

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 *As Engrossed: H3/11/05 H3/16/05 H3/18/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 2501

4

5 By: Representative Mahony

6

7

8

For An Act To Be Entitled

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

11

12

Subtitle

13

AN ACT TO AMEND THE ETHICS IN PUBLIC
14 CONTRACTING LAWS.

15

16

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

18

19 *SECTION 1. Arkansas Code § 7-6-217(g), concerning the authority of the*
20 *Arkansas Ethics Commission, is amended to read as follows:*

21 *(g) The commission shall have the authority to:*

22 *(1) Pursuant to the Arkansas Administrative Procedure Act, § 25-*
23 *15-201 et seq., promulgate reasonable rules and regulations to implement and*
24 *administer the requirements of this subchapter, as well as § 7-9-401 et seq.,*
25 *§ 19-11-701 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et*
26 *seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901*
27 *et seq., and § 21-8-1001 et seq., and to govern procedures before the*
28 *commission, matters of commission operations, and all investigative and*
29 *disciplinary procedures and proceedings;*

30 *(2) Issue advisory opinions and guidelines on the requirements*
31 *of § 7-1-103(a)(1)-(4), (6), and (7), this subchapter, § 7-9-401 et seq., §*
32 *19-11-701 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et*
33 *seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901*
34 *et seq., and § 21-8-1001 et seq.;*

35 *(3) After a citizen complaint has been submitted to the*
36 *commission, investigate alleged violations of § 7-1-103(a)(1) - (4), (6), and*



1 (7), this subchapter, § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et
 2 seq., § 21-8-401 et seq., § 21-8-501 et seq., § 21-8-601 et seq., § 21-8-701
 3 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq. and
 4 render findings and disciplinary action thereon;

5 (4) Investigate potential violations of § 19-11-701 et seq.;

6 ~~(4)(5)~~ Pursuant to commission investigations, subpoena any
 7 person or the books, records, or other documents being held by any person and
 8 take sworn statements;

9 ~~(5)(6)~~ Administer oaths for the purpose of taking sworn
 10 testimony of witnesses and conduct hearings;

11 ~~(6)(7)~~ Hire a staff and retain legal counsel;

12 ~~(7)(8)~~ Approve forms prepared by the Secretary of State pursuant
 13 to this subchapter, § 7-9-401 et seq., § 21-8-301 et seq., § 21-8-401 et
 14 seq., § 21-8-501 et seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801
 15 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.; and

16 ~~(8)(9)~~(A) File suit in the Pulaski County Circuit Court or in
 17 the circuit court of the county wherein the respondent resides or, pursuant
 18 to § 16-17-706, in the small claims division established in any district
 19 court in the State of Arkansas, to obtain a judgment for the amount of any
 20 fine imposed pursuant to § 7-6-218(b)(4)(B)(i)-(iii), or to enforce an order
 21 of the commission requiring the filing or amendment of a disclosure form.

22 (B) Said action by the court shall not involve further
 23 judicial review of the commission's actions.

24 (C) The fee normally charged for the filing of a suit in
 25 any of the circuit courts in the State of Arkansas shall be waived on behalf
 26 of the commission.

27
 28 SECTION 2. Arkansas Code § 7-6-218(b), concerning investigations by
 29 the Arkansas Ethics Commission, is amended to read as follows:

30 (b)(1)(A) Upon a complaint stating facts constituting an alleged
 31 violation signed under penalty of perjury by any person, the commission shall
 32 investigate the alleged violation of this subchapter or § 7-1-103(a)(1) -
 33 (4), (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et seq.,
 34 § 21-8-401 et seq., § 21-8-501 et seq., § 21-8-601 et seq., § 21-8-701 et
 35 seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.

36 (B) The commission shall immediately notify any person

1 under investigation of the investigation and of the nature of the alleged
2 violation.

3 (C) The commission in a document shall advise the
4 complainant and the respondent of the final action taken, together with the
5 reasons for the action, and such document shall be a public record.

6 (D) Filing of a frivolous complaint shall be a violation
7 of this subchapter. For purposes of this section, "frivolous" means clearly
8 lacking any basis in fact or law. In any case in which the commission has
9 dismissed a complaint, the respondent may request in writing that the
10 commission make a finding as to whether or not the complaint filed was
11 frivolous. In the event that the commission finds that the complaint was
12 frivolous, the respondent may file a complaint seeking sanctions as provided
13 in § 7-6-218(b)(4).

