

As Engrossed: 2/21/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A BILL ACT 280 OF 1991
HOUSE BILL 1225

4 **By: Representatives Willems and McJunkin**

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For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR REVIEW AND CIVIL PENALTIES FOR
9 VIOLATING THE FISCAL RESPONSIBILITY AND MANAGEMENT LAWS OF
10 ARKANSAS; AND FOR OTHER PURPOSES."

11

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

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14 SECTION 1. SHORT TITLE. This Act may be known and cited as the "State
15 Fiscal Management Responsibility Act".

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17 SECTION 2. INTENT AND PURPOSE. The General Assembly of the State of
18 Arkansas has enacted various laws relating to the receipting, disbursing,
19 depositing, and accounting for public funds, as well as laws relating to
20 establishing salaries, and the purchasing of commodities by various State
21 agencies. In addition, the Department of Finance and Administration or other
22 appropriate agency has issued rules and regulations pertaining to the
23 administration of these various laws.

24 It is the intent of the General Assembly of the State of Arkansas that
25 all State officers and employees comply with the provisions of these laws and
26 regulations. Presently, most of these laws and regulations do not provide
27 penalty provisions for violations thereof.

28 It is the purpose of this Act to provide procedures and civil penalties
29 regarding violations of the fiscal responsibility and management laws of the
30 State.

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32 SECTION 3. DEFINITIONS. (a) As used in this Act, unless the Act
33 otherwise provides:

34 (1) "Agency" means any State agency, bureau, board, commission, council,
35 department, institution, or office of the State of Arkansas;

36 (2) "Executive agencies" means all agencies other than constitutional,

1 *judicial, and legislative officers, agencies and departments;*

2 (3) "Fiscal responsibility and management laws" means the following
3 laws and regulations applicable thereto, as amended:

- 4 (A) General Accounting and Budgetary Procedures Laws, Title 19, Chapter 4 of
5 the Arkansas Code Annotated;
- 6 (B) Arkansas Purchasing Laws, Title 19, Chapter 11 of the Arkansas Code
7 Annotated;
- 8 (C) Attendance and Leave Laws, Title 21, Chapter 4 of the Arkansas Code
9 Annotated;
- 10 (D) Regular Salary Procedures and Restrictions Act, Title 21, Chapter 5,
11 Subchapter 1 of the Arkansas Code Annotated;
- 12 (E) Uniform Classification and Compensation Act, Title 21, Chapter 5,
13 Subchapter 2 of the Arkansas Code Annotated;
- 14 (F) Higher Education Expenditure Restrictions Act, Title 6, Chapter 63,
15 Subchapter 3 of the Arkansas Coded Annotated;
- 16 (G) Higher Education Employee Classification and Compensation Act, Title 6,
17 Chapter 63, Subchapter 2 of the Arkansas Code Annotated;
- 18 (H) Accounts and Notes Receivable Abatement Act, Title 19, Chapter 2 of the
19 Arkansas Code Annotated;
- 20 (I) Revenue Stabilization Laws, Title 19, Chapter 5 of the Arkansas Code
21 Annotated;
- 22 (J) Revenue Classification Laws, Title 19, Chapter 6 of the Arkansas
23 Code Annotated;
- 24 (K) Depositories for Public Funds, Title 19, Chapter 8 of the Arkansas
25 Code Annotated;
- 26 (L) Public Works, Title 22, Chapter 9 of the Arkansas Code Annotated;
27 and
- 28 (M) State Fiscal Management Responsibility Act.

29 (4) "Knowingly" means that a person is aware or should have been aware
30 that his conduct will violate the fiscal responsibility and management laws;

31 (5) "Public officer or employee" means any officer or employee of the
32 State of Arkansas.

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34 SECTION 4. INVESTIGATION OF VIOLATIONS. Upon discovery or
35 notification of an alleged violation of the fiscal responsibility and
36 management laws, each agency shall investigate the allegation and take

1 appropriate administrative action. The Director of each agency or, in the
2 case of a constitutional office, the constitutional officer is responsible for
3 complying with the provisions of this Act.

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5 SECTION 5. DOCUMENTATION OF VIOLATION. After completing the
6 investigation, if the agency determines that there has been a violation of the
7 fiscal responsibility and management laws, the facts and circumstances
8 relating to a violation and any corrective or remedial action taken shall be
9 documented and placed in the personnel files of the public officer or employee
10 involved in the violation.

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12 SECTION 6. NOTIFICATION OF VIOLATION. The agency shall notify the
13 public officer or employee of its findings and any corrective or remedial
14 action to be taken. Notification shall be made in a manner ensuring actual
15 notice to the public officer or employee. The public officer or employee
16 shall be notified that the failure to make corrective or remedial action
17 within thirty (30) days after the date of notification creates the rebuttable
18 presumption that the violation was committed knowingly.

