

Hall of the House of Representatives
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of House Bill No. 2501

"AN ACT TO AMEND THE ETHICS IN PUBLIC CONTRACTING LAWS."

Amendment No. 5 to House Bill No. 2501.

Amend House Bill No. 2501 as engrossed, H3/28/05 (version: 03-28-2005 09:24):

Page 1, delete lines 23 and 24 and substitute the following:
"personal services for any state agency;"

AND

Page 1, delete lines 29 through 33 and substitute the following:

"(1)(A) It shall be a breach of ethical standards for any employee or a member of the employee's immediate family to have a financial interest in a contract with the state agency employing the employee or a nonprofit organization created for the specific benefit of the state agency employing the employee, unless the contract:

(i) Is approved as provided in § 19-11-718; or

(ii) Obtained under competitive sealed bids or

competitive sealed proposals.

(B) An employee awarded contracts pursuant to competitive sealed bids or competitive sealed proposals shall report the contacts to the Director of the Arkansas Ethics Commission by August 1 of each year pertaining to contracts of the prior fiscal year."

AND

Page 2, line 22, after "~~Administration~~" and before "Arkansas" add "Director of the"

AND

Page 2, line 26, after "~~Administration~~" and before "Arkansas" add "Director of the"

AND

Page 2, line 28, after "~~director~~" and before "Arkansas" add "Director of the"



AND

Page 3, line 2, after "~~Administration~~" and before "Arkansas" add "Director of the"

AND

Page 4, delete lines 5 and 6 and substitute the following:

"19-11-715. Duties of Director of Department of Finance and Administration Regulations and advisory opinion by the Arkansas Ethics Commission."

AND

Page 4, line 12 delete "employees" and substitute "state agencies, employees,"

AND

Page 4, delete lines 17 through 27 and substitute the following:

~~"regulations of this state are published. Compliance with the requirements of a duly promulgated advisory opinion of the director shall be deemed to constitute compliance with the ethical standards of this subchapter.~~

~~(c) Waiver. On written request of an employee, the director may grant an employee a written waiver from the application of § 19-11-705, which refers to employee conflict of interest, and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote."~~

AND

Page 4, delete lines 35 and 36 and substitute the following:

"the rules and regulations promulgated by the governing board of the institution of higher education."

AND

Page 5, delete lines 1 and 2

AND

Page 5, line 10, delete "~~may shall~~" and substitute "may"

AND

Page 5, delete lines 17 and 18 and substitute the following:

"(c) The institution of higher education shall provide information regarding the transactions described in subdivision (b)(1) of this section and ownership interests of employees or board members in business incubators pertaining to the"

AND

Page 5, delete line 25 and substitute the following:

“19-11-717. Transactions with ~~Institutions~~ institutions of higher education involving patents, copyrights, or other proprietary information.”

AND

Page 6, delete line 6 and substitute the following:

“approved by the governing board of such institution in a public meeting.

(b)(1)(A) With respect to contracts allowed in subsection (a) of this section, nothing in the Arkansas Procurement Law, § 19-11-201 et seq. or in §§ 19-11-1001 through 19-11-1012 shall prevent a state agency from contracting for goods or services, including professional or consultant services, with an organization that employs or contracts with a regular, full-time, or part-time employee of a public institution of higher education if the employee of the institution of higher education will provide some or all of the goods or services under the contract.

(B) Any organization or state agency entering into a contract described under subsection (b) of this section shall comply with the provisions of the Arkansas Procurement Law, § 19-11-201 et seq. and §§ 19-11-1001 through 19-11-1012 to the extent that the provisions do not conflict with this section.

(2) An employee of an institution of higher education who provides goods or services to a state agency through his or her association with an organization that has a contract with the state agency to provide goods or services shall obtain the requisite approvals under the policies of the institution of higher education by which he or she is employed and comply with all provisions of this subchapter.

(c) The Arkansas Ethics Commission may promulgate rules regarding contracts as allowed in this section.”

AND

Page 6, line 7, delete “(b)” and substitute “(d)”

AND

Page 6, line 11, delete “(c)” and substitute “(e)”

AND

Page 6, line 18, after “the” and before “Arkansas” add “Director of the”

AND

Page 6, delete lines 26 through 36 and substitute the following:

“(c)(1) The Director of the Arkansas Ethics Commission shall in writing, approve, disapprove, or request additional information necessary to make a proper determination pertaining to the request in writing within ten (10) working days of receipt of the request.

(2)(A) If additional information is requested, the director shall have an additional ten (10) working days from receipt of the information to approve or disapprove the contract.

(B) If the director fails to approve or disapprove the contract within the ten (10) working day periods provided in this subdivision (c)(2), the contract shall be deemed approved.

(3) No contract subject to review by the director shall be valid or enforceable until an approval letter has been issued by the director or the director fails to respond within the time periods specified in this section.