14 (2) If, after the investigation, the commission finds that
15 probable cause exists for a finding of a violation, the respondent may
16 request a hearing. The hearing shall be a public hearing.

17 (3)(A) The commission shall keep a record of its investigations,
18 inquiries, and proceedings.

19 (B)(i) All proceedings, records, and transcripts of any
20 investigations or inquiries shall be kept confidential by the commission,
21 unless the respondent requests disclosure of documents relating to
22 investigation of the case, in case of a hearing under subdivision (b)(2) of
23 this section, or in case of judicial review of a commission decision pursuant
24 to § 25-15-212.

25 (ii) Provided, however, that the commission may,
26 through its members or staff, disclose confidential information to proper law
27 enforcement officials, agencies, and bodies or as may be required to conduct
28 its investigation.

29 (C) Thirty (30) days after any final adjudication in which
30 the commission makes a finding of a violation, all records relevant to the
31 investigation and upon which the commission has based its decision, except
32 working papers of the commission and its staff, shall be open to public
33 inspection.

34 (4) If the commission finds a violation of this subchapter, § 7-
35 1-103(a)(1)-(4), (6), or (7), § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-
36 401 et seq., § 21-8-501 et seq., § 21-8-601 et seq., § 21-8-701 et seq., §

1 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq., then the
2 commission shall do one (1) or more of the following, unless good cause be
3 shown for the violation:

4 (A) Issue a public letter of caution or warning or
5 reprimand;

6 (B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-
7 409, 21-8-403, and 21-8-903, impose a fine of not less than twenty-five
8 dollars (\$25.00) nor more than one thousand dollars (\$1,000) for negligent or
9 intentional violation of this subchapter or § 21-8-301 et seq., § 21-8-401 et
10 seq., § 21-8-501 et seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801
11 et seq., and § 21-8-901 et seq.

12 (ii) The commission shall adopt rules governing the
13 imposition of such fines in accordance with the provisions of the Arkansas
14 Administrative Procedure Act, § 25-15-201 et seq.

15 (iii) All moneys received by the commission in
16 payment of fines shall be deposited in the State Treasury as general
17 revenues;

18 (C) Order the respondent to file or amend a statutorily
19 required disclosure form; or

20 (D)(i) Report its finding, along with such information and
21 documents as it deems appropriate, and make recommendations to the proper law
22 enforcement authorities.

23 (ii) When exercising the authority provided in this
24 subdivision (b)(4), the commission is not required to make a finding of a
25 violation of the laws under its jurisdiction.

26 (5) Upon the finding of one (1) or more violations of § 19-11-
27 701 et seq., the commission may impose civil and administrative remedies as
28 provided in §§ 19-11-712 and 19-11-713.

29 ~~(5)(6)~~(A) The commission shall complete its investigation of a
30 complaint filed pursuant to this section and take final action within one
31 hundred fifty (150) days of the filing of the complaint; except that, if a
32 hearing under subdivision (b)(2) of this section or other hearing of
33 adjudication is conducted, all action on the complaint by the commission
34 shall be completed within one hundred eighty (180) days.

35 (B) Provided, however, that such time shall be tolled
36 during the pendency of any civil action, civil appeal, or other judicial

1 *proceedings involving those particular commission proceedings.*

2
3 *SECTION 3. Arkansas Code § 19-11-708(8), concerning definitions in*
4 *ethics law is amended to read as follows:*

5 *(8) "Employee" means an individual drawing a salary from a state*
6 *agency, whether elected or not, ~~and~~ any nonsalaried individual performing*
7 *personal services for any state agency, and any member of a board of a state*
8 *agency;*

9
10 *SECTION 4. Arkansas Code § 19-11-705 is amended to read as follows:*

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

12 *(a)~~(1)~~ Conflict of Interest.*

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

18 *(2) It shall be a breach of ethical standards for any employee*
19 *to participate directly or indirectly in any proceeding or application, in*
20 *any request for ruling or other determination, in any claim or controversy,*
21 *or in any other particular matter pertaining to any contract or subcontract,*
22 *and any solicitation or proposal therefor with a state agency, in which to*
23 *the employee's knowledge:*

24 *(A) The employee or any member of the employee's immediate*
25 *family has a financial interest;*

26 *(B) A business or organization has a financial interest,*
27 *in which business or organization the employee, or any member of the*
28 *employee's immediate family, has a financial interest; or*

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

32 *~~(2)~~(3) "Direct or indirect participation" shall include, but not*
33 *be limited to, involvement through decision, approval, disapproval,*
34 *recommendation, preparation of any part of a procurement request, influencing*
35 *the content of any specification or procurement standard, rendering of*
36 *advice, investigation, auditing, or in any other advisory capacity.*

