

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: S1/12/17 S1/18/17  
**A Bill**

SENATE BILL 34

By: Senator Hickey  
By: Representative Hammer

### **For An Act To Be Entitled**

AN ACT TO ESTABLISH THE "PUBLIC OFFICER AND EMPLOYEE INTEGRITY ACT OF 2017"; TO CREATE A SPECIAL REVENUE FUND; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ESTABLISH THE "PUBLIC OFFICER AND EMPLOYEE INTEGRITY ACT OF 2017"; TO CREATE A SPECIAL REVENUE FUND; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 19-6-301, concerning the enumeration of special revenues, is amended to add an additional subdivision to read as follows:

(255) Money damages, interest, costs, and attorney's fees, §§ 21-1-805 and 21-1-806.

SECTION 2. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended to add a new section to read as follows:

19-6-832. Public Officer and Employee Integrity Enforcement Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the "Public Officer and Employee Integrity Enforcement Fund".



(b) The fund shall consist of such funds as may be provided by the General Assembly or as deposited by the Attorney General as required by §§ 21-1-805 and 21-1-806.

(c)(1) The fund shall be used by the Attorney General upon approval of the Legislative Council to reimburse litigation expenses incurred under the Public Officer and Employee Integrity Act of 2017, § 21-1-801 et seq.

(2)(A) The Attorney General may ask the Legislative Council for reimbursement of litigation expenses under this section after a showing that an investigation was conducted or a lawsuit was filed under the Public Officer and Employee Integrity Act of 2017, § 21-1-801 et seq.

(B) Litigation expenses submitted for reimbursement to the Legislative Council under this section shall be itemized.

(d) The Legislative Council may approve some or all of the litigation expenses requested for reimbursement by the Attorney General under this section.

SECTION 3. Arkansas Code Title 21, Chapter 1, is amended to add a new subchapter to read as follows:

Subchapter 8 – Public Officer and Employee Integrity Act of 2017

21-1-801. Title.

This subchapter shall be known and may be cited as the "Public Officer and Employee Integrity Act of 2017".

21-1-802. Legislative intent.

It is the intent of the General Assembly to create a civil cause of action that may be used by the Attorney General to protect the public and to promote and maintain the integrity of local and state agencies against malfeasance and illegal conduct by public officers and employees.

21-1-803. Definitions.

As used in this subchapter:

(1) "Illegal conduct" means conduct for which a sentence to a term of imprisonment or to a fine, or both, is authorized by statute;

(2) "Local or state agency" means:

(A)(i) A constitutional office or constitutional officer.

(ii) As used in this subdivision (2)(A):

(a) "Constitutional office" means an office created by the Arkansas Constitution; and

(b) "Constitutional officer" means a person holding a constitutional office;

(B) Any of the following state or local entities:

(i) A department;

(ii) An institution of higher education;

(iii) A board;

(iv) A commission;

(v) An agency;

(vi) A quasi-public organization;

(vii) An office;

(viii) An instrumentality;

(ix) A county or county entity;

(x) A municipality or municipal entity;

(xi) A school or school district;

(xii) A regional quasi-public entity such as an economic or planning and development district or school educational co-op that functions in a public manner; or

(xiii) A district; or

(C) An entity that receives state funding;

(3) "Malfeasance" means a disregard or violation of the official duties of a public officer or employee acting in a capacity directly or indirectly related to the public officer's or employee's tenure in, appointment to, or employment with a local or state agency; and

(4) "Public officer or employee" means an officer, employee, or volunteer of a local or state agency.

21-1-804. Civil cause of action created.

(a) The Attorney General may bring a lawsuit for money damages, specific performance, and injunctive relief against a public officer or employee under this subchapter if substantial compliance with the following conditions is met:

(1) Arkansas Legislative Audit has identified an occurrence of

malfeasance or illegal conduct alleged to have been committed by a public officer or employee;

(2) A written finding of fact is produced by Arkansas Legislative Audit and delivered via registered United States mail to the public officer or employee at the public officer's or employee's place of employment or to his or her legal representative listing the allegations of malfeasance or illegal conduct;

(3)(A) An invitation to appear before the Legislative Joint Auditing Committee has been delivered to the public officer or employee via registered United States mail to the public officer's or employee's place of employment to answer the allegations of malfeasance or illegal conduct.

(B)(i) An invitation to appear before the Legislative Joint Auditing Committee as required under this subdivision (a)(3) may instead be accomplished by the use and valid service of a subpoena.

