

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: S3/26/15

# A Bill

SENATE BILL 996

5 By: Senator D. Sanders  
6 By: Representative Davis  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS PERTAINING TO PROCUREMENT;  
10 TO AMEND THE ETHICS PROVISIONS RELATING TO  
11 PROCUREMENT; TO REQUIRE ADDITIONAL REPORTING OF  
12 PROCUREMENT MATTERS; TO CREATE PENALTIES FOR  
13 VIOLATIONS OF PROCUREMENT STATUTES; TO MAKE RELATED  
14 CHANGES; AND FOR OTHER PURPOSES.  
15

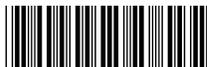
## Subtitle

16  
17  
18 TO AMEND THE LAWS PERTAINING TO  
19 PROCUREMENT; TO AMEND THE ETHICS  
20 PROVISIONS AND REQUIRE ADDITIONAL  
21 REPORTING RELATING TO PROCUREMENT; AND TO  
22 CREATE PENALTIES FOR VIOLATIONS OF  
23 PROCUREMENT STATUTES.  
24

25  
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

28 *SECTION 1. Arkansas Code § 17-25-101(a) and (b), concerning the*  
29 *definition of "contractor" to be used in contractor licensing laws, are*  
30 *amended to read as follows:*

31 *(a)(1) As used in this chapter, "contractor" means ~~any~~ a person, firm,*  
32 *partnership, copartnership, association, corporation, or other organization,*  
33 *or any combination thereof, that, for a fixed price, commission, fee, or*  
34 *wage, attempts to or submits a bid to construct or demolish, or contracts or*  
35 *undertakes to construct or demolish, or assumes charge, in a supervisory*  
36 *capacity or otherwise, or manages the construction, erection, alteration,*



1 demolition, or repair, or has or have constructed, erected, altered,  
2 demolished, or repaired, under his or her, their, or its direction, ~~any a~~  
3 building, apartment, condominium, highway, sewer, utility, grading, or ~~any~~  
4 other improvement or structure on public or private property for lease, rent,  
5 resale, public access, or similar purpose, except single-family residences,  
6 when the cost of the work to be done, or done, in the State of Arkansas by  
7 the contractor, including, ~~but not limited to,~~ without limitation labor and  
8 materials, is ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars  
9 (\$50,000) or more.

10 (2) However, when a person or an entity acts as a contractor in  
11 the construction, erection, alteration, demolition, or repair of his or her  
12 own or its own property, ~~such the~~ action shall not result in the person or  
13 entity being required to obtain a license, but the person or entity shall  
14 comply with all other provisions of this subchapter.

15 (b) However, the ~~twenty-thousand-dollar~~ fifty-thousand-dollar  
16 exception ~~shall~~ does not apply to ~~any a~~ project of construction in which any  
17 of the construction work necessary to complete the project, except any in-  
18 progress change orders, is divided into separate contracts of amounts less  
19 than ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000), a  
20 purpose being to circumvent ~~the provisions of~~ this chapter.

21  
22 SECTION 2. Arkansas Code § 19-4-1405(d)(1), concerning the bidding  
23 procedure for the construction of buildings and facilities, is amended to  
24 read as follows:

25 (d)(1)(A) ~~Every A~~ bid submitted on state agency construction contracts  
26 for projects over ~~the amount of twenty thousand dollars (\$20,000)~~ shall be  
27 fifty thousand dollars (\$50,000) is void unless accompanied by a cashier's  
28 check drawn upon a bank or trust company doing business in this state or by a  
29 corporate bid bond and the agent's power of attorney as his or her authority.

30 (B) ~~No bid~~ Bid security ~~shall be~~ is not required for  
31 projects under or equal to ~~the amount of twenty thousand dollars (\$20,000)~~  
32 fifty thousand dollars (\$50,000).

33  
34 SECTION 3. Arkansas Code § 19-11-101 is amended to read as follows:

35 19-11-101. Responsibility of disbursing officer – Maintenance of files  
36 ~~by Office of State Procurement.~~

1 (a) The disbursing officer of each agency, board, commission,  
2 department, or institution ~~shall be~~ is responsible for reviewing all invoices  
3 prepared by commercial printers or suppliers holding commercial contracts to  
4 make certain that the charges to the agency, board, commission, department,  
5 or institution are proper under the terms of the contract.

6 (b) The Office of State Procurement ~~of the Department of Finance and~~  
7 ~~Administration~~ and each state agency, as defined in § 19-11-203, shall  
8 maintain complete files that ~~shall be~~ are open to public inspection on all  
9 commercial term and one-time contracts. The files shall contain:

10 (1) A copy of the contract;

11 (2) A list of all printing or duplicating done or commodities  
12 ordered, as well as the name of the invoiced agency; and

13 (3) A copy of all correspondence regarding the contract or jobs  
14 performed ~~thereunder~~ under the contract.

