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4

As Engrossed: H3/28/19

A Bill

HOUSE BILL 1842

5 By: Representative Pilkington
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO STREAMLINE THE GRIEVANCE PROCESS FOR STATE
10 EMPLOYEES; TO AMEND THE LAW CONCERNING THE
11 PROCEDURES, FACTORS TO BE CONSIDERED, AND STANDARD OF
12 REVIEW FOR GRIEVANCES; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO STREAMLINE THE GRIEVANCE PROCESS FOR
16 STATE EMPLOYEES; AND TO AMEND THE LAW
17 CONCERNING THE PROCEDURES, FACTORS TO BE
18 CONSIDERED, AND STANDARD OF REVIEW FOR
19 GRIEVANCES.
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22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 21, Chapter 1, Subchapter 7, is amended
26 to read as follows:

27 21-1-701. Definitions.

28 As used in this subchapter:

29 (1) ~~“Adverse action” means the same as defined at § 21-1-~~
30 ~~602;~~

31 (2) ~~“Appropriate authority” means the same as defined at §~~
32 ~~21-1-602;~~

33 (3) ~~“Communicating in good faith” means making a verbal or~~
34 ~~written report at a time and in a manner that gives a state agency reasonable~~
35 ~~notice of the need to correct a waste or violation;~~

36 (4)(A) “Employee” means a person regularly appointed or



1 employed in a position of state service by a state agency for which:

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

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

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

10 ~~(5) "Party" means the employee affected by a state agency
11 decision or the state agency that made the decision at issue in the grievance~~

12 (2) "Grievance" means an employee's complaint resulting from a
13 termination or suspension;

14 ~~(6)(A)(3)(A)~~ "State agency" means a board, commission,
15 department, division, or office of state government within the executive
16 branch.

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

18 (i) An institution of higher education;

19 (ii) A public school district;

20 (iii) The Arkansas Department of

21 Transportation; and

22 (iv) The Arkansas State Game and Fish

23 Commission; and

24 ~~(7)(4)~~ "Supervisory employee" means an individual having:

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

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

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

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

35
36 21-1-702. Grievances.

1 (a) The Office of Personnel Management shall establish a procedure for
2 the filing, hearing, adjudication, and appeal of grievances by state
3 agencies.

4 (b)(1) An employee of a state agency may file a grievance under this
5 subchapter if his or her termination or suspension from employment was
6 inconsistent with the terminating or suspending state agency's disciplinary
7 policy.

8 (2) At the hearing on or appeal of the grievance filed under
9 this subchapter, the sole issue for the trier of fact shall be whether the
10 state agency's decision concerning termination or suspension was consistent
11 with the state agency's disciplinary policy.

12 (c)(1)(A) The procedure established under subsection (a) of this
13 section shall provide without limitation that an employee be afforded a
14 hearing within fifteen (15) business days of the filing of his or her appeal
15 if the employee alleges that he or she was terminated by a state agency for
16 the following actions under § 21-1-603:

17 (i) Communicating in good faith to an appropriate
18 authority:

19 (a) The existence of waste of public funds,
20 property, or manpower, including federal funds, property, or manpower
21 administered or controlled by a public employer; or

22 (b) A violation or suspected violation of a law or
23 rule adopted under the law of this state or a political subdivision of the
24 state;

25 (ii) Participating or giving information in an
26 investigation, hearing, court proceeding, legislative or other inquiry, or in
27 any form of administrative review;

28 (iii) Objecting to or refusing to carry out a directive
29 that the employee reasonably believes violates a law or rule adopted under
30 the authority of the laws of the state or a political subdivision of the
31 state; or

32 (iv) Reporting a loss of public funds under § 25-1-124.

33 (B) A hearing under subdivision (c)(1)(A) of this section shall
34 take place before the occurrence of a state agency hearing pursuant to the
35 grievance filed by the person.

36 (C)(i)(a) An employee requesting a hearing under subdivision

1 (c)(1)(A) of this section shall submit with his or her request for a hearing
 2 evidence that he or she committed one (1) of the actions under subdivisions
 3 (c)(1)(A)(i)-(iv) of this section.

4 (b) Evidence under this subdivision (c)(1)(C)(i)
 5 that is confidential under § 21-1-607 or other provisions of law shall remain
 6 confidential when submitted in support of a request for a hearing or
 7 otherwise utilized in the appeal of the grievance decision.

8 (ii) If the person fails to demonstrate that he or she
 9 committed one (1) of the actions under subdivisions (c)(1)(A)(i)-(iv) of this
 10 section, the office shall not schedule a hearing under subdivision (c)(1)(A)
 11 of this section.