(ii) The subpoena may be issued by the Legislative Auditor or by the Legislative Joint Auditing Committee;

(4)(A) The public officer or employee has:

(i) Appeared before the Legislative Joint Auditing Committee; or

(ii) Declined or has failed to appear before the Legislative Joint Auditing Committee.

(B)(i) The public officer or employee may appear before the Legislative Joint Auditing Committee with his or her legal representative.

(ii) However, the legal representative of the public officer or employee may be present only to offer advice to the public officer or employee and may not speak on the behalf of the public officer or employee unless authorized by the presiding Cochair of the Legislative Joint Auditing Committee;

(5) The Legislative Joint Auditing Committee has affirmatively voted to request that the public officer or employee resign from his or her position as a public officer or employee;

(6)(A) When it has been alleged that the public officer or employee has stolen, illegally expended, improperly used, or mishandled money or public funds or public property, the Legislative Joint Auditing Committee has affirmatively voted to request that the public officer or employee repay

or reimburse the local or state agency the:

(i) Amount of money or public funds that was alleged to have been stolen, illegally expended, improperly used, or mishandled; or

(ii) Value of the public property that was alleged to have been stolen, illegally expended, improperly used, or mishandled.

(B) The Legislative Joint Auditing Committee may subsequently amend the amounts alleged to have been stolen, illegally expended, improperly used, or mishandled under subdivision (a)(6)(A) of this section if new evidence comes to light that the alleged amounts were either less than or more than originally alleged; and

(7) The Legislative Joint Auditing Committee has under its own rules affirmatively voted or determined that the matter be referred to the Attorney General for commencement of an action under this subchapter.

(b) A lawsuit under this subchapter may be filed against a public officer or employee under his or her official capacity or his or her personal capacity, or both.

(c)(1)(A) The limitations period for a lawsuit filed under this subchapter is seven (7) years from the date of the last act alleged to constitute malfeasance or illegal conduct.

(B) If a continuing course of conduct is alleged against a public officer or employee, any act constituting malfeasance or illegal conduct alleged against the public officer or employee shall be considered within the limitations period under this subsection if the lawsuit is filed within seven (7) years from the date of the last act alleged to constitute malfeasance or illegal conduct.

(C)(i) A public officer or employee is civilly liable under this subchapter for acts of malfeasance or illegal conduct committed by the public officer or employee.

(ii) However:

(a) Allegations against a public officer or employee under this subchapter during his or her tenure in, appointment to, or employment with multiple local or state agencies shall be listed as separate counts in the complaint; and

(b) The limitations period under this subsection shall be calculated separately as to allegations of malfeasance or illegal conduct committed while the public officer or employee was tenured

in, appointed to, or employed by each local or state agency.

(2) The limitations period under this subsection is tolled if a person subject to a lawsuit under this subchapter prevents the commencement of an action under this subchapter by leaving the state, absconding, concealing himself or herself, or by any other improper act.

(d) The burden of proof for a party to a lawsuit under this subchapter is proof by a preponderance of the evidence.

21-1-805. Available remedies.

(a) The following remedies are available to the State of Arkansas as the prevailing plaintiff to a lawsuit filed under this subchapter:

(1)(A)(i) Money damages in an amount up to three (3) times the:

(a) Amount of money or public funds proven to have been stolen, illegally expended, improperly used, or mishandled; or

(b) Value of the public property proven to have been stolen, illegally expended, improperly used, or mishandled.

(ii) However, if the defendant was a constitutional officer or director of a state agency at the time the alleged malfeasance or illegal conduct occurred, money damages may be in an amount up to ten (10) times the:

(a) Amount of money or public funds proven to have been stolen, illegally expended, improperly used, or mishandled; or

(b) Value of the public property proven to have been stolen, illegally expended, improperly used, or mishandled.

(B) Any money repaid or reimbursed by the public officer or employee to the local or state agency before trial shall be considered a setoff against any future award of money damages under this section.

(C) Money damages under this section shall not be:

(i) Paid out of any state or locally created or maintained fund; or

(ii) Derived from any taxpayer-subsidized source;

(2) Injunctive relief as permitted by law;

(3) If the public officer or employee remains in office, in an appointed position, or employed by a local or state agency, a court order removing the public officer or employee from the office, appointed position, or employment, to the extent permitted by law;

(4)(A) Interest equal to the maximum interest rate allowed by law at the time of the judgment.