15  
16 SECTION 4. Arkansas Code § 19-11-104(a), concerning equal opportunity  
17 policies, is amended to read as follows:

18 (a) The purpose of this section is to require ~~any~~ an entity or person  
19 bidding on a state contract, responding to a request for proposals regarding  
20 a state contract, responding to a request for qualifications regarding a  
21 state contract, or negotiating a contract with the state for professional or  
22 consulting services to submit to the Office of State Procurement ~~of the~~  
23 ~~Department of Finance and Administration~~ the most current equal opportunity  
24 policy of the entity or person if the contract has a total value of at least  
25 fifty thousand dollars (\$50,000).

26  
27 SECTION 5. Arkansas Code § 19-11-105(a)(1), concerning the definition  
28 of "contractor" used with respect to the prohibition against entering into a  
29 public contract for services with a vendor that employs illegal immigrants,  
30 is amended to read as follows:

31 (1) "Contractor" means a person having a public contract with a  
32 state agency for professional services, technical and general services, or  
33 any category of construction in which the total dollar value of the contract  
34 is ~~twenty-five thousand dollars (\$25,000) or greater~~ at least fifty thousand  
35 dollars (\$50,000);

36

1           SECTION 6. Arkansas Code § 19-11-105(a)(5), concerning the definition  
2 of "public contract for services" used with respect to the prohibition  
3 against entering into a public contract for services with a vendor that  
4 employs illegal immigrants, is amended to read as follows:

5           (5) "Public contract for services" means any type of agreement  
6 between a state agency and a contractor for the procurement of services and  
7 all categories of construction with a state agency in which the total dollar  
8 value of that contract is ~~twenty-five thousand dollars (\$25,000) or greater~~  
9 at least fifty thousand dollars (\$50,000);

10  
11           SECTION 7. Arkansas Code § 19-11-203(14)(S), concerning the definition  
12 of "exempt commodities and services" under the Arkansas Procurement Law, is  
13 repealed.

14           ~~(S) Published books, manuals, maps, periodicals, films,~~  
15 ~~technical pamphlets, and copyrighted educational aids for use in libraries~~  
16 ~~and for other informational or instructional purposes in instances in which~~  
17 ~~other applicable law does not provide a restrictive means for the acquisition~~  
18 ~~of these materials;~~

19  
20           SECTION 8. Arkansas Code § 19-11-203(14)(Y), concerning the definition  
21 of "exempt commodities and services" under the Arkansas Procurement Law, is  
22 amended to read as follows:

23           (Y) Capital improvements valued at less than ~~twenty~~  
24 ~~thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000), subject to  
25 minimum standards and criteria of the Arkansas Building Authority;

26  
27           SECTION 9. Arkansas Code § 19-11-203(14)(Z), concerning the definition  
28 of "exempt commodities and services" under the Arkansas Procurement Law, is  
29 repealed.

30           ~~(Z) Services related to work force development, incumbent~~  
31 ~~work force training, or specialized business or industry training;~~

32  
33           SECTION 10. Arkansas Code § 19-11-206(3), concerning the definitions  
34 used under the Arkansas Procurement Law, is amended to read as follows:

35           (3) "Local public procurement unit" means:

36           (A) ~~Any~~ A county, city, town, state agency, and ~~any~~ other

1 subdivision of the state or public agency thereof;

2 (B) ~~Any~~ A fire protection district;

3 (C) ~~Any~~ A regional water distribution district;

4 (D) ~~Any~~ A rural development authority;

5 (E) ~~Any~~ A public authority;

6 (F) ~~Any~~ A public educational, health, or other  
7 institution;

8 (G) ~~Any~~ A nonprofit corporation during the time that it  
9 contracts with the Department of Human Services to provide services to  
10 individuals with developmental disabilities or for transportation services,  
11 ~~so long as if the contract exceeds seventy-five thousand dollars (\$75,000)~~  
12 one hundred thousand dollars (\$100,000) per year;

13 (H) ~~Any~~ A nonprofit corporation providing fire protection  
14 services to a rural area or providing drinking water to the public in a rural  
15 area; and

16 (I) To the extent not prohibited by law, any other entity  
17 that expends public funds for the acquisition or leasing of commodities and  
18 services;

19  
20 SECTION 11. Arkansas Code § 19-11-217(c), concerning the powers and  
21 duties of the State Procurement Director, is amended to read as follows:

22 (c) Except as otherwise specifically provided in this subchapter, the  
23 State Procurement Director, within the limitations of this subchapter and the  
24 rules ~~and regulations~~ promulgated under ~~authority~~ of this subchapter:

25 (1) Shall procure or supervise the procurement of all  
26 commodities and services for each state agency not having an agency  
27 procurement official and, when requested to do so by such an official,  
28 procure commodities and services not otherwise under state contract;

29 ~~(2)(A) Shall develop and implement a plan for all state agencies~~  
30 ~~acquiring vehicles that will reduce the overall annual petroleum consumption~~  
31 ~~of those state agencies by at least ten percent (10%) by January 1, 2009,~~  
32 ~~through measures that include:~~

33 ~~(i) The use of alternative fuels, as defined by 42~~  
34 ~~U.S.C. § 13211, as it existed on January 1, 2005;~~

35 ~~(ii) The acquisition of vehicles with higher fuel~~  
36 ~~economy, such as a hybrid vehicle operating on electricity and gasoline or~~