12 (2) If the employee demonstrates at the hearing that a reasonable
 13 person would conclude that the state agency terminated the employee as a
 14 result of the employee's activities under subdivision (c)(1)(A) of this
 15 section, the employee shall be:

16 (A) Reinstated to his or her position until the conclusion of
 17 the grievance review procedure under this section; or

18 (B) Reinstated to his or her position and placed on
 19 administrative leave until the conclusion of the grievance review procedure
 20 under this section.

21 (3) An employee filing an appeal of a grievance decision under this
 22 section does not waive his or her right to file a claim under the Arkansas
 23 Whistle-Blower Act, § 21-1-601 et seq.

24
 25 ~~21-1-703. Appeals.~~

26 ~~(a) The Office of Personnel Management shall promulgate rules that:~~

27 ~~(1) Provide a process for appeals of the grievance decisions of~~
 28 ~~state agencies; and~~

29 ~~(2) Provide a procedure for the nonbinding mediation consistent~~
 30 ~~with this subchapter, including without limitation:~~

31 ~~(A) The filing and form of a request for nonbinding~~
 32 ~~mediation;~~

33 ~~(B) The method of notice of and the scheduling of the~~
 34 ~~nonbinding mediation to be provided to a party;~~

35 ~~(C) Rules for conduct of the nonbinding mediation;~~

36 ~~(D) Appropriate evidence to be considered at the~~

1 ~~nonbinding mediation; and~~

2 ~~(E) Considerations to be made in resolving the nonbinding~~
3 ~~mediation.~~

4 ~~(b)(1)(A) The rules promulgated under subdivision (a)(1) of this~~
5 ~~section shall provide without limitation that an employee be afforded a~~
6 ~~hearing within fifteen (15) business days of the filing of his or her appeal~~
7 ~~if the employee alleges that he or she was terminated by a state agency for~~
8 ~~the following actions under § 21-1-603:~~

9 ~~(i) Communicating in good faith to an appropriate~~
10 ~~authority;~~

11 ~~(a) The existence of waste of public funds,~~
12 ~~property, or manpower, including federal funds, property, or manpower~~
13 ~~administered or controlled by a public employer; or~~

14 ~~(b) A violation or suspected violation of a~~
15 ~~law, rule, or regulation adopted under the law of this state or a political~~
16 ~~subdivision of the state;~~

17 ~~(ii) Participating or giving information in an~~
18 ~~investigation, hearing, court proceeding, legislative or other inquiry, or in~~
19 ~~any form of administrative review;~~

20 ~~(iii) Objecting to or refusing to carry out a~~
21 ~~directive that the employee reasonably believes violates a law, rule, or~~
22 ~~regulation adopted under the authority of the laws of the state or a~~
23 ~~political subdivision of the state; or~~

24 ~~(iv) A report of loss of public funds under § 25-1-~~
25 ~~124.~~

26 ~~(B) A hearing under subdivision (b)(1)(A) of this section~~
27 ~~shall take place before the occurrence of a state agency hearing pursuant to~~
28 ~~the grievance filed by the person.~~

29 ~~(C)(i) An employee requesting a hearing under subdivision~~
30 ~~(b)(1)(A) of this section shall submit with his or her request for a hearing~~
31 ~~evidence that he or she committed one of the actions under subdivisions~~
32 ~~(b)(1)(A)(i)-(iv) of this section. Evidence under this subdivision~~
33 ~~(b)(1)(C)(i) that is confidential under § 21-1-607 or other provisions of law~~
34 ~~shall remain confidential when submitted in support of a request for a~~
35 ~~hearing or otherwise utilized in the appeal of the grievance decision.~~

36 ~~(ii) If the person fails to demonstrate that he or~~

1 ~~she committed one of the actions under subdivisions (b)(1)(A)(i)-(iv) of this~~
 2 ~~section, the office shall not schedule a hearing under subdivision (b)(1)(A)~~
 3 ~~of this section.~~

4 ~~(2) If the employee demonstrates at the hearing that a~~
 5 ~~reasonable person would conclude that the state agency terminated the~~
 6 ~~employee as a result of the employee's activities under subdivision (b)(1)(A)~~
 7 ~~of this section, the employee shall be:~~

8 ~~(A) Reinstated to his or her position until the conclusion~~
 9 ~~of the grievance; or~~

10 ~~(B) Reinstated to his or her position and placed on~~
 11 ~~administrative leave until the conclusion of the grievance.~~

12 ~~(3) An employee filing an appeal of a grievance decision under~~
 13 ~~this section does not waive his or her right to file a claim under the~~
 14 ~~Arkansas Whistle-Blower Act, § 21-1-601 et seq.~~

15
 16 ~~21-1-704. Nonbinding mediation.~~

17 ~~(a)(1) After a state agency hearing pursuant to a grievance filed by~~
 18 ~~an employee and before an appeal to the Office of Personnel Management, a~~
 19 ~~party may file a request for nonbinding mediation to resolve the issue raised~~
 20 ~~by the grievance if the grievance concerns an allegation that the employee~~
 21 ~~has been:~~