1 (b) Financial Interest in a Blind Trust. Where an employee or any
2 member of the employee's immediate family holds a financial interest in a
3 blind trust, the employee shall not be deemed to have a conflict of interest
4 with regard to matters pertaining to that financial interest if disclosure of
5 *the existence of the blind trust has been made to the ~~Director of the~~*
6 *~~Department of Finance and Administration~~ Arkansas Ethics Commission.*

7 (c) Discovery of Conflict of Interest, Disqualification, and Waiver.
8 Upon discovery of a possible conflict of interest, an employee shall promptly
9 *file a written statement of disqualification with the ~~Director of the~~*
10 *~~Department of Finance and Administration~~ Arkansas Ethics Commission and shall*
11 *withdraw from further participation in the transaction involved. The*
12 *employee may, at the same time, apply to the ~~director~~ Arkansas Ethics*
13 *Commission in accordance with § 19-11-715(b) for an advisory opinion as to*
14 *what further application, if any, the employee may have in the transaction,*
15 *or for a waiver in accordance with § 19-11-715(c).*

16
17 SECTION 5. Arkansas Code § 19-11-706 is amended to read as follows:

18 19-11-706. Employee disclosure requirements.

19 (a) Disclosure of Benefit Received from Contract. Any employee who
20 has or obtains any benefit from any state contract with a business in which
21 the employee has a financial interest shall report such benefit to the
22 *~~Director of the Department of Finance and Administration~~ Arkansas Ethics*
23 *Commission by August 1 for transactions or contracts pertaining to the*
24 *previous fiscal year. However, this section shall not apply to a contract*
25 *with a business where the employee's interest in the business has been placed*
26 *in a disclosed blind trust.*

27 (b) Failure to Disclosure Benefit Received. Any employee who knows or
28 should have known of such benefit and fails to report the benefit to the
29 *~~director~~ Arkansas Ethics Commission* is in breach of the ethical standards of
30 this section.

31
32 SECTION 6. Arkansas Code § 19-11-712(b), pertaining to the civil and
33 administrative remedies against employees who breach ethical standards, is
34 amended to read as follows:

35 (b) Supplemental Remedies. In addition to existing remedies for breach
36 of the ethical standards of this subchapter, or regulations promulgated

1 ~~thereunder, the Director of the Department of Finance and Administration~~
2 Arkansas Ethics Commission may impose any one (1) or
3 more of the following:

- 4 (1) Oral or written warnings or reprimands;
- 5 (2) Forfeiture of pay without suspension;
- 6 (3) Suspension with or without pay for specified periods of
7 time; and
- 8 (4) Termination of employment.

9
10 SECTION 7. Arkansas Code § 19-11-713(b), pertaining to the civil and
11 administrative remedies against nonemployees who breach ethical standards, is
12 amended to read as follows:

13 (b) Supplemental Remedies. In addition to the existing remedies for
14 breach of the ethical standards of this subchapter, or regulations
15 promulgated thereunder, ~~the Director of the Department of Finance and~~
16 Administration Arkansas Ethics Commission may impose any one (1) or more of
17 the following:

- 18 (1) Oral or written warnings or reprimands;
- 19 (2) Termination of transactions; and
- 20 (3) Suspension or debarment from being a contractor or
21 subcontractor under state contracts.

22
23
24 SECTION 8. Arkansas Code § 19-11-715 is amended to read as follows:

25 19-11-715. Duties of ~~Director of Department of Finance and~~
26 Administration the Arkansas Ethics Commission.

27 (a) Regulations. ~~The Director of the Department of Finance and~~
28 Administration Arkansas Ethics Commission shall promulgate regulations to
29 implement this subchapter and shall do so in accordance with this subchapter
30 and the applicable provisions of the Arkansas Administrative Procedure Act, §
31 25-15-201 et seq.

32 (b) Advisory Opinions. On written request of employees or contractors
33 and in consultation with the Attorney General, the ~~director~~ Arkansas Ethics
34 Commission may render written advisory opinions regarding the appropriateness
35 of the course of conduct to be followed in proposed transactions. Such
36 requests and advisory opinions may be duly published in the manner in which

1 regulations of this state are published. Compliance with the requirements of
2 a duly promulgated advisory opinion of the ~~director~~ Arkansas Ethics
3 Commission shall be deemed to constitute compliance with the ethical
4 standards of this subchapter.

