

**Summary of Proposed Amendment to the Arkansas Ethics Commission's
Rules on Conflicts**

The Ethics Commission is revising the Rules on Conflicts to bring it in conformity with Act 315 of 2019, specifically, by removing the word “regulation” and/or replacing the word “regulation” with the word “rule”. The revisions to the Rules on Conflicts reflect changes made in the code sections provided below.

Act 315 amended Arkansas Code § 21-8-304(b), concerning prohibited activities of public servants, as follows:

(b) No public servant shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position that is declared by law or ~~regulation~~ rule to be confidential.

Act 315 amended Arkansas Code § 21-8-402(1)(A), resulting from Initiated Act 1 of 1988 and concerning the definition of "administrative action" under the laws governing ethics and conflicts of interest, is amended to read as follows:

(1)(A) “Administrative action” means any decision on, or proposal, consideration, or making of any rule, ~~regulation~~, ratemaking proceeding, or policy action by a governmental body.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT/AGENCY Arkansas Ethics Commission

DIVISION _____

PERSON COMPLETING THIS STATEMENT Graham Sloan

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To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules on Conflicts

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X No _____

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
Total	<u>-0-</u>

Next Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
Total	<u>-0-</u>

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
Total	<u>-0-</u>

Next Fiscal Year

General Revenue	<u>-0-</u>
Federal Funds	<u>-0-</u>
Cash Funds	<u>-0-</u>
Special Revenue	<u>-0-</u>
Other (Identify)	<u>-0-</u>
Total	<u>-0-</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

MARK-UP

RULES ON CONFLICTS

**ARKANSAS ETHICS COMMISSION
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§ 400 Definitions

- (a) **Administrative action** – As used in these rules, the term “administrative action” means any decision on, or proposal, consideration, or making of any rule, ~~regulation~~, ratemaking proceeding, or policy action by a governmental body. It does not include ministerial action.
- (b) **Business** – As used in these rules, the term “business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted.
- (c) **County government** – As used in these rules, the term “county government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a county.
- (d) **Family** – As used in these rules, the term “family” means an individual’s spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.
- (e) **Governmental body** – As used in these rules, the term “governmental body” means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.
- (f) **Income or compensation** – As used in these rules, the term “income or compensation” means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. It includes a payment made under obligation for services or other value received. The term “compensation” does not include anything of value presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee’s contribution to education.
- (g) **Legislative action** – As used in these rules, the term “legislative action” means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality.

- (h) **Legislator** – As used in these rules, the term “legislator” means any person who is a member of:
1. The General Assembly;
 2. A quorum court of any county;
 3. The city council or board of directors of any municipality; or
 4. A member of a school district board of directors.
- (i) **Lobbying** – As used in these rules, the term “lobbying” means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.
- (j) **Municipal government** – As used in these rules, the term “municipal government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a municipality.
- (k) **Person** – As used in these rules, the term “person” means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.
- (l) **Public appointee** – As used in these rules, the term “public appointee” means an individual who is appointed to a governmental body. It does not include an individual appointed to an elective office.
- (m) **Public employee** – As used in these rules, the term “public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body. It does not include public officials or public appointees.
- (n) **Public official** – (1) As used in these rules, the term “public official” means a person holding an elective office of any governmental body, whether elected or appointed to the office
- (2) “Public official” includes without limitation:
- (A) A person holding an elective office of any governmental body, whether elected or appointed to the office, during the time period between the date he or she is elected or appointed and the date he or she takes office; and
- (B) A member of a school district board of directors.
- (o) **Public servant** – As used in these rules, the term “public servant” means all public officials, public employees, and public appointees.
- (p) **Special privileges or exemption** – As used in these rules, the term “special privileges or exemption” means a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

- (q) **State government** – As used in these rules, the term “state government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas.
- (r) **Unwarranted privileges or exemptions** – As used in these rules, the term “unwarranted privileges or exemptions” means a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.

§ 401 Confidential Information

- (a)(1) No public servant shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or ~~regulation~~ **rule** to be confidential.
- (2) No public servant shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.
- (b) No public servant shall purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant’s official duties, to secure anything of material value or benefit for himself or herself or his or her family.
- (c) No member of a state board or commission or board member of an entity receiving state funds shall disclose confidential information acquired by him or her in the course of the member’s official duties or use such information to further his or her personal interests.

§ 402 Fair Treatment

- (a) No public servant shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.
- (b) No member of a state board or commission or board member of an entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

§ 403 Decision Making

- (a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.
- (2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.
- (b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

§ 404 Appearances

- (a) No legislator shall appear for compensation on behalf of another person, firm, corporation, or entity before any entity of:
 - (1) State government, if the legislator is a member of the General Assembly;
 - (2) The legislator’s county government, if the legislator is a member of a quorum court;
 - (3) The legislator’s municipal government, if the legislator is a member of a city council or board of directors of a municipality; or
 - (4) The legislator's school district board of directors, if the legislator is a member of a school district board of directors.
- (b) This section shall not:
 - (1) Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;
 - (2) Apply to any hearing or proceeding on which a record is made by the entity of state government, entity of county government, entity of municipal government, or school district board of directors;
 - (3) Apply to an appearance which is a matter of public record;
 - (4) Apply to ministerial actions; or

- (5) Preclude a legislator from acting on behalf of a constituent to determine the status of a matter without accepting compensation.
- (c) An appearance which is a matter of public record as provided in subdivision (b)(3) of this section may be made by:
 - (1)(A) Filing a written statement within twenty-four (24) hours with the agency head of the entity of state government, entity of county government, entity of municipal government, or school district before which an appearance is sought.
 - (B) In the event that a written statement cannot be provided to the agency head prior to the meeting, telephonic notice must be given the agency head or his office; or
 - (2) Filing a quarterly statement with the agency head of the entity of state government before which an appearance is sought.
- (d)(1) A statement filed under subsection (c) of this section shall identify the client on behalf of whom the appearance is made and contain a general statement of the action sought from the governmental body.
 - (2)(A) The statements shall be retained by the agency head and shall be a matter of public record.
 - (B) If the agency head determines that the release of the client's name would be an unwarranted invasion of individual privacy or would give advantage to competitors for bidding, the agency head may withhold the name until appropriate.
- (e) No member of the General Assembly shall receive any income or compensation as defined in § 400(f) other than income and benefits from the governmental body to which he or she is duly entitled, for lobbying other members of the General Assembly by communicating directly or soliciting others to communicate with any other member with the purpose of influencing legislative action by the General Assembly.

§ 405 Reporting

- (a) A legislator who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public, shall:
 - (1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and

- (2)(A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest.
- (B) The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.
- (b) The obligation to report a potential conflict of interest under this section arises as soon as the legislator is aware of the conflict.
- (c) If the statement of financial interest filed by the legislator makes the conflict readily apparent, then no report need be filed.