22 ~~(A) Terminated;~~

23 ~~(B) Demoted;~~

24 ~~(C) Suspended for fourteen (14) or more days; or~~

25 ~~(D)(i) Subject to adverse action by his or her state~~
 26 ~~agency for:~~

27 ~~(a) Communicating in good faith to an~~
 28 ~~appropriate authority:~~

29 ~~(1) The existence of waste of public~~
 30 ~~funds, property, or manpower, including federal funds, property, or manpower~~
 31 ~~administered or controlled by a public employer; or~~

32 ~~(2) A violation or suspected violation~~
 33 ~~of a law, rule, or regulation adopted under the laws of this state or a~~
 34 ~~political subdivision of the state;~~

35 ~~(b) Participating or giving information in an~~
 36 ~~investigation, hearing, court proceeding, legislative or other inquiry, or in~~

1 ~~any form of administrative review;~~

2 ~~(c) Objecting or refusing to carry out a~~
3 ~~directive that the employee reasonably believes violates a law, rule, or~~
4 ~~regulation adopted under the authority of the laws of the state or a~~
5 ~~political subdivision of the state; or~~

6 ~~(d) Reporting a loss of public funds under §~~
7 ~~25-1-124.~~

8 ~~(ii) An employee agreeing to nonbinding mediation~~
9 ~~under this subdivision (a)(1)(D) does not waive his or her right to file a~~
10 ~~claim under the Arkansas Whistle Blower Act, § 21-1-601 et seq.~~

11 ~~(2) Notice of the request for nonbinding mediation shall be~~
12 ~~filed by the party requesting the nonbinding mediation for the grievance with~~
13 ~~the Office of Personnel Management no later than fifteen (15) business days~~
14 ~~after the grievance hearing or state agency decision.~~

15 ~~(b)(1) The Office of Personnel Management shall:~~

16 ~~(A) Maintain a roster of qualified mediators; and~~

17 ~~(B) Provide by rule for the minimum qualifications of~~
18 ~~mediators.~~

19 ~~(2) A mediator shall:~~

20 ~~(A) Be a mediator from the Office of Personnel~~
21 ~~Management's roster of qualified mediators;~~

22 ~~(B) Be certified in mediation by the Arkansas Alternative~~
23 ~~Dispute Resolution Commission;~~

24 ~~(C) Not be employed by the state agency that is a party to~~
25 ~~the nonbinding mediation;~~

26 ~~(D) Have a background in employer and employee relations;~~

27 ~~and~~

28 ~~(E) Not be required to be an attorney.~~

29 ~~(c)(1)(A) The nonbinding mediation may be resolved by the agreement of~~
30 ~~the parties.~~

31 ~~(B) If the parties reach a resolution in the nonbinding~~
32 ~~mediation, the director of the state agency that is a party to the nonbinding~~
33 ~~mediation shall report the resolution in writing to the Office of Personnel~~
34 ~~Management, and the matter shall be considered resolved and final.~~

35 ~~(2)(A) If there is no resolution after the nonbinding mediation:~~

36 ~~(i) A party may file an appeal with the Office of~~

1 ~~Personnel Management within ten (10) business days of the mediation; and~~
2 ~~(ii) The mediator shall report within ten (10)~~
3 ~~business days of the nonbinding mediation his or her suggested resolution to~~
4 ~~the Director of the Department of Finance and Administration.~~

5 ~~(B) In determining the proposed resolution, the mediator~~
6 ~~shall consider:~~

7 ~~(i) What action, if any, is in the best interests of~~
8 ~~the efficient administration of the state agency;~~

9 ~~(ii) Whether the state agency's decision is~~
10 ~~supported by:~~

11 ~~(a) Substantial evidence, if the action was~~
12 ~~based on an employee's unacceptable performance; or~~

13 ~~(b) A preponderance of the evidence, if the~~
14 ~~action was based on factors other than an employee's unacceptable~~
15 ~~performance; and~~

16 ~~(iii) Whether the employee shows:~~

17 ~~(a) Harmful error in the state agency's~~
18 ~~procedures in arriving at the decision;~~

19 ~~(b) That the decision was based on a~~
20 ~~prohibited personnel practice; or~~

21 ~~(c) That the decision was not in accordance~~
22 ~~with the law.~~

23 ~~(d) A party to nonbinding mediation under this subchapter may be~~
24 ~~represented by an attorney or other representative in proceedings before a~~
25 ~~mediator selected to hear the nonbinding mediation.~~

26 ~~(e) The nonbinding mediation shall be conducted within forty five~~
27 ~~(45) days of the request for mediation.~~

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29 */s/Pilkington*
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