

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 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 1325

5 By: Representative Mahony
6 By: Senator Faris
7

For An Act To Be Entitled

10 AN ACT TO REVISE VARIOUS CODE PROVISIONS
11 PERTAINING TO STATE BUILDING SERVICES OVERSIGHT,
12 AUTHORITY, AND RESPONSIBILITY OF CAPITAL
13 IMPROVEMENTS; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO AMEND VARIOUS ARKANSAS CODE
16 PROVISIONS PERTAINING TO THE AUTHORITY
17 AND RESPONSIBILITY OF STATE BUILDING
18 SERVICES OVERSIGHT OF CAPITAL
19 IMPROVEMENTS.
20
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 13-8-205(a), concerning the Arkansas Public
27 Advisory Board, is amended to read as follows:

28 (a) There is established the "Arkansas Public Art Advisory Board" to
29 be composed of ~~seven (7)~~ five (5) members.
30

31 SECTION 2. Arkansas Code § 13-8-205(b)(2), concerning the Arkansas
32 Public Advisory Board, is amended to read as follows:

33 (2) The remaining members of the board shall be as follows: the
34 Executive Director of the Office of Arkansas State Arts and Humanities, ~~the~~
35 ~~State Architect within the Arkansas State Building Services, the~~
36 ~~Administrator of the Construction Section of Arkansas State Building~~



1 ~~Services~~, and the Program Coordinator of the Arkansas Public Art Program.

2
 3 SECTION 3. Arkansas Code § 13-8-209 is amended to read as follows:
 4 13-8-209. Award of contracts.

5 Arkansas State Building Services shall, pursuant to the instruction of
 6 the selection committee for the project, award contracts for the purchase or
 7 commission of art work for the Arkansas Public Art Program and the owner
 8 agency shall administer payments.

9
 10 SECTION 4. Arkansas Code § 19-4-1405(e), concerning bidding
 11 procedures, is amended to read as follows:

12 (e)(1) Whenever it is obvious from examination of the bid document
 13 that it was the intent of a bidder to submit a responsive bid, and the bid,
 14 because of scriveners' error ~~such as transposition of figures~~, if accepted
 15 would create a serious financial loss to the bidder, the Director of Arkansas
 16 State Building Services has the authority to relieve the bidder from
 17 responsibility under his bond and may reject his bid in the same manner and
 18 within the same period as allowed by Arkansas State Building Services.

19 (2) For purposes of this section, "scriveners' error" means:

20 (A) An error in the calculation of a bid which can be
 21 documented by clear and convincing written evidence and which can be clearly
 22 shown by objective evidence drawn from inspection of the original work
 23 papers, documents, or materials used in the preparation of the bid sought to
 24 be withdrawn; and

25 (B) In the case of a bid sought to be withdrawn, the bid
 26 was submitted in good faith and the mistake was due to a calculation or
 27 clerical error, an inadvertent omission, or a typographical error as opposed
 28 to an error in judgment.

29 (3) To receive relief, under subdivision (e)(1), the bidder must
 30 serve written notice to the Director of Arkansas Building Authority any time
 31 after the bid opening, but no later than seventy-two (72) hours after
 32 receiving the intent to award, excluding Saturdays, Sundays and holidays.
 33 Failure to make a withdrawal request within seventy-two (72) hours shall
 34 constitute a waiver by the bidder of the bidder's right to claim that the
 35 mistake in his or her bid was a scriveners' error.

36 (4) In the event the Director of Arkansas Building Authority has

1 relieved the bidder from responsibility under his bond, action on the
 2 remaining bids should be considered as though the withdrawn bid had not been
 3 received.

4 (5) Under no circumstances shall a relieved bidder be permitted
 5 to resubmit a bid for the work should the work be relet for bid, nor shall
 6 the relieved bidder be a supplier of any material or labor, or perform any
 7 subcontract work for anyone to whom a contract is awarded for the work.

