before expending any funds, the commission will need to appoint a temporary dispersing officer to approve the expenditure of the funds.

The Office of Accounting Service Bureau of the Department of Finance and Administration may provide general assistance to the commission until the commission is adequately staffed. Among the services that the DFA Service Bureau provides are:

- Data entry and reconciliation of cash receipts
- Expenditures and fixed asset recording
- Distribution of monthly accounting reports

If the commission chooses to utilize the DFA Service Bureau, then purchasing for the commission is provided by the Office of State Procurement and payroll is provided by the Office of Personnel Management.

HIRING A DIRECTOR

The commission hires a director to oversee the day-to-day operations of the commission staff and functions of the commission. A.C.A. §§ 23-115-301.

The director reports directly to the commission. A.C.A. §§ 23-115-205(a)(11)(A) and 23-115-301.

The commission assigns the duties of the director. These duties include hiring staff and reporting monthly to the Arkansas Lottery Commission Legislative Oversight Committee. A.C.A. §§ 23-115-301 and 302.

The director appoints a Lottery Retailer Advisory Board to advise the commission on retail aspects of lotteries and present the concerns of retailers throughout the state. A.C.A. § 23-115-204.

HIRING AN INTERNAL AUDITOR

The commission hires an internal auditor and determines the duties and responsibilities of the internal auditor. A.C.A. § 23-115-205(a)(11)(B).

The internal auditor reports directly to the commission. A.C.A. § 23-115-205(a)(11)(B)(iii).

SUBMITTING BUDGETS AND REPORTS

The commission submits an annual operating budget for the next fiscal year to the Arkansas Lottery Commission Legislative Oversight Committee by April 30 of each year. A.C.A. § 23-115-206(a)(10).

The commission submits monthly reports to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee that disclose the total lottery revenues, prize disbursements, operating expenses, net assets, and administrative expenses of the commission during the reporting period. A.C.A. § 23-115-206(a)(8)(A).

ARKANSAS LOTTERY COMMISSION MEETINGS

The Arkansas Lottery Commission meets at least quarterly upon the call of the Chair of the Arkansas Lottery Commission. A.C.A. § 23-115-202(d)(1).

A majority of the total membership of the commission constitutes a quorum. A.C.A. § 23-115-202(e).

ARKANSAS LOTTERY COMMISSION COMPENSATION

Arkansas Lottery Commission members are not compensated for their time; however, they may receive expense reimbursement at the rate established for state employees by state travel regulations. A.C.A. § 25-16-902.

APPENDIX A

ARKANSAS FREEDOM OF INFORMATION ACT OF 1967

25-19-101. Title.

This chapter shall be known and cited as the “Freedom of Information Act of 1967”.

25-19-102. Legislative intent.

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this chapter is adopted, making it possible for them or their representatives to learn and to report fully the activities of their public officials.

25-19-103. Definitions.

As used in this chapter:

(1)(A) “Custodian”, with respect to any public record, means the person having administrative control of that record.

(B) “Custodian” does not mean a person who holds public records solely for the purposes of storage, safekeeping, or data processing for others;

(2) “Format” means the organization, arrangement, and form of electronic information for use, viewing, or storage;

(3) “Medium” means the physical form or material on which records and information may be stored or represented and may include, but is not limited to, paper, microfilm, microform, computer disks and diskettes, optical disks, and magnetic tapes;

(4) “Public meetings” means the meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds;

(5)(A) “Public records” means writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

(B) “Public records” does not mean software acquired by purchase, lease, or license;

(6)(A) “Public water system” means all facilities composing a system for the collection, treatment, and delivery of drinking water to the general public, including, but not limited to, reservoirs, pipelines, reclamation facilities, processing facilities, and distribution facilities.

(B) This subdivision (6) shall expire on July 1, 2009; and

(7) “Vulnerability assessment” means an assessment of the vulnerability of a public water system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the public water system to provide a safe and reliable supply of drinking water as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188.

25-19-104. Penalty.

Any person who negligently violates any of the provisions of this chapter shall be guilty of a Class C misdemeanor.