1 ~~diesel or bio-diesel fuel; and~~

2 ~~(iii) The substitution of cars for light trucks.~~

3 ~~(B)(i) By January 30 of each year, the State Procurement~~  
4 ~~Director shall submit to the Legislative Council his or her report evaluating~~  
5 ~~the progress of the plan toward achieving the goal set in subdivision~~  
6 ~~(e)(2)(A) of this section.~~

7 ~~(ii) The report shall include:~~

8 ~~(a) The number and type of alternative fueled~~  
9 ~~vehicles, as defined by 42 U.S.C. § 13211, as it existed on January 1, 2005,~~  
10 ~~procured;~~

11 ~~(b) The total number of alternative fueled~~  
12 ~~vehicles used by each state agency;~~

13 ~~(c) The difference between the cost of the~~  
14 ~~purchase, maintenance, and operation of alternative fueled vehicles and~~  
15 ~~comparable conventionally fueled motor vehicles, as defined by 42 U.S.C. §~~  
16 ~~13211, as it existed on January 1, 2005;~~

17 ~~(d) An evaluation of the plan's success; and~~

18 ~~(e) Suggestions for modifying the plan;~~

19 ~~(3) (2) Shall manage and establish internal procedures for the~~  
20 ~~office;~~

21 ~~(4) (3) Shall sell, trade, or otherwise dispose of surplus~~  
22 ~~commodities belonging to the state;~~

23 ~~(5) (4) May establish and maintain programs for the inspection,~~  
24 ~~testing, and acceptance of commodities and services;~~

25 ~~(6) (5) Shall establish and manage a list of vendors desiring~~  
26 ~~written notice of invitations for bid;~~

27 ~~(7) (6) May establish, by ~~regulation~~ rule, a fee for receiving a~~  
28 ~~written or electronic notice of invitations for bid; and~~

29 ~~(8) (7) Shall ensure compliance with this subchapter and~~  
30 ~~implementing ~~regulations~~ rules by reviewing and monitoring procurements~~  
31 ~~conducted by any designee, department, agency, or official delegated~~  
32 ~~authority under this subchapter.~~

33  
34 SECTION 12. Arkansas Code § 19-11-220(a)(38), concerning the list of  
35 state agencies authorized to have an agency procurement official, is  
36 repealed.

~~(38) Department of Higher Education.~~

SECTION 13. Arkansas Code § 19-11-225 is amended to read as follows:  
19-11-225. Regulations Rules.

(a) ~~Regulations shall be promulgated by the~~ The State Procurement Director shall promulgate rules in accordance with ~~the applicable provisions~~ of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) ~~No regulation~~ Except as provided in subsection (d) of this section, a rule shall not change any a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of the ~~regulation rule.~~

(c)(1) ~~No~~ Except as provided in subsection (d) of this section, a clause which that is required by ~~regulation rule~~ to be included shall not be considered to be incorporated by operation of law in ~~any a~~ state contract without the consent of both parties to the contract to the incorporation.

(2) The parties to the contract may give ~~such~~ consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

(d)(1) A rule promulgated by the director with respect to ethical issues related to procurement matters shall be:

(A) Incorporated by operation of law into a state contract; and

(B) Applied retroactively to a state contract.

(2) A state contract shall contain a statement notifying vendors of the effect of this subsection.

SECTION 14. Arkansas Code § 19-11-229(d)(1), concerning competitive sealed bidding, is amended to read as follows:

(d)(1) Notice inviting bids shall be given not fewer than five (5) ~~calendar~~ business days ~~nor more than thirty (30) calendar days~~ preceding the date for the opening of bids by publishing the notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances, ~~adequate~~ notice shall be given.

1           SECTION 15. Arkansas Code § 19-11-230(b), concerning competitive  
2 sealed proposals, is amended to read as follows:

3           **(b)(1)** When the use of competitive sealed bidding is not practicable  
4 and advantageous, a contract may be awarded by competitive sealed proposals.

5           **(2)(A)** If a contract is awarded by competitive sealed proposal  
6 under this subsection, then the state agency awarding the contract shall make  
7 a written determination stating the reasons that competitive sealed bidding  
8 is not practical and advantageous with respect to the contract.

9           **(B)** A state agency shall maintain a written determination  
10 made under subdivision (b)(2)(A) of this section as part of the bid file  
11 required under § 19-11-101.

12  
13           SECTION 16. Arkansas Code § 19-11-232, concerning proprietary or sole  
14 source procurements, is amended to add an additional subsection to read as  
15 follows:

16           **(c)(1)** The director shall submit a monthly report to the Legislative  
17 Council or, if the General Assembly is in session, to the Joint Budget  
18 Committee, of each sole source contract.

19           **(2)** The report required under this subsection shall include  
20 without limitation the following:

21           **(A)** The name of the state agency entering into the sole  
22 source contract;

23           **(B)** The name of the contractor;

24           **(C)** The total projected amount of the contract, including  
25 any possible extensions;

26           **(D)** The term of the contract; and

27           **(E)** The reason for the sole source procurement.