8
 9 SECTION 5. Arkansas Code § 19-4-1406 is repealed.

10 ~~19-4-1406. Concurrence by architects.~~

11 ~~(a) Any architect who submits a bid for any proposed project of a~~
 12 ~~state agency as may be held out for bid shall concur, in writing, with the~~
 13 ~~provisions of this subchapter, with such concurrence to be included in his~~
 14 ~~bid proposal.~~

15 ~~(b) Failure to include such concurrence shall deem the bid proposal~~
 16 ~~null and void.~~

17
 18 SECTION 6. Arkansas Code § 19-4-1411(a)(1), concerning the processing
 19 of payments, is amended to read as follows:

20 (a)(1) When a contractor submits a properly prepared request for
 21 payment of work completed on state construction projects and the request for
 22 payment conforms with the provisions of the contract award and laws of the
 23 State of Arkansas, the following maximum time is allowed for the processing
 24 of the payment requests by the various parties involved, excluding time
 25 required for transmittal from one (1) party to another:

26 (A) Design professional - Five (5) working days;

27 (B) State agency or institutions of higher education
 28 exempt from review and approval by Arkansas State Building Services - Five
 29 (5) working days, including preparation of voucher and submission for
 30 payment; and

31 ~~(C)(i) Arkansas State Building Services - Five (5) working~~
 32 ~~days.~~

33 ~~(ii) that this time for processing a request for~~
 34 ~~payment shall not apply to public institutions of higher education which are~~
 35 ~~exempt from construction review and approval by Arkansas State Building~~
 36 ~~Services, unless any such institution has entered into an agreement for~~

1 ~~Arkansas State Building Services to provide its construction review and~~
2 ~~approval; and~~

3 ~~(D)~~(C) Department of Finance and Administration - Five (5)
4 working days.

5
6 SECTION 7. Arkansas Code § 19-4-1415(c), concerning projects exceeding
7 five million dollars, is amended to read as follows:

8 (c)(1) For all projects contemplated or contracted for, Arkansas State
9 Building Services shall:

10 (A) Review and approve the advertisement as stated in
11 subsection (d) of this section, the scope of work, the site selection,
12 funding review, and, to the extent available, all project drawings, plans,
13 and specifications prior to any solicitation of proposals for the project;

14 (B) Conduct on-site ~~inspections~~ observations of the
15 construction project on a regular basis ~~to ensure that the project complies~~
16 ~~with the contract documents~~ and ~~maintains~~ maintain project records; and

17 (C)(i) Review and approve all contract amendments ~~and~~
18 ~~payments.~~

19 (ii) State agencies shall submit a summary of all
20 contract amendments to the Legislative Council;

21 (2)(A) The institutions of higher education stated in
22 subdivision (b)(5) of this section shall perform all duties and
23 responsibilities stated in subdivision (c)(1) of this section under policies
24 and procedures adopted by their governing boards.

25 (B) They shall submit a summary of all contract amendments
26 to the Legislative Council.

27
28 SECTION 8. Arkansas Code § 22-2-102(1) is amended to read as follows:

29 (1) "Capital improvement" means all lands, buildings,
30 structures, utilities, on-site and off-site improvements, and other
31 appertaining improvements, existing or future, and all construction, repairs,
32 alterations, demolitions, and renovations thereof which are undertaken,
33 owned, operated, or otherwise managed by a state agency, except that capital
34 improvements shall not include construction and reconstruction of roads and
35 bridges in the state highway system by the State Highway Commission, nor
36 shall the term "capital improvements" include any building, facility, plant,

1 structure, or other improvements constructed by or in behalf of the Arkansas
2 State Highway and Transportation Department or the State Highway Commission,
3 nor shall the term "capital improvement" include any lands, buildings or
4 other structures or facilities now owned or hereafter acquired by an Arkansas
5 state retirement system as an investment or as a result of the investment of
6 assets of the system;

