

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: H3/7/13*

## A Bill

HOUSE BILL 1205

5 By: Representative Nickels  
6 By: Senator Elliott  
7

### For An Act To Be Entitled

9 AN ACT CONCERNING STATE AGENCY EMPLOYEE GRIEVANCES;  
10 TO PROVIDE THE POSSIBILITY OF RELIEF FOR EMPLOYEES  
11 WITH GROUNDS FOR A GRIEVANCE, INCLUDING WITHOUT  
12 LIMITATION THE RECEIPT OF CREDIT UNDER AN APPLICABLE  
13 RETIREMENT SYSTEM; AND FOR OTHER PURPOSES.  
14

### Subtitle

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16 AN ACT CONCERNING STATE EMPLOYEE  
17 GRIEVANCES AND POSSIBLE RELIEF FOR  
18 GRIEVANCES, INCLUDING WITHOUT LIMITATION  
19 CREDIT UNDER A RETIREMENT SYSTEM.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 16-7-104(8) and (9), concerning the powers  
26 and duties of the Arkansas Alternative Dispute Resolution Commission, are  
27 amended to read as follows:

28 (8) Apply for and accept gifts or grants from any public or  
29 private source for use in maintaining and improving alternative dispute  
30 resolution programs in the state; ~~and~~

31 (9) Collect fees for tuition and registration of educational  
32 *programs and to assist in maintaining a roster of third-party neutrals;*

33 (10) Establish fees and fines by rule to assist in maintaining  
34 rosters of arbitrators under § 16-7-108;

35 (11) Establish rules for the certification, professional  
36 conduct, discipline, and training of persons who are eligible to arbitrate



1 appeals from the state employee grievance procedures under § 21-1-701 et  
2 seq.; and

3 (12) Collect a fee to provide *panels of potential arbitrators*  
4 *for appeals* from the state employee grievance procedures under § 21-1-701 et  
5 seq.

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7 SECTION 2. Arkansas Code Title 16, Chapter 7, Subchapter 2, is amended  
8 to add an additional section to read as follows:

9 16-7-108. Arbitrators for state employee grievance procedures.

10 (a) The Arkansas Alternative Dispute Resolution Commission shall  
11 maintain a roster of arbitrators eligible to hear appeals from state employee  
12 grievance procedures under § 21-1-701 et seq.

13 (b) The commission shall provide a panel of arbitrators from which the  
14 employee and state agency may select an arbitrator to hear the employee's  
15 appeal from the state employee grievance procedures under § 21-1-701 et seq.

16 (c) The commission may promulgate rules concerning the:

17 (1) Selection of *panels of potential arbitrators* for appeals  
18 from the state employee grievance procedures under § 21-1-701 et seq.; and

19 (2) Establishment of fees and fines to assist in maintaining the  
20 *roster of arbitrators maintained under this section, including without*  
21 *limitation the fee to be paid by an arbitrator to be included on the roster*  
22 *of arbitrators eligible to hear appeals under § 21-1-701 et seq.*

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24 SECTION 3. Arkansas Code Title 21, Chapter 1, is amended to add an  
25 additional subchapter to read as follows:

26 Subchapter 7 – Appeals of State Employee Grievances

27 21-1-701. Definitions.

28 As used in this subchapter:

29 (1) “Adverse action” means the same as defined at § 21-1-602;

30 (2) “Appropriate authority” means the same as defined at § 21-1-  
31 602;

32 (3) “Arbitrator” means an individual who is certified by the  
33 Arkansas Alternative Dispute Resolution Commission to hear appeals under this  
34 subchapter;

35 (4) “Communicating in good faith” means making a verbal or  
36 written report at a time and in a manner that gives a state agency reasonable

1 notice of the need to correct a waste or violation;

2 (5)(A) "Employee" means a person regularly appointed or employed  
3 in a position of state service by a state agency for which:

4 (i) He or she is compensated on a full-time basis or  
5 on a pro rata basis; and

6 (ii) A class title and pay grade are established in  
7 the appropriation act for the agency or institution in accordance with the  
8 Uniform Classification and Compensation Act, § 21-5-201 et seq.

9 (B) "Employee" does not include a supervisory employee;

10 (6)(A) "State agency" means a board, commission, department,  
11 division, or office of state government within the executive branch.

