

1 INTERIM STUDY PROPOSAL 2011-095

2 State of Arkansas

*As Engrossed: H3/10/11 H3/22/11*

3 88th General Assembly

# A Bill

4 Regular Session, 2011

HOUSE BILL 1251

5  
6 By: Representatives Nickels, *Lea, Lindsey*

7 *By: Senator M. Lamoureux*

8 Filed with: Interim Joint Committee on Public Retirement & Social Security Programs  
9 pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

10 AN ACT CONCERNING STATE AGENCY EMPLOYEE GRIEVANCES;  
11 TO PROVIDE THE POSSIBILITY OF RELIEF FOR EMPLOYEES  
12 WITH GROUNDS FOR A GRIEVANCE, INCLUDING WITHOUT  
13 LIMITATION THE RECEIPT OF CREDIT UNDER AN APPLICABLE  
14 RETIREMENT SYSTEM; AND FOR OTHER PURPOSES.  
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## Subtitle

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18 AN ACT CONCERNING STATE EMPLOYEE  
19 GRIEVANCES AND POSSIBLE RELIEF FOR  
20 GRIEVANCES, INCLUDING WITHOUT LIMITATION  
21 CREDIT UNDER A RETIREMENT SYSTEM.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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27 *SECTION 1. Arkansas Code § 16-7-104(8) and (9), concerning the powers and duties of the Arkansas  
28 Alternative Dispute Resolution Commission, are amended to read as follows:*

29 *(8) Apply for and accept gifts or grants from any public or private source for use in maintaining  
30 and improving alternative dispute resolution programs in the state; ~~and~~*

31 *(9) Collect fees for tuition and registration of educational programs ~~and to assist in maintaining a~~  
32 ~~roster of third party neutrals.;~~*

33 *(10) Collect fees and assess fines to assist in maintaining rosters of third-party neutrals;*

34 *(11) Establish rules for the certification, professional conduct, discipline and training of persons*  
35 *who shall be eligible to arbitrate appeals from the state employee grievance procedures under § 21-1-701 et seq.;*  
36 *and*

1 (12) Collect a fee to provide arbitrators for appeals from the state employee grievance  
2 procedures under § 21-1-701 et seq.

4 SECTION 2. Arkansas Code Title 16, Chapter 7, Subchapter 1 is amended to add an additional section to  
5 read as follows:

6 16-7-108. Appeals from state employee grievance procedures.

7 (a) The Arkansas Alternative Dispute Resolution Commission shall maintain a roster of arbitrators  
8 qualified to hear appeals from state employee grievance procedures under § 21-1-701 et seq.

9 (b) The commission shall provide a panel of arbitrators from which the employee and state agency may  
10 select an arbitrator to hear the employee’s appeal from the state employee grievance procedures under § 21-1-701  
11 et seq.

12 (c) The commission may promulgate rules concerning the selection of arbitrators for appeals from state  
13 employee grievance procedures under § 21-1-701 et seq.

15 SECTION 3. Arkansas Code Title 21, Chapter 1 is amended to add an additional subchapter to read as  
16 follows:

17 Subchapter 7. Appeals of State Employee Grievances.

18 21-1-701. Definitions.

19 As used in this subchapter:

20 (1) “Adverse action” means the same as defined at § 21-1-602;

21 (2) “Appropriate authority” means the same as defined at § 21-1-602;

22 (3) “Arbitrator” means an individual who is certified by the Arkansas Alternative Dispute  
23 Resolution Commission to hear appeals under this subchapter;

24 (4) “Communicating in good faith” means a verbal or written report made at a time and in a  
25 manner that gives a state agency reasonable notice of the need to correct a waste or violation;

26 (5)(A) “Employee” means a person regularly appointed or employed in a position of state service  
27 by a state agency for which:

28 (i) He or she is compensated on a full-time basis or on a pro rata basis;

29 and

30 (ii) A class title and pay grade are established in the appropriation act  
31 for the agency or institution in accordance with the Uniform Classification and Compensation Act, § 21-5-201 et  
32 seq.

33 (B) “Employee” does not include a supervisory employee;

34 (6)(A) “State agency” means a board, commission, department, division, or office of state  
35 government within the executive branch.

36 (B) “State agency” does not include:

- (i) An institution of higher education;
- (ii) The Arkansas State Highway and Transportation Department; and
- (iii) The Arkansas State Game and Fish Commission;

(7) "Supervisory employee" means any individual having:

(A) Authority in the interest of a state agency to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the state agency; or

(B) If his or her exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature, the responsibility to direct other employees of the state agency by which he or she is employed;

(8) "Violation" means the same as defined at § 21-1-602; and

(9) "Waste" means the same as defined at § 21-1-602.

21-1-702. Appeals.

(a)(1) Upon the completion of any employee grievance procedure mandated by the executive branch, an employee who wishes to appeal the results of the employee grievance procedure mandated by the executive branch may file an appeal with the Office of Personnel Management of the Department of Finance and Administration if the employee has been:

(A) Terminated;

(B) Demoted;

(C) Suspended for fourteen (14) or more days; or

(D)(i) Subject to adverse action by his or her state agency for:

(a) Communicating in good faith to an appropriate authority:

(1) The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or

(2) A violation or suspected violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;

(b) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or

(c) Objecting or refusing to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state.

(ii) An employee filing an appeal under this subdivision (a)(1)(D) does not waive his or her right to file a claim under the Arkansas Whistle-Blower Act, § 21-1-601 et seq.

(2) The employee shall file the appeal with the Office of Personnel Management within thirty (30) days of the conclusion of any employee grievance procedures mandated by the executive branch.