7

8 SECTION 9. Arkansas Code § 22-2-107(a)(1) is amended to read as
9 follows:

10 (1) CONSTRUCTION SECTION. The Construction Section shall:

11 (A) Supervise the bidding and awarding of contracts for
12 new construction and renovations for or by state agencies' capital
13 improvements;

14 (B) ~~Approve methods of finance and establish~~ Establish and
15 maintain complete construction files on all jobs, including plans and
16 specifications for alterations, renovations, and repairs of all capital
17 improvements;

18 (C) Approve all proposed contracts, change orders, and
19 final payments requests;

20 (D) Ensure that on-site ~~inspection~~ observation of all
21 construction projects, alterations, and repairs is accomplished on a regular
22 basis and maintain records of those ~~inspections~~ observations;

23 (E) Obtain and maintain construction inspection reports
24 from architects or engineers or their consultants from state agencies and
25 institutions for all capital improvement construction projects;

26 (F)(i) Conduct visits ~~by~~ with the design professional to
27 determine the responsibility and performance required by the contract
28 documents.

29 (ii) On-site observations by design professionals
30 shall concur with the contractor's payment request and shall be submitted in
31 written form with the pay request.

32 (iii) The inspection reports shall be as adopted by
33 the council.

34 (iv) State agencies shall engage the services of
35 licensed architects or engineers for all projects covered by the Arkansas
36 Architectural Act, § 17-15-101 et seq., and the Arkansas Engineering Act, §

1 17-30-101 et seq.;

2 (G) Ensure that the construction of all projects complies
3 with the contract documents; and

4 (H)(i) Establish and manage a list of contractors desiring
5 written notice of invitations to bid and establish by regulation a fee, not
6 to exceed twenty-five dollars (\$25.00) annually, for receiving a written
7 notice of an invitation to bid.

8 (ii) Subscription fees collected pursuant to this
9 section shall be deposited in the State Building Services Fund;

10

11 SECTION 10. Arkansas Code § 22-2-107(a)(3) is amended to read as
12 follows:

13 (3) ARCHITECTURAL SECTION. The Architectural Section shall be
14 directed by an architect registered and licensed to practice architecture in
15 the state and who shall have had seven (7) years of experience as a
16 registered architect. The section shall:

17 (A) Establish procedures, as approved by the council, for
18 the selection of architectural and building design ~~consultant~~ consultants
19 services by state agencies and State Building Services, which procedures
20 shall ensure an equitable opportunity for all persons and firms;

21 (B) Encourage, within the rules and regulations of the
22 state, the timely and expedient commitment and expenditure of appropriations
23 for ~~construction~~ capital improvements;

24 (C) Establish standard fee schedules, as approved by the
25 council, for architectural and building design consultant services for
26 capital improvements;

27 (D) Develop and upon adoption by the council establish
28 minimum design standards and criteria, which shall be made available to all
29 architects in the state;

30 (E) Utilize, require, or undertake studies concerning the
31 needs for and costs of proposed capital improvements;

32 (F) Review and approve, consistent with the provisions of
33 this chapter, contracts for architectural and building design consultant
34 services, preliminary plans, cost estimates, building programs, feasibility
35 studies, and construction bid documents for capital improvements and mediate
36 architectural and design and construction-related problems;

1 (G) Assist in analyzing architectural design and
 2 construction problems at state-owned facilities; and

3 (H) Ensure that state agencies shall engage the services
 4 of licensed architects and licensed engineers for all appropriate capital
 5 improvement projects contracted, not exempted by the requirements of the
 6 Arkansas Architectural Act, § 17-15-101 et seq., the Arkansas Engineering
 7 Act, § 17-30-101 et seq., and the Arkansas Public Works Act, § 22-9-101 et
 8 seq.