25-19-105. Examination and copying of public records.

(a)(1)(A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

(B)(i) However, access to inspect and copy public records of the Department of Correction and the Department of Community Correction shall be denied to:

(a) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(b) The representative of a person under subdivision (a)(1)(B)(i)(a) of this section unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

(ii) Access to inspect and copy public records of the Department of Correction and the Department of Community Correction shall be denied to a person under subdivision (a)(1)(B)(i)(a) of this section regardless of whether the records are in the possession of the Department of Correction, the Department of Community Correction, or another agency of the state.

(2)(A) A citizen may make a request to the custodian to inspect, copy, or receive copies of public records.

(B) The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

(C) The request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.

(3) If the person to whom the request is directed is not the custodian of the records, the person shall so notify the requester and identify the custodian, if known to or readily ascertainable by the person.

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax records;

(2) Medical records, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of that act;

(3) The site files and records maintained by the Arkansas Historic Preservation Program of the Department of Arkansas Heritage and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General;

(8) Documents that are protected from disclosure by order or rule of court;

(9)(A) Files that if disclosed would give advantage to competitors or bidders and records maintained by the Arkansas Economic Development Commission related to any business entity's planning, site location, expansion, operations, or product development and marketing, unless approval for release of those records is granted by the business entity.

(B) However, this exemption shall not be applicable to any records of expenditures or grants made or administered by the commission and otherwise disclosable under the provisions of this chapter;

(10)(A) The identities of law enforcement officers currently working undercover with their agencies and identified in the Arkansas Minimum Standards Office as undercover officers.

(B) Records of the number of undercover officers and agency lists are not exempt from this chapter;

(11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein;

(12) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

(13) Home addresses of nonelected state employees, nonelected municipal employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;

(14) Materials, information, examinations, and answers to examinations utilized by boards and commissions for purposes of testing applicants for licensure by state boards or commissions;

(15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date;

(16) Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the United States Environmental Protection Agency for a period of ten (10) years from the date of submission;

(17)(A) Records, including analyses, investigations, studies, reports, or recommendations, containing information relating to any Department of Human Services risk or security assessment, known or suspected security vulnerability, or safeguard related to compliance with the Health Insurance Portability and Accountability Act of 1996 or protection of other confidential department information.

(B) The records shall include:

(i) Risk and security assessments;

(ii) Plans and proposals for preventing and mitigating privacy and security risks;

(iii) Emergency response and recovery records;

(iv) Privacy and security plans and procedures; and

(v) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect personal health information or other protected department information.

(C) This subdivision (b)(17) expires on July 1, 2009; and

(18)(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings,

diagrams, blueprints, and plans, containing information relating to security for any public water system.

(B) The records shall include:

(i) Risk and vulnerability assessments;

(ii) Plans and proposals for preventing and mitigating security risks;

(iii) Emergency response and recovery records;

(iv) Security plans and procedures; and

(v) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system.

(C) This subdivision (b)(18) shall expire on July 1, 2009.

(c)(1) Notwithstanding subdivision (b)(12) of this section, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B)(i) If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period, the

custodian shall send written notice via overnight mail to the subject of the records at his or her last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

(ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d)(1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(2)(A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.

(B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

(C) A custodian is not required to compile information or create a record in response to a request made under this section.

(3)(A)(i) Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency

personnel time associated with searching for, retrieving, reviewing, or copying the records.

(ii) The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

(iii) If the estimated fee exceeds twenty-five dollars (\$25.00), the custodian may require the requester to pay that fee in advance.

(iv) Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

(B) The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.

(e) If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days at which time the record will be available for the exercise of the right given by this chapter.

(f)(1) No request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.

(2) Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.

(3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.

(4) If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, or obtain copies of public records, the custodian shall bear the cost of the separation.

(g) Any computer hardware or software acquired by an entity subject to § 25-19-103(5)(A) after July 1, 2001, shall be in full compliance with the requirements of this section and shall not impede public access to records in electronic form.

(h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, any settlement agreement entered into by a state agency shall be deemed a public document for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before

the meeting takes place in order that the public shall have representatives at the meeting.

