

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
4

As Engrossed: H3/11/05

A Bill

HOUSE BILL 2501

5 By: Representative Mahony
6
7

For An Act To Be Entitled

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

Subtitle

12 AN ACT TO AMEND THE ETHICS IN PUBLIC
13 CONTRACTING LAWS.
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16

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;
25

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.*

29 (1) Unless approved as provided in § 19-11-718, it shall be a
30 breach of ethical standards for any employee or a member of the employee's
31 immediate family to have a financial interest in a contract with the state
32 agency employing the employee or a nonprofit organization created for the
33 specific benefit of the state agency employing the employee.

34 (2) It shall be a breach of ethical standards for any employee
35 to participate directly or indirectly in any proceeding or application, in
36 any request for ruling or other determination, in any claim or controversy,



1 or in any other particular matter pertaining to any contract or subcontract,
2 and any solicitation or proposal therefor with a state agency, in which to
3 the employee's knowledge:

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

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

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

12 ~~(2)~~(3) "Direct or indirect participation" shall include, but not
13 be limited to, involvement through decision, approval, disapproval,
14 recommendation, preparation of any part of a procurement request, influencing
15 the content of any specification or procurement standard, rendering of
16 advice, investigation, auditing, or in any other advisory capacity.

17 (b) Financial Interest in a Blind Trust. Where an employee or any
18 member of the employee's immediate family holds a financial interest in a
19 blind trust, the employee shall not be deemed to have a conflict of interest
20 with regard to matters pertaining to that financial interest if disclosure of
21 the existence of the blind trust has been made to the ~~Director~~ executive
22 director of the ~~Department of Finance and Administration~~ Arkansas Ethics
23 Commission.

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

33
34 SECTION 3. Arkansas Code § 19-11-706 is amended to read as follows:
35 19-11-706. Employee disclosure requirements.

36 (a) Disclosure of Benefit Received from Contract. Any employee who

1 has or obtains any benefit from any state contract with a business in which
2 the employee has a financial interest shall report such benefit to the
3 ~~Director of the Department of Finance and Administration~~ executive director
4 of the Arkansas Ethics Commission by August 1 for transactions or contracts
5 pertaining to the previous fiscal year. However, this section shall not
6 apply to a contract with a business where the employee's interest in the
7 business has been placed in a disclosed blind trust.

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

11
12 SECTION 4. Arkansas Code § 19-11-712(b), pertaining to the civil and
13 administrative remedies against employees who breach ethical standards, is
14 amended to read as follows:

15 (b) Supplemental Remedies. In addition to existing remedies for breach
16 of the ethical standards of this subchapter, or regulations promulgated
17 thereunder, the executive director of the Arkansas Ethics Commission may
18 recommend to the Director of the Department of Finance and Administration or
19 other executive or governing body the imposition of ~~may impose~~ any one (1) or
20 more of the following:

21 (1) Oral or written warnings or reprimands;

22 (2) Forfeiture of pay without suspension;

23 (3) Suspension with or without pay for specified periods of
24 time; and

25 (4) Termination of employment.

26
27 SECTION 5. Arkansas Code § 19-11-713(b), pertaining to the civil and
28 administrative remedies against nonemployees who breach ethical standards, is
29 amended to read as follows:

30 (b) Supplemental Remedies. In addition to the existing remedies for
31 breach of the ethical standards of this subchapter, or regulations
32 promulgated thereunder, the executive director of the Arkansas Ethics
33 Commission may recommend to the Director of the Department of Finance and
34 Administration or other executive or governing body the imposition of ~~may~~
35 ~~impose~~ any one or more of the following:

36 (1) Oral or written warnings or reprimands;

- 1 (2) *Termination of transactions; and*
- 2 (3) *Suspension or debarment from being a contractor or*
- 3 *subcontractor under state contracts.*

4

5 SECTION 6. 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 7. 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 pertaining to the
19 prior fiscal year by August 1 of each year to the Arkansas Ethics Commission,
20 the Legislative Council, and the 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.

