

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 1039

By: Senator D. Sanders
By: Representative Davis

For An Act To Be Entitled

AN ACT CONCERNING CONFLICTS OF INTEREST OF MEMBERS AND FORMER MEMBERS OF CERTAIN STATE ENTITIES; TO PROVIDE CONFLICT OF INTEREST PROVISIONS FOR MEMBERS AND FORMER MEMBERS OF CERTAIN STATE ENTITIES; TO ALLOW THE ARKANSAS ETHICS COMMISSION TO REGULATE AND ENFORCE THE CONFLICTS OF INTEREST PROVISIONS FOR MEMBERS AND FORMER MEMBERS OF CERTAIN STATE ENTITIES; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE CONFLICT OF INTEREST PROVISIONS FOR MEMBERS AND FORMER MEMBERS OF CERTAIN STATE ENTITIES.

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

SECTION 1. Arkansas Code § 7-6-217(g), concerning the Arkansas Ethics Commission, is amended to read as follows:

(g) The commission shall have the authority to:

(1) ~~Pursuant to~~ Under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., promulgate reasonable rules ~~and regulations~~ to implement and administer the requirements of this subchapter, as well as § 7-9-401 et seq., § 19-11-718, § 21-8-301 et seq., § 21-8-401 et seq., ~~§ 21-8-501 et seq.,~~ ~~repealed~~, § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq., and to govern procedures before the commission, matters of commission operations, and all investigative and



disciplinary procedures and proceedings;

(2) Issue advisory opinions and guidelines on the requirements of § 7-1-103(a)(1)-(4), (6), and (7), this subchapter, § 7-9-401 et seq., § 19-11-718, § 21-8-301 et seq., § 21-8-401 et seq., ~~§ 21-8-501 et seq.~~, ~~[repealed]~~, § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.;

(3) After a citizen complaint has been submitted to the commission, investigate alleged violations of § 7-1-103(a)(1)-(4), (6), and (7), this subchapter, § 7-9-401 et seq., § 19-11-718, § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., ~~§ 21-8-501 et seq.~~, ~~[repealed]~~, § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq. and render findings and disciplinary action thereon;

(4) Pursuant to commission investigations, subpoena any person or the books, records, or other documents being held by any person and take sworn statements;

(5) Administer oaths for the purpose of taking sworn testimony of witnesses and conduct hearings;

(6) Hire a staff and retain legal counsel;

(7) Approve forms prepared by the Secretary of State ~~pursuant to~~ under this subchapter, § 7-9-401 et seq., § 19-11-718, § 21-8-301 et seq., § 21-8-401 et seq., ~~§ 21-8-501 et seq.~~, ~~[repealed]~~, § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.; and

(8)(A) File suit in the Pulaski County Circuit Court or in the circuit court of the county wherein the respondent resides or, ~~pursuant to~~ under § 16-17-706, in the small claims division established in any district court in the State of Arkansas, to obtain a judgment for the amount of any fine imposed ~~pursuant to~~ under § 7-6-218(b)(4)(B)(i)-(iii), or to enforce an order of the commission requiring the filing or amendment of a disclosure form.

(B) Said action by the court shall not involve further judicial review of the commission's actions.

(C) The fee normally charged for the filing of a suit in any of the circuit courts in the State of Arkansas shall be waived on behalf of the commission.

SECTION 2. Arkansas Code Title 19, Chapter 11, Subchapter 7, is amended to add an additional section to read as follows:

19-11-718. Special state employees – Conflicts of interest.

(a) As used in this section:

(1)(A) "Conflict of interest" means a special state employee's direct or indirect pecuniary or other interest in a matter before a covered board.

(B) "Conflict of interest" includes without limitation the following:

(i) An offer of employment from an entity that is involved in a procurement matter with the covered board or is involved in a discussion of a procurement matter with the covered board;

(ii) Being an officer or employee of a business, association, or nonprofit organization that is involved in a procurement matter with the covered board or is involved in a discussion of a procurement matter with the covered board; and

(iii) Receiving compensation from an entity that is involved in a procurement matter or is involved in a discussion of a procurement matter with the covered board;

(2)(A) "Covered board" means:

(i) A commission, board, bureau, office, or other state instrumentality created within the executive branch; and

(ii) An entity that is created by regulation, statute, legislative direction, executive order, or other informal means if the entity has decision-making authority over procurement criteria, contracts, appointment of individuals to negotiate procurement directly or indirectly, or the approval of procurements.

(B) "Covered board" does not include the following:

(i) The constitutional departments of the state;

(ii) The elected constitutional offices of the state;

(iii) The General Assembly, including the Legislative Council, the Legislative Joint Auditing Committee, and supporting agencies and bureaus of the General Assembly;

(iv) The Supreme Court;

(v) The Court of Appeals;

(vi) The circuit courts;
(vii) Prosecuting attorneys;
(viii) The Administrative Office of the Courts;
(ix) An institution of higher education;
(x) A municipal government;
(xi) A county government;
(xii) An interstate agency; or
(xiii) A legislative task force or committee if the legislative task force or committee only advises the General Assembly; and

(3)(A) "Special state employee" means a person appointed to a covered board, regardless of whether the person:

(i) Receives compensation for his or her services;
(ii) Receives reimbursement for travel expenses;
(iii) Receives per diem; or
(iv) Was appointed formally or informally.

(B) "Special state employee" does not include a constitutional officeholder or an exofficio or nonvoting member of an entity described in subdivision (a)(2)(A) of this section.

(b) A special state employee shall disclose a conflict of interest in a procurement matter before the covered board:

(1) Either:

(A) In writing to the head of a covered board; or

(B) Orally or in writing at a public meeting of the covered board if the disclosure is included in the minutes of the public meeting; and

(2) By filing a conflict of interest disclosure report with the Secretary of State within five (5) business days of the date the special state employee becomes aware of the conflict of interest.

(c) A special state employee shall not vote on, receive or read confidential materials related to, participate in discussion of, or attempt to influence the covered board's decision on a procurement matter if the special state employee has a conflict of interest in the procurement matter.

(d) A special state employee who is a lobbyist registered under § 21-8-601 shall recuse himself or herself from a procurement matter before the covered board if:

(1) The special state employee receives compensation as a

lobbyist from an entity involved in the procurement matter; or

(2) The procurement matter involves a person or entity that is a competitor of a lobbying client of the special state employee.

(e) A special state employee or former special state employee shall not:

(1) Represent an entity other than the state in a matter in which he or she participated in making a decision, rendering approval or disapproval, making a recommendation, or rendering advice on behalf of the covered board; or

(2) Assist or represent a party for contingent compensation in a matter involving a covered board other than in a judicial, administrative, or quasi-judicial proceeding.

(f) A former special state employee shall not lobby the members or staff of a covered board of which he or she is a former member for one (1) year after the cessation of the special state employee's membership on the covered board.

(g) A contract entered into by a covered board, including a renewal, extension, or amendment of a contract entered into by a covered board, shall include a statement that no special state employee has been influenced by the vendor in the course of the procurement.

(h)(1) A complaint about a violation of this section may be filed with the Arkansas Ethics Commission.

(2) A violation of this section is grounds for discipline or removal of the special state employee by the commission.

(i) The commission shall promulgate rules regarding disciplinary and removal proceedings for special state employees.

APPROVED: 04/08/2015