(c)(1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee. The specific purpose of the executive session shall be announced in public before going into executive session.

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

(5)(A) Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials that are administered to applicants for licensure from state agencies.

(B) Boards and commissions are excluded from this chapter for the administering of examinations to applicants for licensure.

(6)(A) Subject to the provisions of subdivision (c)(4) of this section, any public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security as described in § 25-19-105(b)(18).

(B) This subdivision (c)(6) shall expire on July 1, 2009.

25-19-107. Appeal from denial of rights – Attorney's fees.

(a) Any citizen denied the rights granted to him or her by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved.

(b) Upon written application of the person denied the rights provided for in this chapter, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case.

(c) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(d) In any action to enforce the rights granted by this chapter, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of these expenses unjust. However, no expenses shall be assessed against the State of Arkansas or any of its agencies or

departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

25-19-108. Information for public guidance.

(a) Each state agency, board, and commission shall prepare and make available:

(1) A description of its organization, including central and field offices, the general course and method of its operations, and the established locations, including, but not limited to, telephone numbers and street, mailing, electronic mail, and Internet addresses and the methods by which the public may obtain access to public records;

(2) A list and general description of its records, including computer databases;

(3)(A) Its regulations, rules of procedure, any formally proposed changes, and all other written statements of policy or interpretations formulated, adopted, or used by the agency, board, or commission in the discharge of its functions.

(B) (i) Rules, regulations, and opinions used in this section shall refer only to substantive and material items that directly affect procedure and decision-making.

(ii) Personnel policies, procedures, and internal policies shall not be subject to the provisions of this section.

(iii) Surveys, polls, and fact-gathering for decision-making shall not be subject to the provisions of this section.

(iv) Statistical data furnished to a state agency shall be posted only after the agency has concluded its final compilation and result.

(4) All documents composing an administrative adjudication decision in a contested matter, except the parts of the decision that are expressly confidential under state or federal law; and

(5) Copies of all records, regardless of medium or format, released under § 25-19-105 which, because of the nature of their subject matter, the agency, board, or commission determines have become or are likely to become the subject of frequent requests for substantially the same records.

(b)(1) All materials made available by a state agency, board, or commission pursuant to subsection (a) of this section and created after July 1, 2003, shall be made publicly accessible, without charge, in electronic form via the Internet.

(2) It shall be a sufficient response to a request to inspect or copy the materials that they are available on the Internet at a specified location, unless the requester specifies another medium or format under § 25-19-105(d)(2)(B).

25-19-109. Special requests for electronic information.

(a)(1) At his or her discretion, a custodian may agree to summarize, compile, or tailor electronic data in a particular manner or medium and may agree to provide the data in an electronic format to which it is not readily convertible.

(2) Where the cost and time involved in complying with the requests are relatively minimal, custodians should agree to provide the data as requested.

(b)(1) If the custodian agrees to a request, the custodian may charge the actual, verifiable costs of personnel time exceeding two (2) hours associated with the tasks, in addition to copying costs authorized by § 25-19-105(d)(3).

(2) The charge for personnel time shall not exceed the salary of the lowest paid employee or contractor who, in the discretion

of the custodian, has the necessary skill and training to respond to the request.

(c) The custodian shall provide an itemized breakdown of charges under subsection (b) of this section.

APPENDIX B

EQUAL OPPORTUNITY POLICIES

19-11-104. Equal Opportunity Policy.

(a) The purpose of this section is to require any entity or person bidding on a state contract, responding to a request for proposals regarding a state contract, responding to a request for qualifications regarding a state contract, or negotiating a contract with the state for professional or consulting services to submit to the Office of State Procurement of the Department of Finance and Administration the most current equal opportunity policy of the entity or person.

(b) The office and a state agency shall require a copy of the most current equal opportunity policy of an entity or person to be filed with the office or state agency for public inspection as a condition precedent to:

(1) Accepting a letter of intent, bid, proposal, or statement of qualification with regard to a state contract from the entity or person; or

(2) Entering negotiations with the entity or person for a professional or consulting services contract with the state.

