

Hall of the House of Representatives

86th General Assembly - Regular Session, 2007

Amendment Form

Subtitle of House Bill No. 2723

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

Amendment No. 1 to House Bill No. 2723.

Amend House Bill No. 2723 as originally introduced:

Delete everything following the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 19-11-705 is amended to read as follows:
19-11-705. Employee conflict of interest.

(a)~~(1)~~ Conflict of Interest.

(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 § 19-11-717 or § 19-11-718; or

(ii) Obtained under competitive sealed bids under § 19-11-229 or competitive sealed proposals under § 19-11-230.

(B) An employee awarded a contract pursuant to competitive sealed bids or competitive sealed proposals pertaining to contracts entered into during the previous calendar year shall report the contract to the Director of the Arkansas Ethics Commission by January 31 of each year.

(2) It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application, in any request for ruling or other determination, in any claim or controversy, or in any other particular matter pertaining to any contract or subcontract, and any solicitation or proposal therefor with a state agency, in which to the employee's knowledge:

(A) The employee or any member of the employee's immediate family has a financial interest;

(B) A business or organization has a financial interest, in which business or organization the employee, or any member of the employee's immediate family, has a financial interest; or

(C) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is a party.

~~(2)~~(3) "Direct or indirect participation" shall include, but not be limited to, involvement through decision, approval, disapproval,



recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(b) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest if disclosure of the existence of the blind trust has been made to the ~~Director of the Department of Finance and Administration~~ director.

(c) Discovery of Conflict of Interest, Disqualification, and Waiver. Upon discovery of a possible conflict of interest, an employee shall promptly file a written statement of disqualification with the ~~Director of the Department of Finance and Administration~~ director and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the director in accordance with § 19-11-715(b) for an advisory opinion as to what further application, if any, the employee may have in the transaction, or for a waiver in accordance with § 19-11-715(c).

SECTION 2. Arkansas Code § 19-11-706 is amended to read as follows:
19-11-706. Employee disclosure requirements.

(a) Disclosure of Benefit Received from Contract. Any employee who has or obtains any benefit from any state contract with a business in which the employee has a financial interest shall report such benefit to the ~~Director of the Department of Finance and Administration~~ Director of the Arkansas Ethics Commission by January 31 for transactions occurring in or contracts entered into during the previous calendar year. However, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(b) Failure to Disclosure Benefit Received. Any employee who knows or should have known of such benefit and fails to report the benefit to the ~~director~~ Arkansas Ethics Commission is in breach of the ethical standards of this section.

SECTION 3. Arkansas Code § 19-11-712(b), pertaining to the civil and administrative remedies against employees who breach ethical standards, is amended to read as follows:

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this subchapter, or ~~regulations~~ rules promulgated thereunder, the ~~Director of the Department of Finance and Administration~~ Arkansas Ethics Commission may ~~impose~~ recommend any one (1) or more of the following:

- (1) Oral or written warnings or reprimands;
- (2) Forfeiture of pay without suspension;
- (3) Suspension with or without pay for specified periods of time; and
- (4) Termination of employment.

SECTION 4. Arkansas Code § 19-11-713(b), pertaining to the civil and administrative remedies against nonemployees who breach ethical standards, is amended to read as follows:

(b) Supplemental Remedies. In addition to the existing remedies for breach of the ethical standards of this subchapter, or ~~regulations~~ rules

promulgated thereunder, the ~~Director of the Department of Finance and Administration~~ Arkansas Ethics Commission may ~~impose~~ recommend any one (1) or more of the following:

- (1) Oral or written warnings or reprimands;
- (2) Termination of transactions; and
- (3) Suspension or debarment from being a contractor or subcontractor under state contracts.

SECTION 5. Arkansas Code § 19-11-715 is amended to read as follows:

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

(a) ~~Regulations~~ Rules. The ~~Director of the Department of Finance and Administration~~ Arkansas Ethics Commission shall promulgate ~~regulations~~ rules to implement this subchapter and shall do so in accordance with this subchapter and the applicable provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Advisory Opinions. On written request of state agencies, employees, or contractors and in consultation with the Attorney General, the ~~director~~ Arkansas Ethics Commission may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions may be duly published in the manner in which ~~regulations~~ rules 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.~~

SECTION 6. Arkansas Code § 19-11-716 is amended to read as follows:

19-11-716. Participation in business incubators – ~~Regulations~~ Rules and guidelines.

(a) The provisions of this subchapter shall not be applicable to faculty or staff of state-supported institutions of higher education participating in business incubators within this state if the faculty or staff have followed the rules promulgated by the governing board of the institution of higher education.

(b)(1) The ~~Director of the Department of Finance and Administration~~ Arkansas Ethics Commission shall promulgate rules ~~and regulations~~ pursuant to the procedure for adoption as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and under § 10-3-309 to implement a program allowing admittance to business incubators by faculty or staff of state-supported institutions of higher education or admittance by companies in which faculty or staff may hold an ownership interest.

(2) The program may include guidelines setting forth full disclosure requirements, any limitations on ownership interests, maximum income amounts to be received, annual reporting to the General Assembly, mandatory levels of student participation and such other reasonable restrictions as are necessary to maintain the public trust while encouraging

the facilitation of commercialization of university-generated technology or discovery.

(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 prior fiscal year by August 1 of each year to the Arkansas Ethics Commission, the Legislative Council, and the Legislative Joint Auditing Committee.