(b)(1) The employee filing the appeal and the state agency shall select an arbitrator to hear the appeal

1 from a panel of arbitrators provided by the Arkansas Alternative Dispute Resolution Commission under § 16-7-104.

2 (2)(A) The commission shall promulgate rules concerning the qualifications and certification  
3 process of arbitrators eligible to hear appeals.

4 (B)(i) The qualifications shall include a background in employer and employee relations.

5 (ii) The qualifications shall not require a person to be an attorney to hear  
6 appeals under this subchapter.

7 (c)(1) An employee appealing to the commission may request that the appeal be conducted by:

8 (A) A de novo before the arbitrator selected to hear the appeal; or

9 (B) The record being reviewed by the arbitrator selected to hear the appeal.

10 (2)(A) A state agency decision shall be sustained only if the state agency's decision is supported  
11 by:

12 (i) Substantial evidence, if the action was based on an employee's unacceptable  
13 performance; or

14 (ii) A preponderance of the evidence, if the action was based on factors other  
15 than an employee's unacceptable performance.

16 (B) A state agency decision shall not be upheld by the arbitrator selected to hear the  
17 appeal if the employee shows:

18 (i) Harmful error in the state agency's procedures in arriving at the decision;

19 (ii) That the decision was based on a prohibited personnel practice; or

20 (iii) That the decision was not in accordance with the law.

21 (d) An employee appealing under this subchapter may be represented by an attorney or other  
22 representative in proceedings before an arbitrator selected to hear the appeal.

23 (e)(1) The arbitrator shall conduct the appeal within forty-five (45) days of the appeal's filing date.

24 (2) The arbitrator shall issue a final decision within twenty (20) days of the date of the hearing or  
25 review of the record.

26 (3) The final decision of the arbitrator may not be appealed.

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28 21-1-703. Relief.

29 (a) If an employee is the prevailing party in an appeal under this subchapter, the employee shall be  
30 granted relief deemed appropriate by the arbitrator, including without limitation:

31 (1) Attorney's fees; and

32 (2) The restoration of the employee to his or her previous employment position.

33 (b)(1) An employee who is found to have been affected by an unjustified or unwarranted personnel action  
34 that resulted in the withdrawal or reduction of all or part of the employee's pay or allowances may receive, at the  
35 discretion of the arbitrator, an amount equal to all or part of the pay or allowances that the employee would have  
36 earned or received during the period affected by the personnel action, less any amounts earned by the employee

1 through other employment during that period.

2 (2) If the arbitrator awards an amount under subdivision (b)(1) of this section, the employee shall  
3 receive the following benefits if the benefits were not received due to the personnel action:

4 (A) Annual and sick leave credit that the employee would have earned or received  
5 during the period affected by the personnel action; and

6 (B) Credit under an applicable state retirement system that the employee would have  
7 earned or received during the period affected by the personnel action.

8 (3) If the arbitrator awards an amount under subdivision (b)(1) of this section, he or she shall also  
9 award interest, compounded daily, calculated under rules promulgated by the Office of Personnel Management of  
10 the Department of Finance and Administration.

11 (4) An amount awarded under subdivision (b)(1) of this section shall not be an amount that  
12 results in the employee's exceeding the total compensation authorized by law for the position at issue.

13 (c)(1) If the decision of the arbitrator requires a financial award to an employee, the state agency shall  
14 pay the award ordered by the arbitrator if it is ten thousand dollars (\$10,000) or less.

15 (2)(A) If the award exceeds ten thousand dollars (\$10,000), the award shall be referred to the  
16 General Assembly for an appropriation.

17 (B) The Office of Personnel Management shall file a written report of an award  
18 exceeding ten thousand dollars (\$10,000) to the Claims Review Subcommittee of the Legislative Council.

19 (C) The report shall include a concise statement of the facts with an explanation of the  
20 state agency's liability.

21 (D) The report shall be filed with the Claims Review Subcommittee within thirty (30) days  
22 after the final decision of the arbitrator.

23 (d) If the arbitrator determines, upon motion of the employee appealing under this subchapter, that  
24 irreparable harm or damage would result to the employee in the time period pending the appeal decision, the  
25 arbitrator may grant an injunction that is to remain in effect until the final decision of the arbitrator.

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27 21-1-704. Alternative dispute resolution.

28 (a) In lieu of requesting an appeal under § 21-1-702, an employee may request that the appeal be  
29 mediated.

30 (b) If an employee requests mediation, the Arkansas Alternative Dispute Resolution Commission shall  
31 select an appropriate mediator from a roster maintained by the commission of those mediators who meet the  
32 commission's guidelines for that type of case.

33 (c) If the parties reach an agreement through mediation, the mediator shall provide a copy of the  
34 mediation agreement to the Office of Personnel Management of the Department of Finance and Administration  
35 and the matter shall be considered resolved and final.

36 (d)(1) If the parties are unable to reach an agreement through mediation, the mediator shall report that

1 information to the commission.

2 (2) An employee who is unable to reach an agreement through mediation may request an appeal  
3 under § 21-1-702 within ten (10) days of the unsuccessful mediation.

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5 21-1-705. Rules.

6 (a) The Department of Finance and Administration shall promulgate rules governing appeals under this  
7 subchapter.

8 (b) The Arkansas Alternative Dispute Resolution Commission shall promulgate rules governing the  
9 selection of arbitrators for the purpose of hearing appeals under this subchapter.

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11 SECTION 4. DO NOT CODIFY. The Office of Personnel Management of the  
12 Department of Finance and Administration shall begin receiving appeals under  
13 this subchapter on July 1, 2013.

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15 /s/Nickels

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17 Referred by the Arkansas House of Representatives

18 Prepared by: MBM/VJF

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