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3 95th General Assembly
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A Bill

SENATE BILL 227

5
6 By: Senators C. Tucker, B. Davis, J. Boyd, C. Penzo, G. Stubblefield, J. Petty
7 By: Representatives Eubanks, *A. Collins, Gazaway, Gramlich, Hawk, L. Johnson, M. McElroy, J.*
8 *Richardson, Womack, Wooldridge*

For An Act To Be Entitled

11 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF
12 1967; TO AMEND THE PROVISIONS OF THE FREEDOM OF
13 INFORMATION ACT OF 1967 CONCERNING PUBLIC MEETINGS;
14 AND FOR OTHER PURPOSES.

Subtitle

18 TO AMEND THE FREEDOM OF INFORMATION ACT
19 OF 1967; AND TO AMEND THE PROVISIONS OF
20 THE FREEDOM OF INFORMATION ACT OF 1967
21 CONCERNING PUBLIC MEETINGS.

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

25 *SECTION 1. Arkansas Code § 25-19-103 is amended to read as follows:*

26 *25-19-103. Definitions.*

27 *As used in this chapter:*

28 *(1) "Background and nondecisional information" means information*
29 *that is not deliberation;*

30 *~~(1)(A)~~(2)(A) "Custodian", except as otherwise provided by law*
31 *and with respect to any public record, means the person having administrative*
32 *control of that record.*

33 *(B) "Custodian" does not mean a person who holds public*
34 *records solely for the purposes of storage, safekeeping, or data processing*
35 *for others;*

36 *(3) "Cybersecurity" means the measures taken to achieve*



1 protection against the criminal or unauthorized use of electronic data;

2 (4) "Deliberation" means an exchange of information or opinion
3 between two (2) or more members of a governing body that:

4 (A) Seeks, discloses, or inquires about a decision by a
5 member of the governing body concerning any matter on which official action
6 will foreseeably be taken by the governing body; or

7 (B) Solicits, discloses, or inquires about the support or
8 opposition of a member of the governing body concerning any matter on which
9 official action will foreseeably be taken by the governing body;

10 ~~(2)~~(5) "Disaster recovery system" means an electronic data
11 storage system implemented and maintained solely for the purpose of allowing
12 a governmental unit or agency to recover operational systems and datasets
13 following the occurrence of a catastrophe, including without limitation an
14 act of war, an equipment failure, a cyberattack, or a natural disaster such
15 as a tornado, earthquake, or fire;

16 ~~(3)~~(6) "Format" means the organization, arrangement, and form of
17 electronic information for use, viewing, or storage;

18 (7) "Governing body" means the governing body of a public
19 entity;

20 (8) "Informal meeting" means the gathering of two (2) or more
21 members of a governing body outside of a public meeting;

22 ~~(4)~~(9) "Medium" means the physical form or material on which
23 records and information may be stored or represented and may include, but is
24 not limited to, paper, microfilm, microform, computer disks and diskettes,
25 optical disks, and magnetic tapes;

26 ~~(5)~~(A)~~(10)~~(A) "Municipally owned utility system" means a utility
27 system owned or operated by a municipality that provides:

- 28 (i) Electricity;
- 29 (ii) Water;
- 30 (iii) Wastewater;
- 31 (iv) Cable television; or
- 32 (v) Broadband service.

33 (B) "Municipally owned utility system" includes without
34 limitation a:

35 (i) Consolidated waterworks system under the
36 Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

1 (ii) Utility system managed or operated by a
2 nonprofit corporation under § 14-199-701 et seq.; and

3 (iii) Utility system owned or operated by a
4 municipality or by a consolidated utility district under the General
5 Consolidated Public Utility System Improvement District Law, § 14-217-101 et
6 seq.;

7 (11) "Poll" means a series of communications:

8 (A) Between:

9 (i) One (1) or more persons paid by a public entity
10 or agents or employees of that public entity; and

11 (ii) One (1) or more members of the governing body
12 of that public entity;

13 (B) Concerning any matter on which official action will
14 foreseeably be taken by the governing body;

15 (C) To determine:

16 (i) How the member of the governing body intends to
17 vote; or

18 (ii) Whether the member of the governing body
19 supports or opposes certain proposed action by the governing body; and

20 (D) For the purpose of exercising a responsibility,
21 authority, power, or duty of the governing body;

22 ~~(6)(12) "Public meetings" "Public entity" means the meetings of~~
23 ~~any;~~

24 (A) A bureau, commission, or agency of the state; ~~or any~~

25 (B) A political subdivision of the state, including
26 municipalities, ~~and~~ counties, ~~and~~ boards of education; ~~and all~~

27 (C) All other boards, bureaus, commissions, or
28 organizations in the State of Arkansas, except grand juries, supported wholly
29 or in part by public funds or expending public funds;

30 (13)(A) "Public meeting" means the formal gathering together, in
31 a special or regular gathering, of a governing body, whether in person or
32 remotely.

33 (B) "Public meeting" does not include:

34 (i) The gathering together, whether in person or
35 remotely, of the members of a governing body to discuss the settlement of a
36 cause of action in a court-ordered alternative dispute resolution process,

1 including without limitation a settlement conference or mediation; and

2 (ii) A meeting of the Child Maltreatment

3 Investigations Oversight Committee under § 10-3-3201 et seq.;

4 ~~(7)(A)~~(14)(A) "Public records" means writings, recorded sounds,
5 films, tapes, electronic or computer-based information, or data compilations
6 in any medium required by law to be kept or otherwise kept and that
7 constitute a record of the performance or lack of performance of official
8 functions that are or should be carried out by a public official or employee,
9 a governmental agency, or any other agency or improvement district that is
10 wholly or partially supported by public funds or expending public funds. All
11 records maintained in public offices or by public employees within the scope
12 of their employment shall be presumed to be public records.