28  
29           SECTION 17. Arkansas Code § 19-11-235, concerning the responsibility  
30 of bidders and offerors, is amended to add an additional subsection to read  
31 as follows:

32           **(d)** A bidder or offeror shall be determined to be nonresponsible if  
33 the bidder or offeror does not provide a signed statement that the bidder or  
34 offeror, including any business entity or subsidiary of the bidder or offeror  
35 and any individual employed by the bidder or offeror, has not been  
36 disqualified from a state contract in Arkansas or any other state as the

1 result of one (1) or more criminal offenses.

2  
3 SECTION 18. Arkansas Code § 19-11-238(a), concerning multiyear  
4 contracts, is amended to read as follows:

5 (a) Specified Period.

6 (1)(A) Unless otherwise provided by law, a contract for  
7 commodities or services may be entered into for periods of not more than  
8 seven (7) years if funds for the first fiscal year of the contemplated  
9 contract are available at the time of contracting.

10 (B) Payment and performance obligations for succeeding  
11 fiscal years shall be are subject to the availability and appropriation of  
12 funds therefor for the payment and performance obligations.

13 (2) However, a contract shall not be extended under this section  
14 if a contract was entered into for a period of less than seven (7) years and:

15 (A) An extension of the contract would exceed the scope of  
16 the initial contract by more than one hundred fifty percent (150%); or

17 (B) The scope of commodities or services contracted for  
18 under the amendment providing an extension of the contract substantially  
19 exceeds the scope of commodities or services under the initial contract.

20  
21 SECTION 19. Arkansas Code § 19-11-260 is repealed.

22 ~~19-11-260. Recycled paper products—Preference.~~

23 ~~(a) The State Procurement Director shall issue a recycled paper content~~  
24 ~~specification for each type of paper product.~~

25 ~~(b)(1) The goal of state agencies for the percentage of paper products~~  
26 ~~to be purchased that utilize recycled paper shall be:~~

27 ~~(A) Ten percent (10%) in fiscal year 1991;~~

28 ~~(B) Twenty five percent (25%) in fiscal year 1992;~~

29 ~~(C) Forty five percent (45%) in fiscal year 1993; and~~

30 ~~(D) Sixty percent (60%) by calendar year 2000.~~

31 ~~(2)(A) The Office of State Procurement shall prepare a semiannual~~  
32 ~~report of the state's progress in meeting the goals for the purchase of paper~~  
33 ~~products with recycled content.~~

34 ~~(B) The report shall be made to the Governor.~~

35 ~~(c)(1) Whenever a bid is required, a preference for recycled paper~~  
36 ~~products shall be exercised if the use of the products is technically~~

1 ~~feasible and price is competitive.~~

2 ~~(2)(A) For the purpose of procurement of recycled paper products,~~  
3 ~~“competitive” means the bid price does not exceed the lowest qualified bid of~~  
4 ~~a vendor offering paper products manufactured or produced from virgin~~  
5 ~~material by ten percent (10%).~~

6 ~~(B) An additional one percent (1%) preference shall be~~  
7 ~~allowed for products containing the largest amount of postconsumer materials~~  
8 ~~recovered within the State of Arkansas.~~

9 ~~(3) A bidder receiving a preference under this section shall not~~  
10 ~~be entitled to an additional preference under § 19-11-259.~~

11  
12 SECTION 20. Arkansas Code § 19-11-265, as amended by Section 5 of Act  
13 557 of 2015 and concerning submission of contracts under the Arkansas  
14 Procurement Law, is amended to add an additional subsection to read as  
15 follows:

16 (f)(1) In addition to the submission and reporting of contracts  
17 required under this section, the director shall compile a report to be  
18 presented to the Legislative Council or, if the General Assembly is in  
19 session, to the Joint Budget Committee, of each project with a total contract  
20 amount of at least one hundred thousand dollars (\$100,000) that involves two  
21 (2) or more contracts.

22 (2) The report required under this subsection shall include  
23 without limitation:

24 (A) The name of each contractor;

25 (B) The state agency name;

26 (C) The contact information for the contractor and state  
27 agency;

28 (D) The total initial cost of the contract, the cost of  
29 any commodities included in the contract, and the cost of the services;

30 (E) The type of commodities and services contracted;

31 (F) The quantity of commodities and services contracted;

32 (G) The procurement method;

33 (H) The total projected contract amount that includes any  
34 amendments and all available extensions; and

35 (I) Any other information requested by the Legislative  
36 Council or the Joint Budget Committee.

1  
2       SECTION 21. Arkansas Code § 19-11-266 is repealed.