(d) Failure to follow the provisions of this section shall be a violation of the provisions of this chapter.

SECTION 7. Arkansas Code § 19-11-717 is amended to read as follows:

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

~~(a) Notwithstanding anything in this subchapter to the contrary, if, in either of the events in subdivisions (a)(1) and (2) of this section, the contract or subcontract, solicitation, or proposal involves patents, copyrights, or other proprietary information in which an institution of higher education and an employee or former employee of the institution have rights or interests, provided that any contract or subcontract shall be approved by the governing board of the institution in a public meeting, it shall not be a violation of § 19-11-709, a conflict of interest, or a breach of ethical standards for:~~

~~(1) The institution to contract with a person or firm in which an employee or former employee of the institution has a financial interest; or~~

~~(2) The employee or former employee of the institution to participate directly or indirectly in any matter pertaining to any contract or subcontract or any solicitation or proposal for any contract or subcontract between the institution and a person or firm in which the employee or former employee has a financial interest. If a contract or subcontract, solicitation, or proposal involves patents, copyrights, or other proprietary information in which an institution of higher education and an employee or former employee have direct or indirect rights or interests, an institution may enter the contract, except that any contract or subcontract shall be approved by the governing board of the institution in a public meeting.~~

(b)(1) Nothing in the Arkansas Procurement Law, § 19-11-201 et seq., or in § 19-11-1001 et seq., 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 in situations in which the employee of the public institution of higher education will provide some or all of the goods or services under the contract.

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

(3) An employee of a public 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 public 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.

(d) The institution of higher education shall provide information regarding these transactions pertaining to the prior fiscal year by August 1 of each year to the Arkansas Ethics Commission, the Legislative Council, and the Legislative Joint Auditing Committee.

(e) Failure to follow the provisions of this section shall be a violation of the provisions of this chapter.

SECTION 8. Arkansas Code Title 19, Chapter 11, Subchapter 7 is amended to add an additional section to read as follows:

19-11-718. Issuance of waivers by the Arkansas Ethics Commission.

(a) A state agency or a nonprofit organization created for the specific benefit of a state agency may file a request with the Director of the Arkansas Ethics Commission to review a contract between the state agency or nonprofit organization and an employee of that state agency or nonprofit organization or a member of the employee's immediate family and to request a waiver for the contract from the provisions of this subchapter.

(b) The request shall fully disclose all pertinent terms and conditions of the contract and shall state the unusual circumstances necessitating and justifying the contract.

(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 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 if 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 Arkansas Ethics Commission regarding the approval or denial of a contract 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.

SECTION 9. Arkansas Code § 19-11-1004(c), pertaining to restrictions on contracts, is amended to read as follows:

(c)(1) Except as provided in this subsection, no state agency shall engage in a professional services or consultant services contract with a part-time or full-time employee who occupies a position authorized to be paid from extra help or regular salaries for a state agency, except as provided in § 21-1-403.

(2) However, this subsection does not prohibit an institution of higher education from executing a contract with a state agency under which professional or consulting services will be performed by employees of the institution of higher education.

(3) An employee of an institution of higher education performing professional or consulting services to a state agency may receive additional compensation if:

(A) The institution of higher education requests and receives written approval from the Office of Personnel Management of the Department of Finance and Administration concerning the amount of additional compensation to be paid to any employee; and

(B) The total salary payments received from the employee's regular salaried position and amounts received for services performed under a professional services contract do not exceed one hundred twenty-five percent (125%) of the maximum annual salary authorized by law for the employee's position with the institution of higher education.

(4) Any state agency engaging in a professional services or consultant services contract as provided in subdivisions (c)(2) or (c)(3) of this section shall provide a listing of such contracts for the previous year, including without limitation the amounts paid and the person or persons performing the services, to the Legislative Council and the Legislative Joint Auditing Committee by January 31 of each year.

SECTION 10. Arkansas Code Title 19, Chapter 11, Subchapter 7 is amended to add an additional section to read as follows:

19-11-718. Enforcement.

The Arkansas Ethics Commission shall have the authority to:

- (1) Issue advisory opinions and guidelines on the requirements of § 19-11-701 et seq.;
- (2) Investigate potential violations of § 19-11-701 et seq.;
- (3) Impose civil and administrative remedies as provided in §§ 19-11-712 and 19-11-713 upon the finding of one (1) or more violations of § 19-11-701 et seq; and
- (4) Promulgate reasonable rules to implement and administer the requirements of § 19-11-701 et seq.

SECTION 11. 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 or receiving other funds through a state agency 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 or receiving other funds through a state agency 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 on which he or she serves if the contracts are obtained through competitive sealed bids under § 19-11-229 or competitive sealed proposals under § 19-11-230.

(2) A board or commission member awarded a contract pursuant to competitive sealed bids or competitive sealed proposals shall report the contract to the Director of the Arkansas Ethics Commission by January 31 of each year pertaining to contracts entered into during the previous calendar year.

(d)(1) Except for contracts covered under subdivision (c)(1) of this section, 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 the nature and amount of the contract or transaction.

(2)(A) Upon receipt of the disclosure, the director 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 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 director does not send the state entity written notice of the disapproval of the contract or transaction within ten (10) working days, 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) There is no rational basis for the award of the contract to the member;

(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 12. 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 without limitation § 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 Petrus
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Chief Clerk