23
24 SECTION 8. 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 pertaining to the
9 prior fiscal year by August 1 of each year to the Arkansas Ethics Commission,
10 the Legislative Council, and the 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.

13
14 SECTION 9. Arkansas Code Title 19, Chapter 11, Subchapter 7 is amended
15 to add an additional section to read as follows:

16 19-11-718. Issue of waivers by the Arkansas Ethics Commission.

17 (a) A state agency or a nonprofit organization created for the
18 specific benefit of a state agency may file a request with the Arkansas
19 Ethics Commission to review a contract between the state agency or nonprofit
20 organization and an employee of that state agency or nonprofit organization
21 and to request a waiver for the contract from the provisions of this
22 subchapter.

23 (b) The request shall fully disclose all pertinent terms and
24 conditions of the contract and shall state the unusual circumstances
25 necessitating and justifying the contract.

26 (c) The commission may request additional information, testimony, or
27 other pertinent data before ruling on the request.

28 (d) After examining the submitted information and additional requested
29 testimony or data, the commission may approve by a majority vote the waiver
30 of the contract if in the opinion of the commission:

31 (1) The circumstances are such that fair competitive access to
32 governmental procurement has been obtained;

33 (2) The contract is in the best interest of the state;

34 (3) The state agency or nonprofit organization has followed
35 proper procedures in bidding or awarding the contract;

36 (4) Reasonable alternatives for contracting with a nonemployee

1 are not available;

2 (5) It appears that an employee has not used his or her position
3 to obtain the contract; and

4 (6) Any ethical conflict is insubstantial or remote.

5
6 (e) All decisions of the commission regarding the approval or denial
7 shall be reported to the state agency or nonprofit organization, the Chief
8 Fiscal Officer of the State, the Legislative Council, and the Legislative
9 Joint Auditing Committee on a quarterly basis.

10 (f) No contract subject to review and approval by the Arkansas Ethics
11 Commission shall be valid or enforceable until an approval letter has been
12 issued by the Arkansas Ethics Commission.

13 (g) The Arkansas Ethics Commission shall adopt appropriate regulations
14 regarding the administration of the procedures contained in this subsection.

15 (h) Any person knowingly providing or furnishing false information or
16 knowingly not fully disclosing relevant information necessary for a proper
17 determination by the Arkansas Ethics Commission is guilty of violating the
18 provisions of this subchapter.

19
20 *SECTION 10. Arkansas Code § 19-11-1004(c), pertaining to restrictions*
21 *on contracts, is amended to read as follows:*

22 *(c)(1) Except as provided in this subsection, no state agency shall*
23 *engage in a professional services or consultant services contract with a*
24 *part-time or full-time employee who occupies a position authorized to be paid*
25 *from extra help or regular salaries for a state agency, except as provided in*
26 *§ 21-1-403.*

27 *(2) However, this subsection does not prohibit an institution of*
28 *higher education from executing a contract with a state agency under which*
29 *professional or consulting services will be performed by employees of the*
30 *institution of higher education.*

31 *(3) An employee of an institution of higher education performing*
32 *professional or consulting services to a state agency may receive additional*
33 *compensation if:*

34 *(A) The institution of higher education requests and*
35 *receives written approval from the Office of Personnel Management of the*
36 *Department of Finance and Administration concerning the amount of additional*

1 compensation to be paid to any employee; and

2 (B) The total salary payments received from the employee's
3 regular salaried position and amounts received for services performed under a
4 professional services contract do not exceed one hundred twenty-five percent
5 (125%) of the maximum annual salary authorized by law for the employee's
6 position with the institution of higher education.

7 (4) Any state agency engaging in a professional services or
8 consultant services contract as provided in subdivisions (c)(2) or (c)(3) of
9 this section shall provide a listing of such contracts for the previous year,
10 including the amounts paid and the person or persons performing the services,
11 to the Legislative Council and the Legislative Joint Auditing Committee by
12 August 1 of each year.

13 /s/ Mahony
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