3       ~~19-11-266. High efficiency lighting Preference.~~

4       ~~(a)(1) The General Assembly finds:~~

5               ~~(A) The expansion of state government makes it one of the~~  
6       ~~state's leading purchasers of lighting commodities;~~

7               ~~(B) Recent technological developments have produced energy-~~  
8       ~~efficient devices that reduce energy costs through a reduction in energy~~  
9       ~~usage; and~~

10              ~~(C) Prudent use of taxpayer dollars dictates that the State~~  
11       ~~of Arkansas should be at the forefront of implementing energy efficient~~  
12       ~~devices in facilities operated with public funds.~~

13              ~~(2) The intent of this section is to promote the use of high~~  
14       ~~efficiency lighting in facilities operated with public funds when feasible.~~

15       ~~(b) As used in this section:~~

16              ~~(1)(A) "Fluorescent lamp" means a gas-discharge lamp that:~~

17                      ~~(i) Utilizes a magnetic, electronic, or other~~  
18       ~~ballast; and~~

19                      ~~(ii) Uses electricity to excite mercury vapor in~~  
20       ~~argon or neon gas resulting in a plasma that produces short wave ultraviolet~~  
21       ~~light that causes a phosphor to fluoresce and produce visible light.~~

22              ~~(B) "Fluorescent lamp" includes without limitation a~~  
23       ~~compact fluorescent lamp;~~

24              ~~(2) "High efficiency lighting" means fluorescent lamp or solid~~  
25       ~~state lighting;~~

26              ~~(3) "Solid state lighting" means a light device that utilizes~~  
27       ~~light-emitting diodes, organic light-emitting diodes, or polymer light-~~  
28       ~~emitting diodes as sources of illumination rather than electrical filaments~~  
29       ~~or gas; and~~

30              ~~(4)(A) "State agency" means any agency, institution, authority,~~  
31       ~~department, board, commission, bureau, council, or other agency of the state~~  
32       ~~supported by appropriation of state or federal funds.~~

33                      ~~(B) "State agency" includes the constitutional departments~~  
34       ~~of the state, the elected constitutional offices of the state, the General~~  
35       ~~Assembly, including the Legislative Council and the Legislative Joint~~  
36       ~~Auditing Committee and supporting agencies and bureaus thereof, the Arkansas~~

1 ~~Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys,~~  
2 ~~and the Administrative Office of the Courts.~~

3 ~~(c) Whenever a state agency purchases or requires a bid for the~~  
4 ~~purchase of an indoor lamp, a preference for high efficiency lighting shall~~  
5 ~~be exercised if the use of high efficiency lighting is technically feasible~~  
6 ~~and the price is competitive with consideration given to the long term cost~~  
7 ~~effectiveness and savings of high efficiency lighting.~~

8 ~~(d)(1) The goal of state agencies for the percentage of purchased~~  
9 ~~indoor lamps that are high efficiency lighting shall be one hundred percent~~  
10 ~~(100%) by January 1, 2008.~~

11 ~~(2) The Office of State Procurement shall prepare an annual~~  
12 ~~report to the Legislative Council of the state's progress in meeting the~~  
13 ~~goals for the purchase of high efficiency lighting.~~

14  
15 SECTION 22. Arkansas Code Title 19, Chapter 11, Subchapter 2, as  
16 amended by Section 6 of Act 557 of 2015, is amended to add additional  
17 sections to read as follows:

18 19-11-272. Subcontractors.

19 (a)(1) A bidder or offeror under this subchapter shall include in the  
20 bidder's or offeror's bid or proposal a list of the subcontractors the bidder  
21 or offeror will use to complete the contract.

22 (2) If a bidder or offeror does not know the identity of a  
23 subcontractor that may be used to complete a contract under this subchapter,  
24 the bidder or offeror shall report each subcontractor to the state agency  
25 within five (5) business days of selecting the subcontractor.

26 (b) An entity that enters into a contract with a state agency under  
27 this subchapter shall provide a list of subcontractors used to complete the  
28 contract at the time of an extension of or amendment to the contract.

29 (c) A state agency shall maintain information obtained under this  
30 section in the bid file required under § 19-11-101.

31  
32 19-11-273. Civil penalties.

33 (a) If the Office of State Procurement, after a hearing conducted in  
34 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et  
35 seq., determines that a person has violated this subchapter or a rule  
36 promulgated by the office under this subchapter, the office may impose a

1 civil penalty on the person not to exceed one thousand dollars (\$1,000) for  
2 each violation.

3 (b)(1) If a person against whom a civil penalty has been imposed by  
4 the office fails to pay the penalty, the office may file an action in the  
5 Pulaski County Circuit Court to collect the civil penalty.

6 (2) If the office prevails in the action, the defendant shall be  
7 directed to pay, in addition to the civil penalty, reasonable attorney's fees  
8 and costs incurred by the office in prosecuting the action.

9 (c) A person aggrieved by the action of the office in imposing civil  
10 penalties may appeal the decision as prescribed in the Arkansas  
11 Administrative Procedure Act, § 25-15-201 et seq., for appeals from  
12 administrative decisions.

13  
14 SECTION 23. Arkansas Code § 19-11-701(13), concerning the definitions  
15 used in the ethics provisions of state procurement law, is amended to read as  
16 follows:

17 (13) "Person" means ~~any~~:

18 (A) A business, individual, union, committee, club, or  
19 other organization or group of individuals; and

20 (B) An agent, representative, contractor, or subcontractor  
21 of a person or entity listed in subdivision (13)(A) of this section;

22  
23 SECTION 24. Arkansas Code § 19-11-707, concerning the prohibition of  
24 gratuities and kickbacks, is amended to add an additional subsection to read  
25 as follows:

26 (c) A statement describing the prohibitions stated in this section  
27 shall be included in:

28 (1) An invitation for bids, request for proposals, request for  
29 qualifications, and any other type of solicitation made by a state agency;  
30 and

31 (2) A contract entered into by a state agency.

