

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 S4/5/05

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 § 19-11-717 or § 19-*  
34 *11-718; or*

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



1                    (B) An employee awarded contracts pursuant to competitive  
2 sealed bids or competitive sealed proposals shall report the contacts to the  
3 Director of the Arkansas Ethics Commission by August 1 of each year  
4 pertaining to contracts of the prior fiscal year.

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

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

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

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

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

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

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

1 of the Arkansas Ethics Commission in accordance with § 19-11-715(b) for an  
2 advisory opinion as to what further application, if any, the employee may  
3 have in the transaction, or for a waiver in accordance with § 19-11-715(c).  
4

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

6 19-11-706. Employee disclosure requirements.

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

15 (b) Failure to Disclosure Benefit Received. Any employee who knows or  
16 should have known of such benefit and fails to report the benefit to the  
17 ~~director~~ Arkansas Ethics Commission is in breach of the ethical standards of  
18 this section.  
19

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

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

28 (1) Oral or written warnings or reprimands;

29 (2) Forfeiture of pay without suspension;

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

32 (4) Termination of employment.  
33

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

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

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

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

16           (a) Regulations. The ~~Director of the Department of Finance and~~  
17 ~~Administration~~ Arkansas Ethics Commission shall promulgate regulations to  
18 implement this subchapter and shall do so in accordance with this subchapter  
19 and the applicable provisions of the Arkansas Administrative Procedure Act, §  
20 25-15-201 et seq.

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

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

36

1           SECTION 7. Arkansas Code § 19-11-716 is amended to read as follows:  
2           19-11-716. Participation in business incubators - Regulations and  
3 guidelines.

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

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

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

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

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

31

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

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

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

1 ~~ethical standards for:~~

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

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

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

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

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

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

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

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

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

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

10       19-11-718. Issue of waivers by the Arkansas Ethics Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32           (c)(1) Except as provided in this subsection, no state agency shall  
33 engage in a professional services or consultant services contract with a  
34 part-time or full-time employee who occupies a position authorized to be paid  
35 from extra help or regular salaries for a state agency, except as provided in  
36 § 21-1-403.

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

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

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

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

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

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

26           19-11-718. Enforcement.

27           The Arkansas Ethics Commission shall have the authority to

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

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

31                   (3) Impose civil and administrative remedies as provided in §§  
32 19-11-712 and 19-11-713 upon the finding of one (1) or more violations of §  
33 19-11-701 et seq; and

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

36

1           SECTION 12. Arkansas Code § 21-8-1001 is amended to read as follows:  
2           21-8-1001. Conflicts of interest.

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

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

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

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

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

26           (d)(1) Except for contracts covered under subdivision (c)(1) of this  
27 section, before a contract or transaction with a member having a pecuniary  
28 interest as allowed in this section is deemed valid and enforceable, the  
29 state entity shall disclose to the Director of the Arkansas Ethics Commission  
30 the nature and amount of the contract or transaction.

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

35           (B) If additional information is requested, the Director  
36 of the Arkansas Ethics Commission has ten (10) additional working days from

1 the receipt of the information to inform the state entity that the contract  
2 or transactions are disapproved.

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

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

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

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

13 (B) There is no rational basis for the award of the  
14 contract to the member;

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

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

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

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

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

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

31  
32  
33 SECTION 13. Arkansas Code 21-8-1004 is amended to read as follows:

34 § 21-8-1004. Penalties - Investigation by Arkansas Ethics Commission.

35 (a) In addition to any penalty contained in any other provision of  
36 law, including, but not limited to, § 19-11-702, any member of a state board

1 or commission or board member of an entity receiving state funds who  
2 knowingly and intentionally violates any of the provisions of this subchapter  
3 may be removed from office by the appointing authority.

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

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/s/ Mahony

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