

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 H3/28/05 H3/31/05

2 85th General Assembly

# A Bill

3 Regular Session, 2005

HOUSE BILL 2501

4  
5 By: Representative Mahony

## For An Act To Be Entitled

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

### Subtitle

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

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

19 *SECTION 1. Arkansas Code § 19-11-708(8), concerning definitions in*  
20 *ethics law 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;*

25 *SECTION 2. Arkansas Code § 19-11-705 is amended to read as follows:*

26 19-11-705. Employee conflict of interest.

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

28 (1)(A) It shall be a breach of ethical standards for any  
29 employee or a member of the employee's immediate family to have a financial  
30 interest in a contract with the state agency employing the employee or a  
31 nonprofit organization created for the specific benefit of the state agency  
32 employing the employee, unless the contract:

33 (i) Is approved as provided in § 19-11-718; or

34 (ii) Obtained under competitive sealed bids or  
35 competitive sealed proposals.

36 (B) An employee awarded contracts pursuant to competitive



1 sealed bids or competitive sealed proposals shall report the contacts to the  
2 Director of the Arkansas Ethics Commission by August 1 of each year  
3 pertaining to contracts of the prior fiscal year.

4 (2) It shall be a breach of ethical standards for any employee  
5 to participate directly or indirectly in any proceeding or application, in  
6 any request for ruling or other determination, in any claim or controversy,  
7 or in any other particular matter pertaining to any contract or subcontract,  
8 and any solicitation or proposal therefor with a state agency, in which to  
9 the employee's knowledge:

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

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

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

18 ~~(2)~~(3) "Direct or indirect participation" shall include, but not  
19 be limited to, involvement through decision, approval, disapproval,  
20 recommendation, preparation of any part of a procurement request, influencing  
21 the content of any specification or procurement standard, rendering of  
22 advice, investigation, auditing, or in any other advisory capacity.

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

30 (c) Discovery of Conflict of Interest, Disqualification, and Waiver.  
31 Upon discovery of a possible conflict of interest, an employee shall promptly  
32 ~~file a written statement of disqualification with the Director of the~~  
33 ~~Department of Finance and Administration~~ Director of the Arkansas Ethics  
34 Commission and shall withdraw from further participation in the transaction  
35 involved. The employee may, at the same time, apply to the ~~director~~ Director  
36 of the Arkansas Ethics Commission in accordance with § 19-11-715(b) for an

1 advisory opinion as to what further application, if any, the employee may  
2 have in the transaction, or for a waiver in accordance with § 19-11-715(c).

3  
4 *SECTION 3. Arkansas Code § 19-11-706 is amended to read as follows:*

5 *19-11-706. Employee disclosure requirements.*

6 (a) Disclosure of Benefit Received from Contract. Any employee who  
7 has or obtains any benefit from any state contract with a business in which  
8 the employee has a financial interest shall report such benefit to the  
9 ~~Director of the Department of Finance and Administration~~ Director of the  
10 Arkansas Ethics Commission by August 1 for transactions or contracts  
11 pertaining to the previous fiscal year. However, this section shall not  
12 apply to a contract with a business where the employee's interest in the  
13 business has been placed in a disclosed blind trust.

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

18  
19 *SECTION 4. Arkansas Code § 19-11-712(b), pertaining to the civil and*  
20 *administrative remedies against employees who breach ethical standards, is*  
21 *amended to read as follows:*

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

27 (1) Oral or written warnings or reprimands;

28 (2) Forfeiture of pay without suspension;

29 (3) Suspension with or without pay for specified periods of  
30 time; and

31 (4) Termination of employment.

32  
33 *SECTION 5. Arkansas Code § 19-11-713(b), pertaining to the civil and*  
34 *administrative remedies against nonemployees who breach ethical standards, is*  
35 *amended to read as follows:*

36 (b) Supplemental Remedies. In addition to the existing remedies for

1 breach of the ethical standards of this subchapter, or regulations  
2 promulgated thereunder, the ~~Director of the Department of Finance and~~  
3 ~~Administration~~ Arkansas Ethics Commission may impose any one (1) or more of  
4 the following:

- 5  
6 (1) Oral or written warnings or reprimands;  
7 (2) Termination of transactions; and  
8 (3) Suspension or debarment from being a contractor or  
9 subcontractor under state contracts.

10  
11 SECTION 6. Arkansas Code § 19-11-715 is amended to read as follows:  
12 ~~19-11-715. Duties of Director of Department of Finance and~~  
13 ~~Administration~~ Regulations and advisory opinion by the Arkansas Ethics  
14 Commission.