9
 10 SECTION 11. Arkansas Code § 22-2-108(9)-(11), which are powers of the
 11 State Building Services Council, are amended to read as follows:

12 (9)(A) To establish, promulgate, and enforce minimum design and
 13 construction standards and criteria for all capital improvements undertaken
 14 by any state agency, including, but not limited to, procedures regarding the
 15 bidding and awarding of capital improvements, suspension and debarment of
 16 contractors or design professionals regarding projects under the jurisdiction
 17 of the Arkansas Building Authority.

18 (B) However, Arkansas State Building Services shall not
 19 engage in the production of architectural plans and specifications, with the
 20 exception that the architects and engineers employed by Arkansas State
 21 Building Services may provide and make available technical assistance to
 22 Arkansas State Building Services' sections listed in § 22-2-107 and other
 23 agencies regarding capital improvements involving roofing projects, repairs,
 24 alterations, or renovations;

25 (10) To establish and enforce minimum standards and criteria for
 26 the management, maintenance, and operation of all public buildings and
 27 capital improvements;

28 (11) To establish and enforce minimum standards and criteria for
 29 the leasing and renting of space on lands or of structures or within
 30 buildings or facilities for and by state agencies on properties owned by
 31 private or public entities;

32
 33 SECTION 12. Arkansas Code § 22-2-116 is amended to read as follows:
 34 22-2-116. Maintenance responsibilities generally.

35 (a) The State Building Services shall provide for the management,
 36 maintenance, and operation of public buildings as may be required by the

1 provisions and implementation of this chapter, or as may otherwise be
2 required by law.

3 (b) Arkansas Building Authority may enter into agreements with
4 agencies to provide for the management, maintenance, and operation of those
5 public buildings, which are not owned by Arkansas Building Authority.

6
7 SECTION 13. Arkansas Code § 22-2-121 is amended to read as follows:
8 22-2-121. Real estate compilation.

9 (a) The Arkansas State Building Services shall:

10 (1) Perform a compilation of all real property owned by state
11 agencies, including boards, commissions, and institutions of higher
12 education, the Arkansas Game and Fish Commission, the Arkansas State Highway
13 and Transportation Department, and the State Highway Commission;

14 (2) Create a database that shall include a description of each
15 piece of real property owned; and

16 (3) Maintain the database with current information.

17 (b) The initial compilation of all real property shall be completed by
18 January 1, 2002.

19 (c) All state agencies identified in subdivision (a)(1) of this
20 section, including
21 ~~boards, commissions, and institutions of higher education,~~ shall provide the
22 necessary information to State Building Services.

23 (d) State Building Services, in accordance with the
24 Arkansas Administrative Procedure Act, § 25-15-201 et seq., may adopt rules
25 and regulations necessary to administer the provisions of this section.

26
27 SECTION 14. Arkansas Code § 22-3-405(b), concerning the capitol
28 parking control committee, is amended to read as follows:

29 (b) The committee shall be composed of three (3) members, as follows:

30 (1) The Secretary of State or designee;

31 (2) The Director of the State Building Services or designee; and

32 (3) A state employee designated by the Secretary of State who is
33 employed on the State Capitol grounds in a position of administrator or
34 higher by an agency or office other than that of the Secretary of State or of
35 the State Building Services.

36

SECTION 15. Arkansas Code § 22-3-923 is amended to read as follows:
 22-3-923. Allocation of space.

(a)(1) It is found and determined by the General Assembly that the Justice Building was constructed primarily to house the higher appellate courts and that other agencies were permitted to occupy portions of the building only because the space was not needed by the courts at that time; that since construction of the building, the electors of the state authorized the establishment of a new appellate court, the Court of Appeals; that the Court of Appeals is in urgent need of additional space in the Justice Building in order to perform its responsibilities; that it is essential that the additional space to be provided the Court of Appeals is contiguous to the space now assigned to that court.

(2) Further, it is the purpose and intent of this section to establish specific priorities for use of space in the Justice Building and to specifically authorize the Arkansas ~~Justice Building Commission~~ Authority to allocate space in the Justice Building in accordance with those priorities to assure that the appellate courts and the services and facilities essential to the effective and efficient operation of the courts, such as library facilities, are given first priority in the use of space in the building.

