

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative Wilkins**

# **A Bill**

**HOUSE BILL 1651**

## **For An Act To Be Entitled**

"STATE EMPLOYEE GRIEVANCE PROCEDURE ACT."

### **Subtitle**

"STATE EMPLOYEE GRIEVANCE PROCEDURE ACT."

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16 SECTION 1. This act may be cited as the "State Employee Grievance  
17 Procedure Act".

19 SECTION 2. To every extent possible, the grievance procedure required  
20 by this act shall be designed to resolve the grievance quickly; settle the  
21 disagreement informally at the employee-supervisor level when possible;  
22 correct, if possible, the cause of the grievance to prevent future similar  
23 complaints; and assure fair and equitable treatment of all employees and to  
24 promote harmonious relations generally among employees, supervisors, and  
25 administrative staff.

27 SECTION 3. As used in this act:

28 (1) "Administrator" means the administrator of the Office of Personnel  
29 Management, Department of Finance and Administration.

30 (2) "Committee" means the State Grievance Review Committee, as  
31 established by this act.

32 (3) "Council" means a three (3) person panel organized to conduct  
33 pretermination hearings pursuant to this act.

34 (4) "Employer" means the State of Arkansas and all supervisory  
35 personnel vested with the authority to implement and administer the state\_s

1 personnel policies.

2 (5) "Grievance" means a complaint by an employee concerning any matter  
3 touching upon the relationship between the employee and his employer and any  
4 dispute between an employee and his employer including but not limited to  
5 those disputes involving suspension, reduction in pay, transfer, layoff,  
6 promotion, demotion, dismissal, working conditions, disciplinary actions and  
7 discrimination. Compensation shall not be deemed a proper subject for a  
8 grievance except as it pertains to alleged inequities within a particular  
9 agency.

10 (6) "Probationary employee" means a full-time or part-time employee in  
11 the initial test period of employment with the State of not more than six (6)  
12 months duration. The probationary period may be extended for not more than  
13 three (3) months based upon a less than satisfactory performance appraisal.  
14 At the completion of the extended time period, the employee shall either  
15 become a permanent employee based on a satisfactory or higher performance  
16 appraisal or be terminated. An employee who receives an unsatisfactory  
17 performance appraisal during the probationary period shall be terminated prior  
18 to becoming a regular employee.

19 (7) "Regular employee" means a full-time or part-time employee  
20 occupying an established position whose retention has been approved at the  
21 completion of the probationary period as determined by a satisfactory or  
22 higher performance appraisal and who has appeal rights. If an employee does  
23 not receive an appraisal on or prior to the official appraisal date, the  
24 employee shall be considered to have performed in a satisfactory manner and to  
25 have grievance rights.

26 (8) "State agency" means all departments, offices, boards, commissions,  
27 and institutions of the state, not including the state-supported institutions  
28 of higher education.

29 (9) "Supervisor" means the person to whom an employee reports and who  
30 assigns and oversees the employee\_s work.

31 (10) "Temporary employee" means a full-time or part-time employee hired  
32 to fill a position for a period not to exceed six (6) months or to fill a  
33 position requiring seasonal or intermittent work for no more than fifteen  
34 hundred (1,500) hours during any twelve-month period.

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1 SECTION 4. *Notwithstanding any other provision of law*, a regular state  
2 employee shall have the right to appeal to the committee any grievance after  
3 all administrative remedies to secure relief within the agency have been  
4 exhausted.

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6 SECTION 5. No employee shall be disciplined or otherwise prejudiced in  
7 employment for exercising rights or testifying under the procedure, and agency  
8 directors shall encourage the use of the procedure in the resolution of  
9 grievances arising in the course of public employment.

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11 SECTION 6. (a) Each agency shall establish a written agency grievance  
12 procedure and submit it within ninety (90) calendar days after the effective  
13 date of this act for approval by the administrator of the Office of Personnel  
14 Management, Department of Finance and Administration. A copy of the approved  
15 agency grievance procedure shall be furnished to each employee of the agency  
16 concerned.

17 (b) The provisions of the Administrative Procedures Act, §25-15-201, et  
18 seq., shall apply in proceedings before the State Employee Grievance  
19 Committee. At other levels the Administrative Procedures Act shall not apply  
20 but the grievant shall have the right to a representative, including counsel,  
21 and when a final decision is rendered it shall be given to the grievant in  
22 writing. If the grievant chooses to exercise the right to counsel, he shall  
23 do so at his own expense.