(d) After examining the submitted information and additional requested testimony or data, the director may approve the waiver of the contract if in the opinion of the director:

(1) The circumstances are such that fair competitive access to governmental procurement has been obtained;

(2) The contract is in the best interest of the state;

(3) The state agency has followed proper procedures in bidding or awarding the contract; and

(4) It appears that an employee has not used his or her position to obtain the contract.

(e)(1) All decisions of the director may be appealed to the Arkansas Ethics Commission for review. All appeals shall be made in writing to the Arkansas Ethics Commission within thirty (30) days of disapproval by the director.

(2) Upon receipt of an appeal, the Arkansas Ethics Commission shall decide the appeal at its next commission meeting unless additional information or witnesses are required or a delay is agreed upon by the person making the appeal.

(f) All decisions of the director or the commission regarding the approval or denial shall be reported to the state agency or nonprofit organization, the Chief Fiscal Officer of the State, the Legislative Council, and the Legislative Joint Auditing Committee on a quarterly basis.

(g) No contract subject to review and approval by the director or the Arkansas Ethics Commission shall be valid or enforceable until an approval letter has been issued by the director or the Arkansas Ethics Commission.

(h) The Arkansas Ethics Commission shall adopt appropriate rules regarding the administration of the procedures contained in this subsection.

(i) Any person knowingly providing or furnishing false information or knowingly not fully disclosing relevant information necessary for a proper determination by the director or the Arkansas Ethics Commission is guilty of violating the provisions of this subchapter.”

Page 7, delete lines 1 through 17

AND

After Section 11 of the bill add the following additional sections:

“SECTION 12. Arkansas Code § 21-8-1001 is amended to read as follows:
21-8-1001. Conflicts of interest.

(a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary

interest in the matter under consideration by the board, commission, or entity.

(2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

(c)(1) Nothing in this chapter shall prohibit a board or commission member from contracting with the board or commission he or she serves if the contracts are obtained through competitive sealed bids or competitive sealed proposals.

(2) A board or commission member awarded a contract pursuant to competitive sealed bids or competitive sealed proposals shall report the contact to the Director of the Arkansas Ethics Commission by August 1 of each year pertaining to contracts of the prior fiscal year.

(d)(1) Before a contract or transaction with a member having a pecuniary interest as allowed in this section is deemed valid and enforceable, the state entity shall disclose to the Director of the Arkansas Ethics Commission the nature and amount of the contract or transaction.

(2)(A) Upon receipt of the disclosure, the Director of the Arkansas Ethics Commission has ten (10) working days to notify the state entity that additional information is needed, or to inform the state entity that the contract or transaction is disapproved.

(B) If additional information is requested, the Director of the Arkansas Ethics Commission has ten (10) additional working days from the receipt of the information to inform the state entity that the contract or transactions are disapproved.

(C) If the state entity does not receive written disapproval from the director within ten (10) working days provided in this subdivision (d)(2), the contract or transaction is deemed approved by the director.

(3) If the director disapproves the contract or transaction, the state entity may appeal the decision to the Arkansas Ethics Commission.

(4) The director may disapprove the contract or transaction if it appears that:

(A) The circumstances are such that fair competitive access to governmental procurement has not been obtained;

(B) The contract is not reasonable and equitable to the interest of the state;

(C) The state entity has not followed proper procedures in bidding or awarding the contract; or

(D) It appears that a board or commission member has used his or her position to obtain the contract.

(5)(A) If the director disapproves the contract or transaction, the state entity may appeal the decision to the Arkansas Ethics Commission.

(B) All appeals shall be made in writing to the Arkansas Ethics Commission within thirty (30) days of disapproval by the director.

(C) Upon receipt of an appeal, the Arkansas Ethics Commission shall decide the appeal at its next commission meeting unless additional information or witnesses are required or a delay is agreed upon by the state agency making the appeal.

(e) On a quarterly basis, the director shall notify the Chief Fiscal Officer of the State, the Legislative Council, and the Legislative Joint Auditing Committee of all contracts or transactions disclosed to the Director for review pursuant to the terms of this section.

SECTION 13. Arkansas Code 21-8-1004 is amended to read as follows:

§ 21-8-1004. Penalties - Investigation by Arkansas Ethics Commission.

(a) In addition to any penalty contained in any other provision of law, including, but not limited to, § 19-11-702, any member of a state board or commission or board member of an entity receiving state funds who knowingly and intentionally violates any of the provisions of this subchapter may be removed from office by the appointing authority.

(b) The Arkansas Ethics Commission may investigate complaints alleging a violation of this subchapter and may make recommendations to the appointing authority.

The Amendment was read _____
By: Representative Mahony
JDF/JDF - 03-30-2005 12:03
JDF447

Chief Clerk