32  
33 SECTION 25. Arkansas Code § 19-11-709(b)(2), concerning restrictions  
34 on employment of present and former employees, is amended to read as follows:

35 (2) ~~One-Year~~ Two-Year Representation Restriction Regarding  
36 Matters for Which a Former Employee Was Officially Responsible. It ~~shall be~~

1 is a breach of ethical standards for ~~any a~~ former employee, within ~~one (1)~~  
2 year two (2) years after cessation of the former employee's official  
3 responsibility in connection with any:

4 (A) Judicial or other proceeding, application, request for  
5 a ruling, or other determination;

6 (B) Contract;

7 (C) Claim; or

8 (D) Charge or controversy,

9 knowingly to act as a principal or as an agent for anyone other than the  
10 state in matters ~~which~~ that were within the former employee's official  
11 responsibility, where the state is a party or has a direct or substantial  
12 interest.

13  
14 SECTION 26. Arkansas Code § 19-11-709(d) and (e), concerning  
15 restrictions on employment of present and former employees, are amended to  
16 read as follows:

17 (d) Selling to State After Termination of Employment Is Prohibited.

18 (1) It ~~shall be~~ is a breach of ethical standards for ~~any a~~  
19 former employee, unless the former employee's last annual salary did not  
20 exceed ten thousand five hundred dollars (\$10,500), to engage in selling or  
21 attempting to sell commodities or services, including technical or  
22 professional consultant services, to the state for ~~one (1) year~~ two (2) years  
23 following the date employment ceased.

24 (2) As used in this subsection, "sell" means:

25 (A) Signing a bid, proposal, or contract;

26 (B) Negotiating a contract;

27 (C) Contacting any employee for the purpose of obtaining,  
28 negotiating, or discussing changes in specifications, price, cost allowances,  
29 or other terms of a contract;

30 (D) Settling disputes concerning performance of a  
31 contract; or

32 (E) Any other liaison activity with a view toward the  
33 ultimate consummation of a sale although the actual contract for the sale is  
34 subsequently negotiated by another person.

35 (e) It is a breach of ethical standards for a former employee to  
36 become an employee or officer of an entity with which the former employee

1 worked in his or her official capacity on any procurement matter while  
2 employed by the state in the two (2) years preceding the former employee's  
3 cessation of employment with the state.

4 ~~(e)(1)~~ (f)(1) This section ~~is not intended to~~ does not preclude a  
5 former employee from accepting employment with private industry solely  
6 because his or her employer is a contractor with this state.

7 (2) This section ~~is not intended to~~ does not preclude an  
8 employee, a former employee, or a partner of an employee or former employee  
9 from filing an action as a taxpayer for alleged violations of this  
10 subchapter.

11  
12 SECTION 27. Arkansas Code § 19-11-802(a), concerning annual statements  
13 of qualifications and performance data, is amended to read as follows:

14 (a)(1) In the procurement of professional services, a state agency or  
15 political subdivision which utilizes these services may encourage firms  
16 engaged in the lawful practice of these professions to submit annual  
17 statements of qualifications and performance data to the political  
18 subdivision or may request such information as needed for a particular public  
19 project.

20 (2) An annual statement of qualifications and performance data  
21 submitted under this section shall include a signed statement by the firm  
22 that the firm, including any business entity or subsidiary of the firm and  
23 any individual employed by the firm, has not been disqualified from a state  
24 contract in Arkansas or any other state as the result of one (1) or more  
25 criminal offenses.

26  
27 SECTION 28. Arkansas Code Title 19, Chapter 11, Subchapter 8, is  
28 amended to add additional sections to read as follows:

29 19-11-808. Subcontractors.

30 (a)(1) A person submitting qualifications under this subchapter shall  
31 include in the person's statement of qualifications a list of the  
32 subcontractors the person will use to complete the contract for professional  
33 services.

34 (2) If a person submitting qualifications does not know the  
35 identity of a subcontractor that may be used to complete a contract for  
36 professional services under this subchapter, the person shall report each

1 subcontractor to the state agency within five (5) business days of selecting  
2 the subcontractor.

3 (b) A person that enters into a contract for professional services  
4 with a state agency under this subchapter shall provide a list of  
5 subcontractors used to complete the contract for professional services at the  
6 time of an extension of or amendment to the contract for professional  
7 services.

8 (c) A state agency shall maintain information obtained under this  
9 section in the bid file required under § 19-11-101.

10  
11 19-11-809. Civil penalties.

12 (a) If the Office of State Procurement, after a hearing conducted in  
13 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et  
14 seq., determines that a person has violated this subchapter or a rule  
15 promulgated by the office under this subchapter, the office may impose a  
16 civil penalty on the person not to exceed one thousand dollars (\$1,000) for  
17 each violation.

18 (b)(1) If a person against whom a civil penalty has been imposed by  
19 the office fails to pay the penalty, the office may file an action in the  
20 Pulaski County Circuit Court to collect the civil penalty.

21 (2) If the office prevails in the action, the defendant shall be  
22 directed to pay, in addition to the civil penalty, reasonable attorney's fees  
23 and costs incurred by the office in prosecuting the action.