24 (c) The procedure shall provide that all administrative appeals of  
25 agency actions affecting an employee must be initiated internally by such  
26 employee within twenty-one (21) calendar days after the effective date of the  
27 action and that the agency shall make a final decision on a grievance appeal  
28 within forty-five (45) calendar days after the filing of the grievance.  
29 Failure by the agency to make a final decision on the appeal within forty-five  
30 (45) calendar days after the filing of the grievance will be considered an  
31 adverse decision. The employee may thereafter appeal to the State Employee  
32 Grievance Committee. The internal time periods of the agency grievance  
33 procedure may be waived upon the mutual written agreement of both parties;  
34 provided, however, the forty-five (45) calendar day period for action by the  
35 agency may not be waived except by mutual agreement when a court action is

1 pending.

2 (d) A state employee who wishes to appeal the decision of the agency to  
3 the State Employee Grievance Committee shall file an appeal within ten (10)  
4 calendar days after receipt of the decision from the agency head or within  
5 fifty-five (55) calendar days after the employee files the grievance with the  
6 agency, whichever occurs first. The employee or his representative shall file  
7 the appeal in writing with the committee. Failure to file an appeal with the  
8 committee within ten (10) calendar days of the agency's final decision or  
9 fifty-five (55) calendar days from the initial appeal, whichever occurs first,  
10 shall constitute a waiver of the right to appeal.

11

12 SECTION 7. (a) The State Employee Grievance Committee is hereby  
13 created and shall be comprised of twenty-five (25) members, all of whom must  
14 be state employees, to be appointed by the Governor. All members of the  
15 committee shall be appointed on a broadly representative basis from among the  
16 personnel of the various state agencies.

17 (b)(1) The first members of the committee shall draw lots to determine  
18 their respective terms as follows:

- 19 (A) Five (5) shall serve a term of five (5) years;
- 20 (B) Five (5) shall serve a term of four (4) years;
- 21 (C) Five (5) shall serve a term of three (3) years;
- 22 (D) Five (5) shall serve a term of two (2) years; and
- 23 (E) Five (5) shall serve a term of one (1) year.

24 (2) All successor members shall be appointed for terms of five  
25 (5) years.

26 (3) Vacancies shall be filled by the Governor in the same manner  
27 as the original appointments.

28 (c) The duties of the committee shall be as follows:

29 (1) To serve as an administrative hearing body for state employee  
30 grievances;

31 (2) To establish criteria to determine what constitutes the  
32 proper subject of a grievance;

33 (3) To provide technical advice to the Office of Personnel  
34 Management with regard to the administration of this act;

35 (4) To provide technical advice to state agencies with regard to

1 the proper subject of a grievance;

2           (5) To provide technical advice to the agency director after the  
3 conclusion of the internal review process and the review by the committee,  
4 provided the grievance has not been resolved; and

5           (6) To provide other services as may be required to administer  
6 this act.

7           (d) The committee shall annually elect a chairman and a secretary from  
8 among its members to serve for one-year terms. The chairman, or his designee,  
9 shall serve as the presiding officer at all hearings.

10          (e) The full committee shall not be convened to consider individual  
11 grievances or to determine whether a particular matter falls within the  
12 definition of a grievable matter. The committee shall be a pool of members  
13 whereby groups of at least five (5) members shall be selected by the  
14 administrator to consider grievances and make determinations regarding what  
15 constitutes a grievable matter.

16          (f) Each member of the Committee who performs duties in connection with  
17 this act shall be deemed to be conducting those duties as a part of his  
18 official capacity and as such shall be entitled to those expenses as the  
19 employee would normally be entitled should the employee be engaged in official  
20 state government travel. Those expenses shall be borne by the committee  
21 member's employing agency provided, however, that any expenses incurred by the  
22 committee or the Office of Personnel Management shall be charged to the agency  
23 for which the grievance is being heard.

24          (g) Whenever a grievance before the committee is initiated by or  
25 involves an employee of an agency of which a committee member is also an  
26 employee, the member shall be disqualified from participating in the hearing.  
27 No committee member may serve in connection with any grievance in which the  
28 committee member has a personal involvement, a conflict of interest or the  
29 appearance of a conflict of interest.

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31          SECTION 8. (a) The committee chairman, or his designee, shall conduct  
32 the grievance hearing in an equitable, orderly, and expeditious fashion. The  
33 committee chairman, or his designee, is authorized to administer oaths; to  
34 issue subpoenas for files, records, and papers deemed pertinent to any  
35 investigation; to call additional witnesses; and to subpoena witnesses at the

1 request of either party. The Office of Personnel Management shall be  
2 authorized to request assignment by the Attorney General of one or more of his  
3 staff attorneys admitted to practice law in Arkansas to serve in the capacity  
4 of committee attorney. If the Attorney General is not able to provide  
5 sufficient legal staff for this purpose, the Office of Personnel Management,  
6 with the approval of the Attorney General, shall be authorized to secure other  
7 qualified attorneys to serve as committee counsel. The committee attorney  
8 shall determine the order and relevance of the testimony and the appearance of  
9 witnesses, and shall rule on all motions and legal issues. The parties shall  
10 be bound by the decisions of the committee chairman or committee attorney  
11 insofar as the hearings are concerned.