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20 SECTION 7. REBUTTABLE PRESUMPTION. The public officer or employee
21 violating a fiscal responsibility and management law shall be given not more
22 than thirty (30) days after notification to effect corrective or remedial
23 action recommended by the agency. Failure to make corrective or remedial
24 action within thirty (30) days after notification creates the rebuttable
25 presumption that the violation was committed knowingly.

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27 SECTION 8. NOTIFICATION TO DEPARTMENT OF FINANCE AND ADMINISTRATION.
28 Within thirty (30) days after the expiration of the time period for the
29 public officer or employee to effect corrective or remedial action, the agency
30 shall transfer to the Director of the Department of Finance and Administration
31 a document containing a summary of the violation(s) and any corrective
32 remedial action taken.

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34 SECTION 9. REVIEW BY DEPARTMENT OF FINANCE AND ADMINISTRATION. (a) The
35 Director of the Department of Finance and Administration shall review the

1 summaries of violations received. The Director of the Department of Finance
2 and Administration may:

- 3 (1)Accept the summary and approve the corrective or remedial action by the
4 agency;
- 5 (2)Request additional information regarding the violation(s) and/or corrective
6 or remedial action by the agency; or
- 7 (3)Impose additional corrective or remedial action upon public officers
8 and employees of executive agencies as provided in section 14 of
9 this Act.

10 (b) Quarterly, the Director of the Department of Finance and
11 Administration shall submit a summary of all violations of the fiscal
12 responsibility and management laws, including any corrective or remedial
13 action by the agency or the Director of the Department of Finance and
14 Administration, to the Governor, and members of the General Assembly.

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16 SECTION 10. INVESTIGATION BY ATTORNEY GENERAL. The Director of the
17 Department of Finance and Administration, the Legislative Joint Auditing
18 Committee, or the Legislative Council may request the Office of the Attorney
19 General to review any information concerning any violation(s) of the fiscal
20 responsibility and management laws of the State *in order to determine whether*
21 *legal action is appropriate.*

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23 SECTION 11. CIVIL SUIT BY ATTORNEY GENERAL. The Attorney General may
24 file a civil suit in the Circuit Court against the public officer(s) or
25 employee(s) violating the fiscal responsibility and management laws. Venue
26 shall be in the county where the violation occurred. However, if the
27 violation occurred outside the borders of the State, venue shall be in Pulaski
28 County.

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30 SECTION 12. CIVIL PENALTY. If the public officer or employee is found
31 by the Court to have knowingly violated the fiscal responsibility and
32 management laws, the Court shall impose a civil penalty upon the public
33 officer or employee of not less than one hundred dollars (\$100), nor more than
34 one thousand dollars (\$1,000) for each violation, and may subject the public
35 officer or employee to the payment of damages resulting as a direct

1 consequence of any violation.

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3 SECTION 13. RECOVERY OF COSTS. If the public officer or employee is
4 found by the Court to have knowingly violated the provisions of the fiscal
5 responsibility and management laws, the Attorney General shall be allowed to
6 recover costs and attorney fees associated with the civil suit from the public
7 officer or employee. Any costs or fees recovered by the Attorney General
8 under this provision shall be deposited into the State Treasury.

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10 SECTION 14. EXECUTIVE AGENCIES. (a) Before the Director of the
11 Department of Finance and Administration may impose additional corrective or
12 remedial action regarding public officers or employees of executive agencies,
13 the Director of the Department of Finance and Administration shall conduct an
14 investigation regarding any violation(s). The public officer or employee
15 shall be notified and given the opportunity for a hearing conducted by the
16 Director of the Department of Finance and Administration regarding any
17 violation(s).

18 (b) The Director of the Department of Finance and Administration may
19 impose any one or more of the following as additional corrective or remedial
20 action:

- 21 (1) Oral or written warnings or reprimands;
- 22 (2) Suspension with or without pay for specified periods of time; or
- 23 (3) Termination of employment.

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25 SECTION 15. CIVIL PROCEDURES APPLY. All actions and procedures under
26 the provisions of this Act are civil in nature and shall be governed by the
27 appropriate rules, regulations, and laws regarding civil actions and remedies.

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29 SECTION 16. EXISTING REMEDIES NOT IMPAIRED. The provisions of this Act
30 do not limit or diminish any civil rights or administrative procedures
31 available to any public officer or employee.

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33 SECTION 17. All provisions of this act of a general and permanent
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
35 Code Revision Commission shall incorporate the same in the Code.

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SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 19. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Willems and McJunkin

APPROVED: 2-28-91

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