

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: H3/7/13 H4/3/13*

# A Bill

HOUSE BILL 1205

5 By: Representative Nickels  
6 By: Senator Elliott  
7

## For An Act To Be Entitled

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

15 *CONCERNING STATE EMPLOYEE GRIEVANCES AND*  
16 *POSSIBLE RELIEF FOR GRIEVANCES.*  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code Title 21, Chapter 1, is amended to add an  
22 additional subchapter to read as follows:

23 Subchapter 7 – State Employee Grievances

24 21-1-701. Definitions.

25 As used in this subchapter:

26 (1) “Adverse action” means the same as defined at § 21-1-602;

27 (2) “Appropriate authority” means the same as defined at § 21-1-  
28 602;

29 (3) “Communicating in good faith” means making a verbal or  
30 written report at a time and in a manner that gives a state agency reasonable  
31 notice of the need to correct a waste or violation;

32 (4)(A) “Employee” means a person regularly appointed or employed  
33 in a position of state service by a state agency for which:

34 (i) He or she is compensated on a full-time basis or  
35 on a pro rata basis; and

36 (ii) A class title and pay grade are established in



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

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

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

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

9 (B) "State agency" does not include:

10 (i) An institution of higher education;

11 (ii) A public school district;

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

14 (iv) The Arkansas State Game and Fish Commission;

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

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

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

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

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

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26 21-1-702. Grievances.

27 (a) Each state agency shall promulgate rules instituting a procedure  
28 for the filing, hearing, adjudication, and appeal of grievances.

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30 21-1-703. Appeals.

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

34 (1) Provide a process for appeals of the grievance decisions of  
35 state agencies; and

36 (2) Provide a procedure for the nonbinding mediation consistent

1 with this subchapter, including without limitation:

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

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

6 (C) Rules for conduct of the nonbinding mediation;

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

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

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12 21-1-704. Nonbinding mediation.

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

19 (A) Terminated;

20 (B) Demoted;

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

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

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

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

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

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

35 (c) Objecting or refusing to carry out a  
36 directive that the employee reasonably believes violates a law, rule, or

1 regulation adopted under the authority of the laws of the state or a  
2 political subdivision of the state.

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

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

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

11 (A) Maintain a roster of qualified mediators; and

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

14 (2) A mediator shall:

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

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

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

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

23 (E) Not be required to be an attorney.

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

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

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

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

33 (ii) The mediator shall report within twenty (20)  
34 days of the nonbinding mediation his or her suggested resolution to the  
35 Director of the Department of Finance and Administration.

36 (B) In determining the proposed resolution, the mediator

1 shall consider:

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

5 (ii) Whether the

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

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

9 by:

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

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

14 (iii) Whether the employee shows:

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

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

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

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

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

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

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33 /s/Nickels

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