24 (c) A person aggrieved by the action of the office in imposing civil  
25 penalties may appeal the decision as prescribed in the Arkansas  
26 Administrative Procedure Act, § 25-15-201 et seq., for appeals from  
27 administrative decisions.

28  
29 SECTION 29. Arkansas Code § 19-11-1003(c), concerning contracts that  
30 are exempt from the laws concerning professional and consultant services  
31 contracts, is repealed.

32 ~~(e) This subchapter does not apply to contracts created under~~  
33 ~~federally approved state plans for services reimbursed under Title V of the~~  
34 ~~Social Security Act, 42 U.S.C. §§ 701—710, or Title XIX of the Social~~  
35 ~~Security Act, 42 U.S.C. §§ 1396—1396v, as they existed on January 1, 2001,~~  
36 ~~if those contracts and services conform to all applicable federal laws and~~

1 ~~rules, and to the ethical standards provided for in § 19-11-704.~~

2  
3 SECTION 30. Arkansas Code § 19-11-1004, concerning restrictions on  
4 professional services and consultant services contracts, is amended to add an  
5 additional subsection to read as follows:

6 (f) A state agency shall not enter into a professional services  
7 contract or a consultant services contract unless the contractor provides a  
8 signed statement that states that the contractor, including any business  
9 entity or subsidiary of the contractor and any individual employed by the  
10 contractor, has not been disqualified from a state contract in Arkansas or  
11 any other state as the result of one (1) or more criminal offenses.

12  
13 SECTION 31. Arkansas Code Title 19, Chapter 11, Subchapter 10, as  
14 amended by Section 8 of Act 557 of 2015, is amended to add additional  
15 sections to read as follows:

16 19-11-1015. Subcontractors.

17 (a)(1) A bidder or offeror under this subchapter shall include in the  
18 bidder's or offeror's bid or proposal a list of the subcontractors the bidder  
19 or offeror will use to complete the consultant services contract or  
20 professional services contract.

21 (2) If a bidder or offeror does not know the identity of a  
22 subcontractor that may be used to complete a consultant services contract or  
23 professional services contract under this subchapter, the bidder or offeror  
24 shall report each subcontractor to the state agency within five (5) business  
25 days of selecting the subcontractor.

26 (b) An entity that enters into a consultant services contract or  
27 professional services contract with a state agency under this subchapter  
28 shall provide a list of subcontractors used to complete the consultant  
29 services contract or professional services contract at the time of an  
30 extension of or amendment to the consultant services contract or professional  
31 services contract.

32 (c) A state agency shall maintain information obtained under this  
33 section in the bid file required under § 19-11-101.

34  
35 19-11-1016. Civil penalties.

36 (a) If the Office of State Procurement, after a hearing conducted in

1 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et  
 2 seq., determines that a person has violated this subchapter or a rule  
 3 promulgated by the office under this subchapter, the office may impose a  
 4 civil penalty on the person not to exceed one thousand dollars (\$1,000) for  
 5 each violation.

6 (b)(1) If a person against whom a civil penalty has been imposed by  
 7 the office fails to pay the penalty, the office may file an action in the  
 8 Pulaski County Circuit Court to collect the civil penalty.

9 (2) If the office prevails in the action, the defendant shall be  
 10 directed to pay, in addition to the civil penalty, reasonable attorney's fees  
 11 and costs incurred by the office in prosecuting the action.

12 (c) A person aggrieved by the action of the office in imposing civil  
 13 penalties may appeal the decision as prescribed in the Arkansas  
 14 Administrative Procedure Act, § 25-15-201 et seq., for appeals from  
 15 administrative decisions.

16  
 17 SECTION 32. Arkansas Code § 22-9-101(b), concerning the requirement  
 18 for observation by registered professionals in public works projects, is  
 19 amended to read as follows:

20 ~~(b) Nothing in this~~ This section shall be held to does not apply to  
 21 ~~any a~~ a public works wherein the contemplated capital improvement expenditure:

22 (1) For an engineering project does not exceed ~~twenty-five~~  
 23 ~~thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000); or

24 (2) For an architectural project does not exceed one hundred  
 25 thousand dollars (\$100,000).

26  
 27 SECTION 33. Arkansas Code § 22-9-203(a), concerning the award  
 28 procedure for public improvements, is amended to read as follows:

29 ~~No~~ A contract providing for the making of major repairs or  
 30 alterations, for the erection of buildings or other structures, or for making  
 31 other permanent improvements shall not be entered into by the state or ~~any an~~  
 32 ~~agency thereof~~ of the state, any a county, municipality, school district, or  
 33 other local taxing unit with ~~any a~~ a contractor in instances ~~where~~ in which all  
 34 estimated costs of the work ~~shall~~ exceed the sum of ~~twenty thousand dollars~~  
 35 ~~(\$20,000)~~ fifty thousand dollars (\$50,000) unless:

36 (1) The state or ~~any an~~ an agency of the state ~~shall have~~ has first

1 published notice of its intention to receive bids one (1) time each week for  
2 not less than two (2) consecutive weeks for projects more than ~~the amount of~~  
3 fifty thousand dollars (\$50,000) and published notice of its intention to  
4 receive bids one (1) time each week for not less than one (1) week for  
5 projects more than the quote bid limit, as provided under the Arkansas  
6 Building Authority minimum standards and criteria, but less than or equal to  
7 fifty thousand dollars (\$50,000) in a newspaper of general circulation  
8 published in the county in which the proposed improvements are to be made or  
9 in a trade journal reaching the construction industry; and

10 (2) ~~Any~~ A county, municipality, school district, or other local  
11 taxing unit ~~shall have~~ has first published notice of its intention to receive  
12 bids one (1) time each week for not less than two (2) consecutive weeks in a  
13 newspaper of general circulation published in the county in which the  
14 proposed improvements are to be made or in a trade journal reaching the  
15 construction industry.