12 (B) "State agency" does not include:

13 (i) An institution of higher education;

14 (ii) A public school district;

15 (iii) The Arkansas State Highway and Transportation  
16 Department; and

17 (iv) The Arkansas State Game and Fish Commission;

18 (7) "Supervisory employee" means an individual having:

19 (A) Authority in the interest of a state agency to hire,  
20 transfer, suspend, lay off, recall, promote, discharge, assign, reward, or  
21 discipline other employees of the state agency; or

22 (B) If his or her exercise of authority requires the use  
23 of independent judgment and is not of a merely routine or clerical nature,  
24 the responsibility to direct other employees of the state agency by which he  
25 or she is employed;

26 (8) "Violation" means the same as defined at § 21-1-602; and

27 (9) "Waste" means the same as defined at § 21-1-602.

28  
29 21-1-702. Appeals.

30 (a)(1) Upon the completion of an employee grievance procedure mandated  
31 by the executive branch, an employee who wishes to appeal the results of the  
32 employee grievance procedure mandated by the executive branch may file an  
33 appeal with the Office of Personnel Management of the Division of Management  
34 Services of the Department of Finance and Administration if the employee has  
35 been:

36 (A) Terminated;

1                   (B) Demoted;  
2                   (C) Suspended for fourteen (14) or more days; or  
3                   (D)(i) Subject to adverse action by his or her state  
4 agency for:

5                               (a) Communicating in good faith to an  
6 appropriate authority:

7                                       (1) The existence of waste of public  
8 funds, property, or manpower, including federal funds, property, or manpower  
9 administered or controlled by a public employer; or

10                                      (2) A violation or suspected violation  
11 of a law, rule, or regulation adopted under the laws of this state or a  
12 political subdivision of the state;

13                                      (b) Participating or giving information in an  
14 investigation, hearing, court proceeding, legislative or other inquiry, or in  
15 any form of administrative review; or

16                                      (c) Objecting or refusing to carry out a  
17 directive that the employee reasonably believes violates a law, rule, or  
18 regulation adopted under the authority of the laws of the state or a  
19 political subdivision of the state.

20                                      (ii) An employee filing an appeal under this  
21 subdivision (a)(1)(D) does not waive his or her right to file a claim under  
22 the Arkansas Whistle-Blower Act, § 21-1-601 et seq.

23                                      (2) The employee shall file the appeal with the *Office of*  
24 *Personnel Management* within thirty (30) days of the conclusion of any  
25 employee grievance procedures mandated by the executive branch.

26                                      (b)(1) The employee filing the appeal and the state agency shall  
27 select an arbitrator to hear the appeal from a panel of *five (5) potential*  
28 *arbitrators* provided by the Arkansas Alternative Dispute Resolution  
29 Commission.

30                                      (2)(A) The commission shall promulgate rules concerning the  
31 qualifications and certification process of arbitrators eligible to hear  
32 appeals.

33                                      (B)(i) The qualifications shall include a background in  
34 employer and employee relations.

35                                      (ii) The qualifications shall not require a person  
36 to be an attorney to hear appeals under this subchapter.

1           (3) Upon the selection of an arbitrator under subdivision (b)(1)  
2 of this section, the employee filing the appeal shall pay a fee to the  
3 commission in an amount determined by rule of the commission for providing  
4 the panel of potential arbitrators.

5           (4) The employee filing the appeal and the state agency shall  
6 split the arbitrator's costs for hearing the appeal.

7           (c)(1) An employee appealing to the commission may request that the  
8 appeal be conducted by:

9                   (A) A de novo hearing before the arbitrator selected to  
10 hear the appeal; or

11                   (B) A review of the record by the arbitrator selected to  
12 hear the appeal.

13           (2)(A) A state agency decision shall be sustained only if the  
14 state agency's decision is supported by:

15                   (i) Substantial evidence, if the action was based on  
16 an employee's unacceptable performance; or

17                   (ii) A preponderance of the evidence, if the action  
18 was based on factors other than an employee's unacceptable performance.

19                   (B) A state agency decision shall not be upheld by the  
20 arbitrator selected to hear the appeal if the employee shows:

21                   (i) Harmful error in the state agency's procedures  
22 in arriving at the decision;

23                   (ii) That the decision was based on a prohibited  
24 personnel practice; or

25                   (iii) That the decision was not in accordance with  
26 the law.

27           (d) An employee appealing under this subchapter may be represented by  
28 an attorney or other representative in proceedings before an arbitrator  
29 selected to hear the appeal.

30           (e)(1) The arbitrator shall conduct the appeal within forty-five (45)  
31 days of the appeal's filing date.

32                   (2) The arbitrator shall issue a final decision within twenty  
33 (20) days of the date of the hearing or review of the record.

34                   (3) The final decision of the arbitrator is not appealable.

