

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 85th General Assembly  
3 Regular Session, 2005

# A Bill

HOUSE BILL 2501

4  
5 By: Representative Mahony  
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## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE ETHICS IN PUBLIC CONTRACTING  
10 LAWS; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO AMEND THE ETHICS IN PUBLIC  
14 CONTRACTING LAWS.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 19-11-701(8), concerning definitions in  
20 ethics laws, is amended to read as follows:

21 (8) "Employee" means an individual drawing a salary from a state  
22 agency, whether elected or not, ~~and~~ any nonsalaried individual performing  
23 personal services for any state agency, and any member of a board of a state  
24 agency;  
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26 SECTION 2. Arkansas Code § 19-11-705 is amended to read as follows:

27 19-11-705. Employee conflict of interest.

28 (a)(1) Conflict of Interest. It shall be a breach of ethical  
29 standards for any employee to ~~participate~~ directly or indirectly have a  
30 financial interest in any contract, or participate directly or indirectly in  
31 any proceeding or application, in any request for ruling or other  
32 determination, in any claim or controversy, or in any other particular matter  
33 pertaining to any contract or subcontract, and any solicitation or proposal  
34 therefor, in which to the employee's knowledge;

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



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

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

7 (2) "Direct or indirect participation" shall include, but not be  
8 limited to, a financial interest, involvement through decision, approval,  
9 disapproval, recommendation, preparation of any part of a procurement  
10 request, influencing the content of any specification or procurement  
11 standard, rendering of advice, investigation, auditing, or in any other  
12 advisory capacity.

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

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

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28 SECTION 3. Arkansas Code § 19-11-706 is amended to read as follows:  
29 19-11-706. Employee disclosure requirements.

30 (a) Disclosure of Benefit Received from Contract. Any employee who  
31 has or obtains any benefit from any state contract with a business in which  
32 the employee has a financial interest shall report such benefit to the  
33 ~~Director of the Department of Finance and Administration~~ Arkansas Ethics  
34 Commission. However, this section shall not apply to a contract with a  
35 business where the employee's interest in the business has been placed in a  
36 disclosed blind trust.

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

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 5 SECTION 4. Arkansas Code § 19-11-715 is amended to read as follows:

6 19-11-715. Duties of ~~Director of Department of Finance and~~  
 7 ~~Administration~~ the Arkansas Ethics Commission.

8 (a) Regulations. The ~~Director of the Department of Finance and~~  
 9 ~~Administration~~ Arkansas Ethics Commission shall promulgate regulations to  
 10 implement this subchapter and shall do so in accordance with this subchapter  
 11 and the applicable provisions of the Arkansas Administrative Procedure Act, §  
 12 25-15-201 et seq.

13 (b) Advisory Opinions. On written request of employees or contractors  
 14 and in consultation with the Attorney General, the director of the Arkansas  
 15 Ethics Commission may render written advisory opinions regarding the  
 16 appropriateness of the course of conduct to be followed in proposed  
 17 transactions. Such requests and advisory opinions may be duly published in  
 18 the manner in which regulations of this state are published. Compliance with  
 19 the requirements of a duly promulgated advisory opinion of the director shall  
 20 be deemed to constitute compliance with the ethical standards of this  
 21 subchapter.

22 (c) Waiver. On written request of an employee, the director may grant  
 23 an employee a written waiver from the application of § 19-11-705, which  
 24 refers to employee conflict of interest, and grant permission to proceed with  
 25 the transaction to such extent and upon such terms and conditions as may be  
 26 specified. Such waiver and permission may be granted when the interests of  
 27 the state so require or when the ethical conflict is insubstantial or remote.

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 29 SECTION 5. Arkansas Code § 19-11-716 is amended to read as follows:

30 19-11-716. Participation in business incubators - Regulations and  
 31 guidelines.