5 (c) Waiver. On written request of an employee, the ~~director~~ Arkansas
6 Ethics Commission may grant an employee a written waiver from the application
7 of § 19-11-705, which refers to employee conflict of interest, and grant
8 permission to proceed with the transaction to such extent and upon such terms
9 and conditions as may be specified. Such waiver and permission may be
10 granted when the interests of the state so require or when the ethical
11 conflict is insubstantial or remote.

12
13 SECTION 9. Arkansas Code § 19-11-716 is amended to read as follows:

14 19-11-716. Participation in business incubators - Regulations and
15 guidelines.

16 (a) The provisions of this subchapter shall not be applicable to
17 faculty or staff of state-supported institutions of higher education
18 participating in business incubators within this state if they have followed
19 the rules and regulations promulgated by the Arkansas Ethics Commission and
20 provided detailed information regarding the specifics of these transactions
21 by August 1 of each year to the Arkansas Ethics Commission, the Legislative
22 Council, and the Legislative Joint Auditing Committee.

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

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

1 (c) The institution of higher education shall provide detailed
2 information regarding the specifics of these transactions pertaining to the
3 prior fiscal year by August 1 of each year to the Arkansas Ethics Commission,
4 the Legislative Council, and the Legislative Joint Auditing Committee.

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

7
8 SECTION 10. Arkansas Code § 19-11-717 is amended to read as follows:
9 19-11-717. Institutions of higher education.

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

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

16 ~~(2) An employee or former employee of an institution of higher~~
17 ~~education to participate directly or indirectly in any matter pertaining to~~
18 ~~any contract or subcontract or any solicitation or proposal therefor between~~
19 ~~the institution and a person or firm in which such employee or former~~
20 ~~employee has a financial interest;~~

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

27 (b) The institution of higher education shall provide detailed
28 information regarding the specifics of these transactions pertaining to the
29 prior fiscal year by August 1 of each year to the Arkansas Ethics Commission,
30 the Legislative Council, and the Legislative Joint Auditing Committee.

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

33
34 SECTION 11. Arkansas Code Title 19, Chapter 11, Subchapter 7 is
35 amended to add an additional section to read as follows:

36 19-11-718. Issue of waivers by the Arkansas Ethics Commission.

1 (a) A state agency or a nonprofit organization created for the
2 specific benefit of a state agency may file a request with the Arkansas
3 Ethics Commission to review a contract between the state agency or nonprofit
4 organization and an employee of that state agency or nonprofit organization
5 and to request a waiver for the contract from the provisions of this
6 subchapter.

7 (b) The request shall fully disclose all pertinent terms and
8 conditions of the contract and shall state the unusual circumstances
9 necessitating and justifying the contract.

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

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

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

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

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

20 (4) Reasonable alternatives for contracting with a nonemployee
21 are not available;

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

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

25
26 (e) All decisions of the commission regarding the approval or denial
27 shall be reported to the state agency or nonprofit organization, the Chief
28 Fiscal Officer of the State, the Legislative Council, and the Legislative
29 Joint Auditing Committee on a quarterly basis.

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

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

35 (h) Any person knowingly providing or furnishing false information or
36 knowingly not fully disclosing relevant information necessary for a proper

1 determination by the Arkansas Ethics Commission is guilty of violating the
2 provisions of this subchapter.

3
4 SECTION 12. Arkansas Code § 19-11-1004(c), pertaining to restrictions
5 on contracts, is amended to read as follows:

6 (c)(1) Except as provided in this subsection, no state agency shall
7 engage in a professional services or consultant services contract with a
8 part-time or full-time employee who occupies a position authorized to be paid
9 from extra help or regular salaries for a state agency, except as provided in
10 § 21-1-403.

11 (2) However, this subsection does not prohibit an institution of
12 higher education from executing a contract with a state agency under which
13 professional or consulting services will be performed by employees of the
14 institution of higher education.

15 (3) An employee of an institution of higher education performing
16 professional or consulting services to a state agency may receive additional
17 compensation if:

18 (A) The institution of higher education requests and
19 receives written approval from the Office of Personnel Management of the
20 Department of Finance and Administration concerning the amount of additional
21 compensation to be paid to any employee; and

22 (B) The total salary payments received from the employee's
23 regular salaried position and amounts received for services performed under a
24 professional services contract do not exceed one hundred twenty-five percent
25 (125%) of the maximum annual salary authorized by law for the employee's
26 position with the institution of higher education.

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

33 /s/ Mahony
34
35
36