15 (a) Regulations. The ~~Director of the Department of Finance and~~  
16 ~~Administration~~ Arkansas Ethics Commission shall promulgate regulations to  
17 implement this subchapter and shall do so in accordance with this subchapter  
18 and the applicable provisions of the Arkansas Administrative Procedure Act, §  
19 25-15-201 et seq.

20 (b) Advisory Opinions. On written request of state agencies,  
21 employees, or contractors and in consultation with the Attorney General, the  
22 ~~director~~ Arkansas Ethics Commission may render written advisory opinions  
23 regarding the appropriateness of the course of conduct to be followed in  
24 proposed transactions. Such requests and advisory opinions may be duly  
25 published in the manner in which *regulations of this state are published.*  
26 ~~Compliance with the requirements of a duly promulgated advisory opinion of~~  
27 ~~the director shall be deemed to constitute compliance with the ethical~~  
28 ~~standards of this subchapter.~~

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

35  
36 SECTION 7. Arkansas Code § 19-11-716 is amended to read as follows:

1 19-11-716. Participation in business incubators - Regulations and  
2 guidelines.

3 (a) The provisions of this subchapter shall not be applicable to  
4 faculty or staff of state-supported institutions of higher education  
5 participating in business incubators within this state if they have followed  
6 the rules and regulations promulgated by the governing board of the  
7 institution of higher education.

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

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

22 (c) The institution of higher education shall provide information  
23 regarding the transactions described in subdivision (b)(1) of this section  
24 and ownership interests of employees or board members in business incubators  
25 pertaining to the prior fiscal year by August 1 of each year to the Arkansas  
26 Ethics Commission, the Legislative Council, and the Legislative Joint  
27 Auditing Committee.

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

30  
31 SECTION 8. Arkansas Code § 19-11-717 is amended to read as follows:

32 19-11-717. Transactions with Institutions institutions of higher  
33 education involving patents, copyrights, or other proprietary information.

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

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

4           ~~(2) An employee or former employee of an institution of higher~~  
5 ~~education to participate directly or indirectly in any matter pertaining to~~  
6 ~~any contract or subcontract or any solicitation or proposal therefor between~~  
7 ~~the institution and a person or firm in which such employee or former~~  
8 ~~employee has a financial interest;~~

9           ~~(a) If, in either of the foregoing events, such a contract or~~  
10 ~~subcontract, solicitation, or proposal involves patents, copyrights, or other~~  
11 ~~proprietary information in which the an institution of higher education and~~  
12 ~~the employee or former employee have rights or interests, an institution may~~  
13 ~~enter such a contract~~ provided that any such contract or subcontract shall be  
14 ~~approved by the governing board of such institution in a public meeting.~~

15           ~~(b)(1)(A) With respect to contracts allowed in subsection (a) of this~~  
16 ~~section, nothing in the Arkansas Procurement Law, § 19-11-201 et seq. or in~~  
17 ~~§§ 19-11-1001 through 19-11-1012 shall prevent a state agency from~~  
18 ~~contracting for goods or services, including professional or consultant~~  
19 ~~services, with an organization that employs or contracts with a regular,~~  
20 ~~full-time, or part-time employee of a public institution of higher education~~  
21 ~~if the employee of the institution of higher education will provide some or~~  
22 ~~all of the goods or services under the contract.~~

23           ~~(B) Any organization or state agency entering into a~~  
24 ~~contract described under subsection (b) of this section shall comply with the~~  
25 ~~provisions of the Arkansas Procurement Law, § 19-11-201 et seq. and §§ 19-11-~~  
26 ~~1001 through 19-11-1012 to the extent that the provisions do not conflict~~  
27 ~~with this section.~~

28           ~~(2) An employee of an institution of higher education who~~  
29 ~~provides goods or services to a state agency through his or her association~~  
30 ~~with an organization that has a contract with the state agency to provide~~  
31 ~~goods or services shall obtain the requisite approvals under the policies of~~  
32 ~~the institution of higher education by which he or she is employed and comply~~  
33 ~~with all provisions of this subchapter.~~

34           ~~(c) The Arkansas Ethics Commission may promulgate rules regarding~~  
35 ~~contracts as allowed in this section.~~

36           ~~(d) The institution of higher education shall provide detailed~~

1 information regarding the specifics of these transactions pertaining to the  
2 prior fiscal year by August 1 of each year to the Arkansas Ethics Commission,  
3 the Legislative Council, and the Legislative Joint Auditing Committee.

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

6  
7 SECTION 9. Arkansas Code Title 19, Chapter 11, Subchapter 7 is amended  
8 to add an additional section to read as follows:

9 19-11-718. Issue of waivers by the Arkansas Ethics Commission.