(B) Interest calculated under this subdivision (a)(4) is the maximum interest rate allowed by law at the time of the judgment and shall be calculated from the date the money or public funds were stolen, illegally expended, improperly used, or mishandled, or from the date the public property was stolen, illegally expended, improperly used, or mishandled; and

(5) Reasonable costs and attorney's fees.

(b)(1) Reasonable costs and attorney's fees are available to a prevailing defendant to a lawsuit filed under this subchapter.

(2) An award of costs and attorney's fees shall be paid from the Public Officer and Employee Integrity Enforcement Fund.

(c)(1) Any award of money damages shall be paid by the Attorney General to the local or state agency in an amount equal to the full restitution amount.

(2) Any money damages awarded over the full restitution amount, as well as any interest, reasonable costs, or attorney's fees assessed under this section shall be deposited by the Attorney General into the Public Officer and Employee Integrity Enforcement Fund.

(d) A person against whom a judgment is rendered in a lawsuit under this subchapter shall be required to disclose on his or her statement of financial interest required to be filed with any state agency for any reason any outstanding money damages, restitution, reimbursement, costs, fees, or interest not fully paid, even if the money damages, restitution, reimbursement, costs, fees, or interest has been discharged in bankruptcy.

21-1-806. Settlement offer.

(a) The Attorney General may and is encouraged to engage in meaningful settlement negotiations with the defendant after the commencement of a lawsuit filed under this subchapter.

(b) A settlement under this section is required to contain and shall not be valid absent the following provisions:

(1)(A)(i) Except as provided under subdivision (b)(1)(D) of this section, repayment by the defendant of the total:

(a) Amount of money or public funds stolen,

illegally expended, improperly used, or mishandled; or

(b) Value of the public property stolen, illegally expended, improperly used, or mishandled.

(ii) If applicable, the repayment under subdivision (b)(1)(A)(i) of this section shall include interest, attorney's fees, and any associated litigation costs.

(B) Interest calculated under this subdivision (b)(1) is the maximum interest rate allowed by law at the time of the settlement and shall be calculated from the date the money or public funds were stolen, illegally expended, improperly used, or mishandled, or from the date the public property was stolen, illegally expended, improperly used, or mishandled.

(C) The repayment of the money or public funds or the repayment of the value of the public property shall be completed before or at the time of the settlement unless the Attorney General waives this requirement in lieu of a structured payment plan approved by:

(i) The court; and

(ii) If the defendant is subject to a pending case or order in a United States bankruptcy court, the judge presiding over the bankruptcy petition.

(D) The Attorney General may enter into a settlement with a defendant under this section that does not fully repay the total amount of money or public funds stolen, illegally expended, improperly used, or mishandled, or the value of the public property stolen, illegally expended, improperly used, or mishandled as required under subdivision (b)(1)(A) of this section if the Attorney General submits an electronic or written explanation to the membership of the Legislative Joint Auditing Committee as to why full repayment was not required;

(2) The defendant's resignation of his or her office, employment, or appointment with the local or state agency if he or she remains in that office, employment, or appointed position at the time of the settlement agreement;

(3) The defendant's written agreement that he or she shall not seek an office or accept employment or an appointment to an office with any local or state agency for a period of five (5) years; and

(4) The defendant's agreement to waive any statute-of-

limitations defense if the defendant violates the settlement agreement and the lawsuit is reopened.

(c) If a defendant who agrees to a settlement under this section violates the settlement agreement, the Attorney General may reopen the lawsuit and proceed under this subchapter with the full range of remedies available.

(d)(1) Any restitution or repayment of the value of the public property included in a settlement agreement under this section shall be paid by the Attorney General to the local or state agency in an amount equal to the full restitution amount.

(2) Any interest, reasonable costs of litigation, or attorney's fees paid by a defendant as part of a settlement agreement under this section shall be deposited by the Attorney General into the Public Officer and Employee Integrity Enforcement Fund.

21-1-807. Existing remedies not impaired.

This subchapter is supplemental to any other remedies available by law and does not limit or diminish any civil rights or administrative procedures available to any public officer or employee.

21-1-808. Venue.

All cases brought under this subchapter shall be filed in Pulaski County Circuit Court.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there are bad actors occasionally in the employ of state or local government or appointed or elected to a position in state or local government who operate without oversight and with impunity; that the state requires a strong resource to force removal of those bad actors through a civil remedy that encourages those bad actors to resign or risk serious financial hardship; and that this act is immediately necessary because the integrity of state and local government is of utmost importance and requires immediate recognition and enforcement. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

*/s/Hickey*