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36           21-1-703. Relief.

1       (a) If an employee is the prevailing party in an appeal under this  
2 subchapter, the employee shall be granted relief deemed appropriate by the  
3 arbitrator, including without limitation:

4               (1) Attorney's fees; and

5               (2) The restoration of the employee to his or her previous  
6 employment position.

7       (b)(1) An employee who is found to have been affected by an  
8 unjustified or unwarranted personnel action that resulted in the withdrawal  
9 or reduction of all or part of the employee's pay or allowances may receive,  
10 at the discretion of the arbitrator, an amount equal to all or part of the  
11 pay or allowances that the employee would have earned or received during the  
12 period affected by the personnel action, less any amounts earned by the  
13 employee through other employment during that period.

14               (2) If the arbitrator awards an amount under subdivision (b)(1)  
15 of this section, the employee shall receive the following benefits if the  
16 benefits were not received due to the personnel action:

17                       (A) Annual and sick leave credit that the employee would  
18 have earned or received during the period affected by the personnel action;  
19 and

20                       (B)(i) Credit under an applicable state retirement system  
21 that the employee would have earned or received during the period affected by  
22 the personnel action.

23                               (ii) The state agency shall pay to the applicable  
24 state retirement system the employee and employer contributions that would  
25 have otherwise been paid during the period affected by the personnel action.

26               (3) If the arbitrator awards an amount under subdivision (b)(1)  
27 of this section, he or she shall also award interest, compounded daily,  
28 calculated under rules promulgated by the Office of Personnel Management of  
29 the Division of Management Services of the Department of Finance and  
30 Administration.

31               (4) An amount awarded under subdivision (b)(1) of this section  
32 shall not be an amount that results in the employee's exceeding the total  
33 compensation authorized by law for the position at issue.

34       (c)(1) If the decision of the arbitrator requires a financial award to  
35 an employee, the state agency shall pay the award ordered by the arbitrator  
36 if it is twelve thousand five hundred dollars (\$12,500) or less.

1           (2)(A) If the award exceeds ten thousand dollars (\$10,000), the  
2 award shall be referred to the General Assembly for an appropriation.

3           (B) The Office of Personnel Management shall file a  
4 written report of an award exceeding twelve thousand five hundred dollars  
5 (\$12,500) to the Claims Review Subcommittee of the Legislative Council.

6           (C) The report shall include a concise statement of the  
7 facts with an explanation of the state agency's liability.

8           (D) The report shall be filed with the Claims Review  
9 Subcommittee of the Legislative Council within thirty (30) days after the  
10 final decision of the arbitrator.

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12           21-1-704. Alternative dispute resolution.

13           (a)(1) In lieu of requesting an appeal under § 21-1-702, an employee  
14 may request that the appeal be mediated.

15           (2) The employee shall file a request for mediation with the  
16 Office of Personnel Management of the Division of Management Services of the  
17 Department of Finance and Administration within thirty (30) days of the  
18 conclusion of any employee grievance procedures mandated by the executive  
19 branch.

20           (b)(1) If an employee requests mediation, the Arkansas Alternative  
21 Dispute Resolution Commission shall select an appropriate mediator from a  
22 roster maintained by the commission of those mediators who meet the  
23 commission's guidelines for that type of case.

24           (2) The employee filing the appeal and the state agency shall  
25 split the mediator's costs for conducting the mediation.

26           (c) If the parties reach an agreement through mediation, the mediator  
27 shall provide a copy of the mediation agreement to the Office of Personnel  
28 Management, and the matter shall be considered resolved and final.

29           (d)(1) If the parties are unable to reach an agreement through  
30 mediation, the mediator shall report that information to the Office of  
31 Personnel Management within two (2) days of the unsuccessful mediation.

32           (2) An employee who is unable to reach an agreement through  
33 mediation may request an appeal under § 21-1-702 within ten (10) days of the  
34 unsuccessful mediation.

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36           21-1-705. Rules.

1       (a) The Department of Finance and Administration shall promulgate  
2 rules governing appeals under this subchapter.

3       (b) The Arkansas Alternative Dispute Resolution Commission shall  
4 promulgate rules governing the selection of *arbitrators and mediators* for the  
5 purpose of hearing appeals under this subchapter.

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7       SECTION 4. DO NOT CODIFY. The Office of Personnel Management of the  
8 Division of Management Services of the Department of Finance and  
9 Administration shall begin receiving appeals under Section 3 of this act on  
10 July 1, 2014.

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13                                   */s/Nickels*  
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