(b)(1) Space in the Justice Building shall be allocated by the Arkansas ~~Justice Building Commission~~ Authority, ~~after obtaining the technical assistance and concurrence of the State Building Services~~ and after seeking the advice of the Joint Interim Committee on Legislative Facilities, to the following courts, library, and offices in the order of priority listed:

- ~~(1)~~(A) The Supreme Court;
- ~~(2)~~(B) The Court of Appeals;
- ~~(3)~~(C) The offices of the Clerk of the Supreme Court;
- ~~(4)~~(D) The Supreme Court Library; and
- ~~(5) The offices of the Attorney General; and~~
- ~~(6)~~(E) The ~~Judicial Department~~ Administrative Office of the Courts.

(2) The space requirements of each court, library, or office listed in this subsection must be adequately met before any space is allocated to any other office or agency.

(c) If the space requirements of the courts, library, and offices listed in subsection (b) of this section are adequately met, the Arkansas

1 Justice Building ~~Commission~~ Authority may, after seeking the technical
 2 assistance and concurrence of the State Building Services and the advice of
 3 the Joint Interim Committee on Legislative Facilities, allocate any
 4 additional space to such other offices or agencies as it deems appropriate.

5 (d) The Arkansas Justice Building ~~Commission~~ Authority shall allocate
 6 space in accordance with the priorities prescribed in this section as soon as
 7 practicable after April 3, 1985, in order that the additional space allocated
 8 to the courts, library, and offices enumerated in this section shall be
 9 available on or before July 1, 1985.

10 ~~(e) The commission shall conduct yearly reviews of the space~~
 11 ~~requirements of the courts, library, and offices listed in this section to~~
 12 ~~determine if their space requirements are being adequately met.~~

13 ~~(f)(1) If the Arkansas Justice Building Commission determines, after a~~
 14 ~~review conducted pursuant to subsection (e) of this section, that the space~~
 15 ~~requirements of a court, library, or office listed in this section are not~~
 16 ~~being adequately met, it shall reallocate space occupied by the Workers'~~
 17 ~~Compensation Commission or the Arkansas Transportation Commission to those~~
 18 ~~courts, library, and offices to assure that adequate suitable space is~~
 19 ~~provided them in the Justice Building.~~

20 ~~(2) Before reallocating space occupied by the Workers'~~
 21 ~~Compensation Commission or the Arkansas Transportation Commission, the~~
 22 ~~Arkansas Justice Building Commission must receive certification from the~~
 23 ~~State Building Services that suitable space to house either or both of the~~
 24 ~~agencies has been arranged in accordance with the rental terms suitable to~~
 25 ~~the agencies, and that plan must be submitted to the Joint Interim Committee~~
 26 ~~on Legislative Facilities for its review and advice.~~

27 ~~(g)(1) When the allocation of space contemplated by this section is~~
 28 ~~accomplished, the tenant receiving that additional space shall assume any~~
 29 ~~obligation for the rentals owed for that acquired space in the Justice~~
 30 ~~Building pursuant to any lease agreement existing between the lessor, the~~
 31 ~~Arkansas Justice Building Commission, and the lessee tenant who loses the~~
 32 ~~space.~~

33 ~~(2) The Arkansas Justice Building Commission is to supervise the~~
 34 ~~execution of the lease and documents necessary to protect, and not impair,~~
 35 ~~the obligation of the Arkansas Justice Building Commission under any existing~~
 36 ~~bonded indebtedness it may have previously entered into for the purpose of~~

1 ~~building and maintaining the Justice Building.~~

2 ~~(h)(1)(e)(1)~~ The provisions of §§ 22-3-901 - 22-3-922, and the
 3 covenants and obligations of the Arkansas ~~Justice Building Commission~~
 4 Authority entered into in connection with the issuance of bonds pursuant
 5 thereto are ratified and confirmed.

