

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/20/01 S3/26/01 H4/6/01

A Bill

SENATE BILL 525

5 By: Senator Hill
6 By: Representative Teague
7

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE PERTAINING TO
11 CAPITAL IMPROVEMENTS; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 AN ACT TO AMEND ARKANSAS CODE PERTAINING
16 TO CAPITAL IMPROVEMENTS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 *SECTION 1. Arkansas Code Title 19, Chapter 4, Subchapter 14 is amended*
23 *to add an additional section to read as follows:*

24 *19-4-1414. (a) In the event funds from any sources are provided to*
25 *state agencies for projects which exceed five million dollars (\$5,000,000)*
26 *excluding the cost of land, the provisions of this subchapter and of all other*
27 *provisions of the Arkansas Code governing construction of public facilities,*
28 *including, but not limited to, the provisions of §§ 22-9-201 through 22-9-212,*
29 *shall, at the election of state agencies or the institutions of higher*
30 *education set forth in subsection (b), not be applicable to the projects if*
31 *the selection and contracting process set forth in this section is followed.*

32 *(b)(1) No contract for projects between the state agency and the*
33 *construction manager, general contractor, architect, or engineer shall be*
34 *entered into without first obtaining approval of the Arkansas State Building*
35 *Services and review by the Arkansas Legislative Council.*

36 *(2) The Arkansas State Building Services shall have involvement*

1 in the selection and contract process from the project inception.

2 (3) There shall be separate contracts for design and construction
3 services.

4 (4) Arkansas State Building Services shall have the authority to
5 promulgate rules and regulations pertaining to the process for awarding and
6 overseeing the contracts.

7 (5) The Board of Trustees of the University of Arkansas and the
8 Board of Trustees of Arkansas State University shall be exempt from review and
9 approval by Arkansas State Building Services and any regulations promulgated
10 by it, provided that the institutions shall have adopted policies and
11 procedures involving the awarding and oversight of the contracts for design
12 and construction services.

13 (6) All procedures pertaining to the contracts shall provide, to
14 the extent practicable, substantial uniformity between these institutions with
15 respect to the policies and procedures to be followed.

16 (c) For all projects contemplated or contracted for, Arkansas State
17 Building Services shall:

18 (1) Review and approve the advertisement as stated in subsection
19 (d)(1) of this section, the scope of work, the site selection, funding review,
20 and, to the extent available, all project drawings, plans, and specifications
21 prior to any solicitation of proposals for the project;

22 (2) Conduct on-site inspections of the construction project on a
23 regular basis to ensure that the project complies with the contract documents
24 and maintains project records;

25 (3)(A) Review and approve all contract amendments and payments.

26 (B) State agencies shall submit a summary of all contract
27 amendments to the Arkansas Legislative Council.

28 (4)(A) The institutions of higher education, stated in subsection
29 (b), shall perform all duties and responsibilities stated in subdivisions
30 (c)(1) through (3) under policies and procedures adopted by their governing
31 boards.

32 (B) They shall submit a summary of all contract amendments
33 to the Arkansas Legislative Council.

34 (d) The selection procedures for the construction manager, general
35 contractor, architect, or engineer shall provide for solicitation for
36 qualified, licensed professionals to submit proposals and the procedures shall

1 assure the design and completion of the project in an expeditious manner while
2 adhering to high standards of design and construction quality. The state
3 agency and the institutions of higher education stated in subsection (b)
4 shall:

5 (1) Publish notice of its intention to receive written proposals
6 three (3) consecutive days in a newspaper of statewide distribution;

7 (2) Allow a minimum of ten (10) working days for the
8 professionals to send letters or resumes in response to newspaper
9 advertisement; and

10 (3) Provide additional means of notification, if any, as the
11 state agency or institution of higher education stated in subsection (b) shall
12 determine is appropriate.

13 (e)(1)(A) A pre-selection committee, which shall be composed of no more
14 than three (3) members from the state agency and two (2) members from Arkansas
15 State Building Services shall review the proposals.

16 (B) A pre-selection committee for institutions of higher
17 education stated in subsection (b) shall consist of at least three (3) members
18 as determined by each of the institutions, and the members may be from
19 Arkansas State Building Services.

20 (C) The committee shall select a maximum of five (5)
21 applicants and schedule interviews.

22 (D) The state agency or an institution of higher education
23 as stated in subsection (b) shall notify the finalists of their status.

24 (2)(A) The final selection committee shall be composed of the (3)
25 three members from the state agency on the pre-selection committee.

26 (B) The final interviews shall be held at the time and date
27 as designated by the final selection committee.

28 (C) Representatives of Arkansas State Building Services may
29 attend the final selection meeting, but shall not vote in the final selection
30 process.

31 (D) The final selection committee for institutions of
32 higher education stated in subsection (b) shall consist of at least three (3)
33 members as determined by each of the institutions.

34 (E) Members of a pre-selection committee may also serve as
35 members of the final selection committee of the institutions.