21-3-101. Equal employment hiring program.

(a) Every state agency, board, commission, institution of higher education, and every constitutional officer as defined in Arkansas Constitution, Amendment 56, § 1, shall adopt and pursue a comprehensive equal employment hiring program designed to achieve a goal of increasing the percentage of minority employees within the agency, board, commission, institution of higher education, or constitutional office to a level

that approximates the percentage of minorities in the state's population.

(b)(1) Every state agency, board, commission, institution of higher education, and constitutional officer shall report to the Legislative Council on June 30 of each year regarding its efforts to achieve its equal employment hiring program goal.

(2) However, the report required of any institution by § 6-63-103 may be used in lieu of the report required under this subsection and shall be filed as provided in this subsection.

Arkansas Economic Opportunity Expansion Act

25-36-101. Findings – Purpose.

(a) The General Assembly finds:

(1) To the extent minority-owned businesses are given fair opportunities to compete, all Arkansans benefit;

(2) During 2002, the State of Arkansas spent nine hundred million four hundred thousand dollars (\$900,400,000) procuring goods and services;

(3) Although the state possesses more than seven thousand (7,000) minority-owned businesses, less than three tenths of one percent (.03%) of state expenditures on goods and services was spent with minority-owned businesses in 2002;

(4) Small and minority-owned businesses employ forty-eight and nine tenths percent (48.9%) of the state's total employment;

(5) Seventy-two percent (72%) of all current jobs in the Delta Region of Arkansas, Louisiana, and Mississippi are provided through small and minority-owned businesses;

(6) An increase of four thousand (4,000) jobs in small, minority-owned, and medium-sized businesses would radiate

through the state to result in the creation of forty-eight thousand (48,000) new jobs;

(7) Expanding the profitability and spending power of these businesses will allow them to provide employment opportunities and to increase economic growth and development within Arkansas communities;

(8) Expansion of economic opportunity will reduce unemployment and the need for state-supported social welfare programs, while increasing the state tax base and the appeal to minority-owned businesses from other businesses within their industry for raw materials and production support; and

(9) Increased economic output and employment by minority-owned businesses will have a positive rippling impact throughout the state.

(b) This chapter is intended to expand economic opportunities for Arkansas' minority communities but is not intended to establish any quota system or program.

25-36-102. Definitions.

For the purposes of this chapter:

(1) "Minority" means the same as in § 1-2-503; and

(2) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency, institution of higher learning, or instrumentality of this state.

25-36-103. Agency contracting – Diversity.

(a) A state agency shall include in all requests for proposals and requests for qualifications, language that encourages minority participation in each request for proposals and request for qualifications issued by the state agency.

(b)(1) State agency requests for proposals and requests for qualifications shall take into consideration minority inclusion in the proposed project.

(2) Requests for proposals and requests for qualifications shall provide that an applicant unable to include minority-owned businesses may explain the circumstances preventing minority inclusion.

25-36-104. Data recording and tracking.

(a)(1) The State Procurement Director shall track data regarding minority participation in state contracts that exceed twenty-five thousand dollars (\$25,000).

(2) The data shall include, but not be limited to, information regarding:

(A) The dollar amount for each contract awarded to a minority-owned business;

(B) The total dollar amount spent on contracts by each state agency; and

(C) The number and percentage of minority-owned businesses awarded contracts by the agency.

(b) The director shall report the data required under subsection (a) of this section semiannually to the Governor and to the cochairs of the Legislative Council and to the Legislative Joint Auditing Committee and the Minority Business Advisory Council.

(c)(1) Each state agency shall include in its budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding twenty-five thousand dollars (\$25,000) awarded to minority-owned businesses.

(2) The vice president or vice chancellor for finance of each state college and university shall include in his or her budget report to the Joint Budget Committee a listing of all contracts in

amounts exceeding twenty-five thousand dollars (\$25,000) awarded to minority-owned businesses.

(d) The director shall promulgate rules and regulations necessary for the implementation of this chapter.