16  
17 SECTION 34. Arkansas Code § 22-9-203(c)(2)(A), concerning the award  
18 procedure for public improvements, is amended to read as follows:

19 (2)(A)(i) ~~Every~~ A bid submitted on public construction contracts  
20 for ~~any a~~ political subdivision of the state ~~shall be~~ is void unless  
21 accompanied by a cashier's check drawn upon a bank or trust company doing  
22 business in this state or by a corporate bid bond.

23 (ii) ~~Every~~ A bid submitted on public construction  
24 contracts for the state or ~~any an~~ agency or department of the state ~~shall be~~  
25 is void unless accompanied by a cashier's check drawn upon a bank or trust  
26 company doing business in this state or by a corporate bid bond, except for  
27 projects under ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars  
28 (\$50,000).

29 (iii) ~~No~~ A bid bond shall not be required for public  
30 construction contracts for the state or any agency or department of the state  
31 under or equal to ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars  
32 (\$50,000).

33  
34 SECTION 35. Arkansas Code § 22-9-204(a), concerning the penalty for  
35 having the subcontractors' portion of a project exceed a certain amount, is  
36 amended to read as follows:

1 (a) As a condition to performing construction work for and in the  
 2 State of Arkansas, ~~all~~ prime contractors shall not use ~~no~~ other  
 3 subcontractors when the subcontractors' portion of the project is ~~twenty~~  
 4 ~~thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) or more, except  
 5 those licensed by the Contractors Licensing Board and qualified in:

- 6 (1) Mechanical, indicative of heating, air conditioning,
- 7 ventilation, and refrigeration;
- 8 (2) Plumbing;
- 9 (3) Electrical; and
- 10 (4) Roofing.

11  
 12 SECTION 36. Arkansas Code § 22-9-204(f), concerning the penalty for  
 13 having the subcontractors' portion of a project exceed a certain amount, is  
 14 amended to read as follows:

15 (f)(1) It ~~shall be~~ is a violation of this section for ~~any~~ a prime  
 16 contractor to submit a bid listing unlicensed contractors or to use  
 17 unlicensed contractors on a public works project if the listed work of the  
 18 unlicensed contractors or portion of the unlicensed contractors' work is  
 19 ~~twenty thousand dollars (\$20,000)~~ fifty thousand dollars (\$50,000) or more.

20 (2) It ~~shall be~~ is a violation of this section for ~~any~~ a  
 21 subcontractor who is not licensed by the board to contract to perform work on  
 22 a public works project if the listed work of the subcontractor or portion of  
 23 the subcontractor's work is ~~twenty thousand dollars (\$20,000)~~ fifty thousand  
 24 dollars (\$50,000) or more.

25 (3) The board has jurisdiction over violations of this  
 26 subsection under § 17-25-103.

27  
 28 SECTION 37. Arkansas Code § 25-36-104 is amended to read as follows to  
 29 eliminate a duplicative reporting requirement:

30 25-36-104. Data recording and tracking.

31 (a)(1) The State Procurement Director shall track data regarding  
 32 minority participation in state contracts that exceed fifty thousand dollars  
 33 (\$50,000).

34 (2) The data shall include, ~~but not be limited to,~~ without  
 35 limitation information regarding:

- 36 (A) The dollar amount for each contract awarded to a

1 minority-owned business;

2 (B) The total dollar amount spent on contracts by each  
3 state agency; and

4 (C) The number and percentage of minority-owned businesses  
5 awarded contracts by the agency.

6 ~~(b) The director shall report the data required under subsection (a)~~  
7 ~~of this section semiannually to the Governor and to the cochairs of the~~  
8 ~~Legislative Council and to the Legislative Joint Auditing Committee and the~~  
9 ~~Minority Business Advisory Council.~~

10 ~~(e)(1)~~ (b)(1) Each state agency shall include in its budget report to  
11 the Joint Budget Committee a listing of all contracts in amounts exceeding  
12 fifty thousand dollars (\$50,000) awarded to minority-owned businesses.

13 (2) The vice president or vice chancellor for finance of each  
14 state college and university shall include in his or her budget report to the  
15 Joint Budget Committee a listing of all contracts in amounts exceeding fifty  
16 thousand dollars (\$50,000) awarded to minority-owned businesses.

17 ~~(d)~~ (c) The director shall promulgate rules ~~and regulations~~ necessary  
18 for the implementation of this chapter.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

/s/D. Sanders