36 (F) In selecting a general contractor, construction

1 manager, architect or engineer, the state agency or institution of higher
2 education as stated in subsection (b) shall consider their established
3 criteria which shall include, but are not limited to, the following:

4 (i) The experience of the professional or
5 professionals in similar projects;

6 (ii) The record of the professional or professionals
7 in timely completion of the projects with high quality workmanship; and

8 (iii) Other similar matters to determine that the
9 professional or professionals will complete the project within the time,
10 budget and to the specifications set by the state agency or institution of
11 higher education as stated in subsection (b).

12 (3)(A) The final selection committee shall select or make a
13 formal recommendation to its governing body of the professional or
14 professionals which it determines to be in the best interest of the state.

15 (B) Contracts for professional services shall be negotiated
16 on the basis of demonstrated competence and qualifications for the type of
17 services required and at fair and reasonable prices without the use of
18 competitive bidding, and no rule or regulation shall inhibit the agency's
19 authority to negotiate fees for the services.

20 (C) The final selection committee for the institutions of
21 higher education as stated in subsection (b) shall make a recommendation to
22 its governing board or appropriate committee thereof of the professional or
23 professionals which it determines to be in the best interest of the
24 institution, and the governing board shall make the final decision and
25 authorize the contract or contracts to be negotiated and awarded unless it has
26 delegated the action to a committee of the board.

27 (f)(1) Construction contracts for the projects shall not be entered
28 into without a payment and performance bond in the amount of the contract and
29 any amendments thereto, and shall provide for the manner in which the
30 construction shall be managed and supervised.

31 (2) All project architects and engineers shall be properly
32 licensed in accordance with the Arkansas State Board of Architects and the
33 Arkansas State Board of Engineers.

34 (3) The construction manager or general contractor shall be
35 properly licensed by the Arkansas Contractors Licensing Board.

36 (4)(A) All subcontractors on the project shall be properly by the

1 Arkansas Contractors Licensing Board.

2 (B) Any person who is not considered a contractor under
3 Arkansas Code 17-25-101 may continue to perform subcontracting work under the
4 provisions of this act.

5 (g) To enable a state agency or an institution of higher education as
6 stated in subsection (b) to qualify under this section, the funds shall be
7 paid to or for the benefit of the state agency or institution of higher
8 education, or to a fund or foundation for the benefit of the state agency or
9 institution of higher education, and the funds may be represented in whole or
10 in part by a written pledge or commitment from a donor, provided that the
11 state agency or an institution of higher education shall assure itself of the
12 financial stability of the donor to fulfill the pledge or commitment.

13 (h) All projects constructed pursuant to the section shall, to the
14 extent applicable, be in accordance and compliance with:

15 (1) Arkansas Code Title 17, Chapter 38, regulating plumbers;

16 (2) Arkansas Code Title 17, Chapter 33, regulating the heating,
17 ventilation, air conditioning, and refrigeration industry;

18 (3) Fire Prevention Act, beginning at § 12-13-101;

19 (4) Arkansas Code Title 12, Chapter 80, regarding earthquake
20 resistant design for public structure;

21 (5) Arkansas State Building Services-adopted Americans with
22 Disabilities Act Accessibility Guidelines, 28 C.F.R. Part 36, Appx. A; and

23 (6)(A) Arkansas State Building Services minimum standards and
24 criteria pertaining to projects constructed under this section.

25 (B)(i) However, institutions of higher education as stated
26 in subsection (b) shall be exempt from these standards and criteria, provided
27 that the institutions shall have adopted policies and procedures involving the
28 awarding and oversight of contracts for projects under this section.

29 (ii) It is the intention of this section that all
30 procedures adopted by these institutions pertaining to the contracts shall
31 provide, to the extent practicable, substantial uniformity between these
32 institutions with respect to the policies and procedures to be followed.

33 (iii) Notwithstanding anything in this subsection to
34 the contrary, the provisions of §§ 19-4-1413, 19-11-801, 22-9-101 through 22-
35 9-104, 22-9-213, 22-9-301 through 22-9-315, 22-9-401 through 22-9-404, 22-9-
36 501 through 22-9-505, 22-9-601 through 22-9-604, and 22-9-701 through 22-9-702

1 shall remain in full force and effect and not be affected hereby.

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3 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General
4 Assembly that a more efficient management of funds available to state agencies
5 and institutions of higher education may be accomplished by allowing
6 solicitation, award and contracting for certain construction projects to be
7 conducted in a manner which assures the timely, quality completion of the
8 projects within the budget available; and that this legislation should take
9 effect immediately to permit state agencies and public institutions of higher
10 education utilizing the capital improvement project process and delivery
11 method set forth in this legislation for the benefit of the agencies and
12 institutions of higher education. Therefore, in order to further the
13 operational efficiencies of state agencies and public institutions of higher
14 education in construction of capital improvement projects, an emergency is
15 declared to exist and this act being immediately necessary for the
16 preservation of the public peace, health and safety shall become effective on
17 the date of its approval by the Governor. If the bill is neither approved nor
18 vetoed by the Governor, it shall become effective on the expiration of the
19 period of time during which the Governor may veto the bill. If the bill is
20 vetoed by the Governor and the veto is overridden, it shall become effective
21 on the date the last house overrides the veto.

22 /s/ Hill