12 (b) At such hearings the employee and the agency may be represented by  
13 counsel. During the course of the hearing, the parties and witnesses shall  
14 respond to questions asked by the committee attorney or the committee members.  
15 Upon request of the presiding officer, the committee attorney may assist the  
16 committee in the preparation of its findings of fact, statements of policy,  
17 and conclusions of law. The committee attorney may be present during the  
18 committee\_s deliberations on its decision only upon the request of the  
19 presiding officer. Within twenty (20) calendar days of the conclusion of the  
20 hearing, the committee shall render its decision on the appeal. The decision  
21 shall include the committee\_s findings of fact, statements of policy, and  
22 conclusions of law.

23 (c) *The agency's* decision shall not be altered or overruled by the  
24 committee, unless:

25 (1) the agency\_s findings of facts are not sustained by the  
26 committee;

27 (2) the committee finds that the agency\_s disciplinary action was  
28 not within its established personnel policies, procedures, and regulations; or

29 (3) the committee finds that the agency\_s action was arbitrary or  
30 capricious.

31 (d) The decision of the committee shall be transmitted in writing to  
32 the employee and the *director of the employing agency*. *The agency director*  
33 *shall notify the committee within ten (10) calendar days of his concurrence or*  
34 *rejection of the committee's decision. If the agency director does not*  
35 *concur, he shall first send his decision and the reason thereof to the*

1 Attorney General for review. The Attorney General shall immediately respond  
2 to the agency director with a letter of advice on the action the agency  
3 director is taking.

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5 SECTION 9. (a) When an appeal is filed with the committee, the  
6 administrator shall assemble all records, reports, and documentation of the  
7 earlier proceedings on the grievance.

8 (b) The committee shall review the case to ascertain that there has  
9 been full compliance with established grievance policies, procedures, and  
10 regulations within the agency and determine whether the action appealed is a  
11 proper subject for a grievance.

12 (c) If the committee determines that the action is a grievance, the  
13 director of the Office of Personnel Management shall notify committee members,  
14 the committee attorney, and all other parties concerned of the date, time, and  
15 place of grievance hearings and request their presence.

16 (d) The director of the Office of Personnel Management shall arrange  
17 for the reproduction of pertinent records and papers and distribute copies to  
18 the members of the committee that will hear the grievance and to the committee  
19 attorney prior to the date of the hearing. The director of the Office of  
20 Personnel Management shall be responsible for recording the grievance hearings  
21 and shall provide to the committee from the resources of the Office of  
22 Personnel Management such administrative and clerical services as may be  
23 required.

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25 SECTION 10. The administrator shall establish such rules and  
26 regulations as necessary to give effect to the provisions of this act.

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28 SECTION 11. (a) When an employee is notified of termination, he may  
29 request a pretermination hearing within twenty-four (24) hours.

30 (b) The hearing shall be conducted by a council composed of the  
31 following members:

32 (1) An expert on state personnel policies from the Office of  
33 Personnel Management; and

34 (2) Two (2) representatives of the Governor's Office.

35 (c) If the employee requests a pretermination hearing, the employer

1 shall suspend the employee pending the outcome of the hearing.

2       (d) Within five (5) calendar days after the employee's request for a  
3 hearing, the council shall convene to review any evidence presented by the  
4 employing agency to justify the termination and any evidence presented by the  
5 employee to refute the allegations of the agency.

6       (e) Based on the evidence presented at the hearing, the council may  
7 concur in or reject the agency's decision. The decision of the council shall  
8 be transmitted in writing to the employee and the employing agency within five  
9 (5) calendar days after the hearing.

10       (f) If the council rejects the agency's decision, the council shall  
11 then direct the agency to remove all documents concerning the termination from  
12 the employee's record and restore the employee to his position.

13       (g) If the council concurs in the agency's decision, the employee may  
14 appeal directly to the committee.

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16       SECTION 12. All provisions of this act of a general and permanent  
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
18 Code Revision Commission shall incorporate the same in the Code.

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20       SECTION 13. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

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26       SECTION 14. All laws and parts of laws in conflict with this act are  
27 hereby repealed.

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*/s/Josetta E. Wilkins*

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***As Engrossed: 3/8/93 3/11/93***

**HB 1651**

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