6 (2) Nothing in this section is intended, or shall be
 7 interpreted, to alter the amounts of, due dates for, or obligors of lease
 8 rentals payable pursuant to leases entered into between the ~~commission~~
 9 Arkansas Building Authority and any lessee identified in §§ 22-3-901 - 22-3-
 10 922, or any successor thereto, or to alter the handling, deposit, or
 11 application of the lease rentals.

12
 13 SECTION 16. Arkansas Code § 22-6-601(a), concerning sale procedures of
 14 land, is amended to read as follows:

15 (a)(1)(A) The several state boards or commissions having supervision
 16 of the affairs of the charitable, penal, correctional, educational, and other
 17 institutions of the State of Arkansas, and all other state boards and
 18 commissions, except the State Highway Commission, the Arkansas State Game and
 19 Fish Commission, the Arkansas Natural Heritage Commission, the State Parks,
 20 Recreation, and Travel Commission, the Department of Higher Education, and
 21 institutions of higher education, and the executive heads of all state
 22 offices, departments, and agencies, all referred to separately as "state
 23 agency", may sell or purchase, for cash in hand and upon compliance with the
 24 provisions of this section, the lands, in whole or in part, belonging to or
 25 under the supervision or control of the respective state agency, or belonging
 26 to the state and held for the use or benefit of the state agency.

27 (B) State agencies may purchase lands, so that the lands,
 28 in whole or in part, shall belong to or be under the supervision or control
 29 of the respective state agency or belong to the state and be held for the use
 30 or benefit of the state agency.

31 (2) The provisions of this section shall not apply to:

32 (A) The sale of land by the Commissioner of State Lands;

33 (B) The transfer of state lands to political subdivisions
 34 of the State of Arkansas;

35 (C) The transfer of state lands between state entities; or

36 (D) The exchange of state lands for other lands which are

1 suitable for state purposes if the Director of Arkansas Building Authority
2 ~~director~~ has made a recommendation to the Governor that the exchange be made
3 and if the Governor has approved the exchange.

4

5 SECTION 17. Arkansas Code § 22-6-601(h), concerning bidding for state
6 lands, is amended to read as follows:

7 (h)(1) The lands shall be sold for the highest aggregate responsible
8 bid, and no such sale shall be otherwise than for cash, nor for less than the
9 amount of the appraisal.

10 (2)(A) Upon approval by the Governor, lands may be sold to the
11 highest responsible bidder for less than the amount of the appraisal if the
12 bid process has been utilized and it has been determined and recommended by
13 the agency director and the Director of Arkansas State Building Services that
14 further solicitation of bids is unnecessary. Upon such approval the agency
15 may enter into negotiations with the highest responsible bidder for the sale
16 of the lands. If negotiations are unsuccessful, the agency may enter into
17 negotiations with the next highest responsible bidder. Nothing shall
18 preclude an agency from reletting bids under this section if the negotiations
19 as stated in subdivision (h)(2)(A) are unsuccessful.

20 (B) The Legislative Council shall review the sale of the
21 land before the agency finalizes the sale.

22

23 SECTION 18. Arkansas Code § 22-9-204(a), concerning use of
24 subcontractors, is amended to read as follows:

25 (a) As a condition to performing construction work for and in the
26 State of Arkansas, all prime contractors shall use no other subcontractors
27 when the subcontractors' portion of the project is twenty thousand dollars
28 (\$20,000) or more, except those licensed by the Contractors Licensing Board
29 and qualified in:

30 (1) Mechanical, indicative of heating, air conditioning,
31 ventilation, and refrigeration;

32 (2) Plumbing;

33 (3) Electrical, ~~indicative of wiring and illuminating fixtures;~~

34 and

35 (4) Roofing ~~and sheet metal work, indicative of roofing~~
36 ~~application.~~