32 (a) The provisions of this subchapter shall not be applicable to  
 33 faculty or staff of state-supported institutions of higher education  
 34 participating in business incubators within this state if they have followed  
 35 the rules and regulations promulgated by the Arkansas Ethics Commission and  
 36 provided detailed information regarding the specifics of these transactions

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

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

10 (2) The program ~~may~~ shall include guidelines setting forth full  
 11 disclosure requirements, any limitations on ownership interests, maximum  
 12 income amounts to be received, annual reporting to the General Assembly,  
 13 mandatory levels of student participation and such other reasonable  
 14 restrictions as are necessary to maintain the public trust while encouraging  
 15 the facilitation of commercialization of university-generated technology or  
 16 discovery.

17 (c) The institution of higher education shall provide detailed  
 18 information regarding the specifics of these transactions by August 1 of each  
 19 year to the Arkansas Ethics Commission, the Legislative Council, and the  
 20 Legislative Joint Auditing Committee.

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

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 24 SECTION 6. Arkansas Code § 19-11-717 is amended to read as follows:  
 25 19-11-717. Institutions of higher education.

26 ~~Notwithstanding anything in this subchapter to the contrary, it shall~~  
 27 ~~not be a violation of § 19-11-709, or a conflict of interest, or a breach of~~  
 28 ~~ethical standards for:~~

29 ~~(1) An institution of higher education to contract with a person~~  
 30 ~~or firm in which an employee or former employee of such institution has a~~  
 31 ~~financial interest; or~~

32 ~~(2) An employee or former employee of an institution of higher~~  
 33 ~~education to participate directly or indirectly in any matter pertaining to~~  
 34 ~~any contract or subcontract or any solicitation or proposal therefor between~~  
 35 ~~the institution and a person or firm in which such employee or former~~  
 36 ~~employee has a financial interest;~~

1        (a) If, in either of the foregoing events, such a contract or  
 2        subcontract, solicitation, or proposal involves patents, copyrights, or other  
 3        proprietary information in which the an institution of higher education and  
 4        the employee or former employee have rights or interests, an institution may  
 5        enter such a contract provided that any such contract or subcontract shall be  
 6        approved by the governing board of such institution in public meeting.

7        (b) The institution of higher education shall provide detailed  
 8        information regarding the specifics of these transactions by August 1 of each  
 9        year to the Arkansas Ethics Commission, the Legislative Council, and the  
 10       Legislative Joint Auditing Committee.

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

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

16       19-11-718. Approval of waiver by the Arkansas Ethics Commission.

17       (a)(1) In unusual and limited circumstances, a state agency may file a  
 18       request with the Arkansas Ethics Commission to review a contract between the  
 19       state agency and an employee of a state agency and request a waiver from the  
 20       provisions of this subchapter.

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

24       (3) The Arkansas Ethics Commission may request additional  
 25       information, testimony, or other pertinent data before ruling on the request.

26       (b)(1) After examining the submitted information and additional  
 27       testimony or data, if necessary, the Arkansas Ethics Commission shall by  
 28       majority vote decide whether the unusual and limited circumstances justify  
 29       allowing a state agency to contract with an employee.

30       (2) The Arkansas Ethics Commission may issue a waiver and  
 31       permission may be granted if the interests of the state so require or if the  
 32       ethical conflict is insubstantial or remote.

33       (c) All decisions of the Arkansas Ethics Commission regarding the  
 34       approval or denial shall be reported to the state agency, the Chief Fiscal  
 35       Officer of the State, the Legislative Council, and the Legislative Joint  
 36       Auditing Committee on a quarterly basis.

1       (d) No contract subject to review and approval by the Arkansas Ethics  
2 Commission shall be valid or enforceable until an approval letter has been  
3 issued by the Arkansas Ethics Commission.

4       (e) The Arkansas Ethics Commission shall adopt appropriate regulations  
5 regarding the administration of the procedures contained in this subsection.

6       (f) Any person knowingly providing or furnishing false information or  
7 knowingly not fully disclosing relevant information necessary for a proper  
8 determination by the Arkansas Ethics Commission is guilty of violating the  
9 provisions of this subchapter.

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