

State of Arkansas *As Engrossed: H3/7/13 H4/3/13 H4/11/13*
89th General Assembly **A Bill**
Regular Session, 2013

HOUSE BILL 1205

By: Representative Nickels

By: Senator Elliott

For An Act To Be Entitled

AN ACT CONCERNING STATE AGENCY EMPLOYEE GRIEVANCES;
TO PROVIDE THE POSSIBILITY OF RELIEF FOR EMPLOYEES
WITH GROUNDS FOR A GRIEVANCE; AND FOR OTHER PURPOSES.

Subtitle

*CONCERNING STATE EMPLOYEE GRIEVANCES AND
POSSIBLE RELIEF FOR GRIEVANCES.*

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

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

Subchapter 7 – State Employee Grievances

21-1-701. Definitions.

As used in this subchapter:

- (1) “Adverse action” means the same as defined at § 21-1-602;
- (2) “Appropriate authority” means the same as defined at § 21-1-602;
- (3) “Communicating in good faith” means making a verbal or written report at a time and in a manner that gives a state agency reasonable notice of the need to correct a waste or violation;
- (4)(A) “Employee” means a person regularly appointed or employed in a position of state service by a state agency for which:
 - (i) He or she is compensated on a full-time basis or on a pro rata basis; and
 - (ii) A class title and pay grade are established in



the appropriation act for the agency or institution in accordance with the Uniform Classification and Compensation Act, § 21-5-201 et seq.

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

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

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

(B) "State agency" does not include:

(i) An institution of higher education;

(ii) A public school district;

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

(iv) The Arkansas State Game and Fish Commission;

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

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

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

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

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

21-1-702. Grievances.

The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall establish a procedure for the filing, hearing, adjudication, and appeal of grievances by state agencies.

21-1-703. Appeals.

The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall promulgate rules that:

(1) Provide a process for appeals of the grievance decisions of

state agencies; and

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

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

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

(C) Rules for conduct of the nonbinding mediation;

(D) Appropriate evidence to be considered at the nonbinding mediation; and

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

21-1-704. Nonbinding mediation.

(a)(1) After a state agency hearing pursuant to a grievance filed by an employee and before an appeal to the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration, a party may file a request for nonbinding mediation to resolve the issue raised by the grievance if the grievance concerns an allegation that the employee has been:

(A) Terminated;

(B) Demoted;

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

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

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

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

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

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

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

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

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

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

(A) Maintain a roster of qualified mediators; and

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

(2) A mediator shall:

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

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

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

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

(E) Not be required to be an attorney.

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

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

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

(i) A party may file an appeal with the Office of Personnel Management within ten (10) business days of the mediation; and

(ii) The mediator shall report within ten (10) business days of the nonbinding mediation his or her suggested resolution to

the Director of the Department of Finance and Administration.

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

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

(ii) Whether the

(a) What action, if any, is in the best interests of the efficient administration of the state agency;

(b) Whether the state agency's decision is supported by:

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

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

(iii) Whether the employee shows:

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

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

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

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

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

SECTION 2. DO NOT CODIFY. The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall begin offering nonbinding mediation under this act on July 1, 2014.

/s/Nickels

APPROVED: 04/22/2013