10 (a) A state agency or a nonprofit organization created for the  
11 specific benefit of a state agency may file a request with the Director of  
12 the Arkansas Ethics Commission to review a contract between the state agency  
13 or nonprofit organization and an employee of that state agency or nonprofit  
14 organization and to request a waiver for the contract from the provisions of  
15 this subchapter.

16 (b) The request shall fully disclose all pertinent terms and  
17 conditions of the contract and shall state the unusual circumstances  
18 necessitating and justifying the contract.

19 (c)(1) The Director of the Arkansas Ethics Commission shall in  
20 writing, approve, disapprove, or request additional information necessary to  
21 make a proper determination pertaining to the request in writing within ten  
22 (10) working days of receipt of the request.

23 (2)(A) If additional information is requested, the director  
24 shall have an additional ten (10) working days from receipt of the  
25 information to approve or disapprove the contract.

26 (B) If the director fails to approve or disapprove the  
27 contract within the ten (10) working day periods provided in this subdivision  
28 (c)(2), the contract shall be deemed approved.

29 (3) No contract subject to review by the director shall be valid  
30 or enforceable until an approval letter has been issued by the director or  
31 the director fails to respond within the time periods specified in this  
32 section.

33 (d) After examining the submitted information and additional requested  
34 testimony or data, the director may approve the waiver of the contract if in  
35 the opinion of the director:

36 (1) The circumstances are such that fair competitive access to

1 governmental procurement has been obtained;

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

3 (3) The state agency has followed proper procedures in bidding  
4 or awarding the contract; and

5 (4) It appears that an employee has not used his or her position  
6 to obtain the contract.

7 (e)(1) All decisions of the director may be appealed to the Arkansas  
8 Ethics Commission for review. All appeals shall be made in writing to the  
9 Arkansas Ethics Commission within thirty (30) days of disapproval by the  
10 director.

11 (2) Upon receipt of an appeal, the Arkansas Ethics Commission  
12 shall decide the appeal at its next commission meeting unless additional  
13 information or witnesses are required or a delay is agreed upon by the person  
14 making the appeal.

15 (f) All decisions of the director or the commission regarding the  
16 approval or denial shall be reported to the state agency or nonprofit  
17 organization, the Chief Fiscal Officer of the State, the Legislative Council,  
18 and the Legislative Joint Auditing Committee on a quarterly basis.

19 (g) No contract subject to review and approval by the director or the  
20 Arkansas Ethics Commission shall be valid or enforceable until an approval  
21 letter has been issued by the director or the Arkansas Ethics Commission.

22 (h) The Arkansas Ethics Commission shall adopt appropriate rules  
23 regarding the administration of the procedures contained in this subsection.

24 (i) Any person knowingly providing or furnishing false information or  
25 knowingly not fully disclosing relevant information necessary for a proper  
26 determination by the director or the Arkansas Ethics Commission is guilty of  
27 violating the provisions of this subchapter.

28  
29 SECTION 10. Arkansas Code § 19-11-1004(c), pertaining to restrictions  
30 on contracts, is amended to read as follows:

31 (c)(1) Except as provided in this subsection, no state agency shall  
32 engage in a professional services or consultant services contract with a  
33 part-time or full-time employee who occupies a position authorized to be paid  
34 from extra help or regular salaries for a state agency, except as provided in  
35 § 21-1-403.

36 (2) However, this subsection does not prohibit an institution of



1 higher education from executing a contract with a state agency under which  
2 professional or consulting services will be performed by employees of the  
3 institution of higher education.

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

7 (A) The institution of higher education requests and  
8 receives written approval from the Office of Personnel Management of the  
9 Department of Finance and Administration concerning the amount of additional  
10 compensation to be paid to any employee; and

11 (B) The total salary payments received from the employee's  
12 regular salaried position and amounts received for services performed under a  
13 professional services contract do not exceed one hundred twenty-five percent  
14 (125%) of the maximum annual salary authorized by law for the employee's  
15 position with the institution of higher education.

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

22  
23 SECTION 11. Arkansas Code Title 19, Chapter 11, Subchapter 7 is  
24 amended to add an additional section to read as follows:

25 19-11-718. Enforcement.

26 The Arkansas Ethics Commission shall have the authority to

27 (1) Issue advisory opinions and guidelines on the requirements  
28 of § 19-11-701 et seq.;

29 (2) Investigate potential violations of § 19-11-701 et seq.;

30 (3) Impose civil and administrative remedies as provided in §§  
31 19-11-712 and 19-11-713 upon the finding of one (1) or more violations of §  
32 19-11-701 et seq; and

33 (4) Promulgate reasonable rules and regulations to implement and  
34 administer the requirements § 19-11-701 et seq.

35  
36 SECTION 12. Arkansas Code § 21-8-1001 is amended to read as follows:

1           21-8-1001. Conflicts of interest.

2           (a)(1) No member of a state board or commission or board member of an  
3 entity receiving state funds shall participate in, vote on, influence, or  
4 attempt to influence an official decision if the member has a pecuniary  
5 interest in the matter under consideration by the board, commission, or  
6 entity.

7           (2) A member of a state board or commission or board member of  
8 an entity receiving state funds may participate in, vote on, influence, or  
9 attempt to influence an official decision if the only pecuniary interest that  
10 may accrue to the member is incidental to his or her position or accrues to  
11 him or her as a member of a profession, occupation, or large class to no  
12 greater extent than the pecuniary interest could reasonably be foreseen to  
13 accrue to all other members of the profession, occupation, or large class.

14           (b) No member of a state board or commission or board member of an  
15 entity receiving state funds shall participate in any discussion or vote on a  
16 rule or regulation that exclusively benefits the member.

17           (c)(1) Nothing in this chapter shall prohibit a board or commission  
18 member from contracting with the board or commission he or she serves if the  
19 contracts are obtained through competitive sealed bids or competitive sealed  
20 proposals.

21           (2) A board or commission member awarded a contract pursuant to  
22 competitive sealed bids or competitive sealed proposals shall report the  
23 contact to the Director of the Arkansas Ethics Commission by August 1 of each  
24 year pertaining to contracts of the prior fiscal year.

25           (d)(1) Before a contract or transaction with a member having a  
26 pecuniary interest as allowed in this section is deemed valid and  
27 enforceable, the state entity shall disclose to the Director of the Arkansas  
28 Ethics Commission the nature and amount of the contract or transaction.

29           (2)(A) Upon receipt of the disclosure, the Director of the  
30 Arkansas Ethics Commission has ten (10) working days to notify the state  
31 entity that additional information is needed, or to inform the state entity  
32 that the contract or transaction is disapproved.

33           (B) If additional information is requested, the Director  
34 of the Arkansas Ethics Commission has ten (10) additional working days from  
35 the receipt of the information to inform the state entity that the contract  
36 or transactions are disapproved.

1                   (C) If the state entity does not receive written  
2 disapproval from the director within ten (10) working days provided in this  
3 subdivision (d)(2), the contract or transaction is deemed approved by the  
4 director.

5                   (3) If the director disapproves the contract or transaction, the  
6 state entity may appeal the decision to the Arkansas Ethics Commission.

7                   (4) The director may disapprove the contract or transaction if  
8 it appears that:

9                   (A) The circumstances are such that fair competitive  
10 access to governmental procurement has not been obtained;

11                   (B) The contract is not reasonable and equitable to the  
12 interest of the state;

13                   (C) The state entity has not followed proper procedures in  
14 bidding or awarding the contract; or

15                   (D) It appears that a board or commission member has used  
16 his or her position to obtain the contract.

17                   (5)(A) If the director disapproves the contract or transaction,  
18 the state entity may appeal the decision to the Arkansas Ethics Commission.

19                   (B) All appeals shall be made in writing to the Arkansas  
20 Ethics Commission within thirty (30) days of disapproval by the director.

21                   (C) Upon receipt of an appeal, the Arkansas Ethics  
22 Commission shall decide the appeal at its next commission meeting unless  
23 additional information or witnesses are required or a delay is agreed upon by  
24 the state agency making the appeal.

25                   (e) On a quarterly basis, the director shall notify the Chief Fiscal  
26 Officer of the State, the Legislative Council, and the Legislative Joint  
27 Auditing Committee of all contracts or transactions disclosed to the Director  
28 for review pursuant to the terms of this section.

29  
30  
31                   SECTION 13. Arkansas Code 21-8-1004 is amended to read as follows:

32                   § 21-8-1004. Penalties - Investigation by Arkansas Ethics Commission.

33                   (a) In addition to any penalty contained in any other provision of  
34 law, including, but not limited to, § 19-11-702, any member of a state board  
35 or commission or board member of an entity receiving state funds who  
36 knowingly and intentionally violates any of the provisions of this subchapter

1 *may be removed from office by the appointing authority.*

2 *(b) The Arkansas Ethics Commission may investigate complaints alleging*  
3 *a violation of this subchapter and may make recommendations to the appointing*  
4 *authority.*

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*/s/ Mahony*

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