13 (B) "Public records" does not mean software acquired by
14 purchase, lease, or license;

15 ~~(8)~~(15) "Public water system" means all facilities composing a
16 system for the collection, treatment, and delivery of drinking water to the
17 general public, including without limitation reservoirs, pipelines,
18 reclamation facilities, processing facilities, distribution facilities, and
19 regional water distribution districts under The Regional Water Distribution
20 District Act, § 14-116-101 et seq.; ~~and~~

21 (16) "Remotely" means through electronic means, including
22 without limitation by telephone, video conference, or video broadcast; and

23 ~~(9)~~(17) "Vulnerability assessment" means an assessment of the
24 vulnerability of a public water system to a terrorist attack or other
25 intentional acts intended to substantially disrupt the ability of the public
26 water system to provide a safe and reliable supply of drinking water as
27 required by the Public Health Security and Bioterrorism Preparedness and
28 Response Act of 2002, Pub. L. No. 107-188.

29
30 SECTION 2. Arkansas Code § 25-19-106 is amended to read as follows:

31 25-19-106. ~~Open public~~ Public meetings – Requirements, exceptions, and
32 penalties.

33 (a) ~~Except as otherwise specifically provided by law, all meetings,~~
34 ~~formal or informal, special or regular, of the governing bodies of all~~
35 ~~municipalities, counties, townships, and school districts and all boards,~~
36 ~~bureaus, commissions, or organizations of the State of Arkansas, except grand~~

1 ~~juries, supported wholly or in part by public funds or expending public~~
2 ~~funds, shall be public meetings.~~ To lawfully hold a public meeting, a
3 governing body shall ensure that:

4 (1) Prior notice of the public meeting has been provided as
5 required under subsection (b) of this section;

6 (2) Any executive session held within a public meeting is
7 conducted as required under subsection (c) of this section;

8 (3) The public meeting is recorded as provided under subsection
9 (d) of this section;

10 (4) The public is permitted reasonable access to the public
11 meeting, and members of the governing body attend the public meeting in the
12 appropriate manner, as provided under subsection (e) of this section; and

13 (5) The public meeting is conducted in a manner that allows the
14 public to attend and hear all of the governing body's meaningful discussion
15 and deliberation, if any, on official business as provided under subsections
16 (f) and (g) of this section.

17 (b)(1)(A) The time and place of each regular public meeting shall be
18 furnished to anyone who requests the information.

19 (B) Unless another notification timeline for the public
20 meeting of a governing body is specified by law, the notification required
21 under subdivision (b)(1)(A) of this section shall be made at least three (3)
22 days before the public meeting takes place in order that the public may have
23 representatives at the public meeting.

24 (2)(A) In the event of an emergency or special ~~meetings~~ public
25 meeting, the person calling the public meeting shall notify the
26 representatives of the newspapers, radio stations, and television stations,
27 if any, located in the county in which the public meeting is to be held and
28 any news media located elsewhere that cover regular public meetings of the
29 governing body and that have requested to be so notified of emergency or
30 special public meetings of the time, place, and date of the public meeting.

31 (B) ~~Notification~~ The notification required under
32 subdivision (b)(2)(A) of this section shall be made at least two (2) hours
33 before the public meeting takes place in order that the public ~~shall~~ may have
34 representatives at the public meeting.

35 (3) In addition to the requirements under subdivisions (b)(1)
36 and (2) of this section:

1 (A) The time, place, and date of a public meeting shall be
2 published online if the governing body or the public entity it governs
3 maintains a website or social media page; and

4 (B)(i) The governing body shall furnish the most current
5 agenda for a public meeting upon request and shall publish the most current
6 agenda for a public meeting online if the governing body or the public entity
7 it governs maintains a website or social media page at least three (3) days
8 before a regular public meeting and at least two (2) hours before an
9 emergency or special public meeting.

10 (ii) The requirement of subdivision (b)(3)(B)(i) of
11 this section does not preclude a governing body from adding items to an
12 agenda after the agenda has been furnished or posted under subdivision
13 (b)(3)(B)(i) of this section.

14 ~~(c)(1)(A) Except as provided under subdivision (e)(6) of this section,~~
15 ~~an~~ An executive session will shall be permitted only for the purpose of:

16 (A)(i) ~~considering~~ Considering the employment,
17 appointment, promotion, demotion, disciplining, or resignation of any public
18 officer or employee.

19 ~~(B)(ii) The specific purpose of the executive~~
20 ~~session shall be announced in public before~~ Before going into an executive
21 session called under subdivision (c)(1)(A)(i) of this section, a governing
22 body shall state publicly which specific purpose listed in subdivision
23 (c)(1)(A)(i) of this section is the basis for the executive session.

24 ~~(2)(A)(iii) Only the person holding the top~~
25 administrative position in the public agency, department, or office involved,
26 the immediate supervisor of the employee involved, and the employee may be
27 present at the executive session when so requested by the governing body,
28 ~~board, commission, or other public body holding the executive session.~~

29 ~~(B)(iv) Any person being interviewed for the top~~
30 administrative position in the public agency, department, or office involved
31 may be present at the executive session when so requested by the governing
32 board, commission, or other public body holding the executive session;

33 (B) Discussing how a governing body will respond to an
34 attack on or other breach of the cybersecurity of the public entity governed
35 by the governing body;

36 (C)(i) A board or commission of the state preparing

1 examination materials and answers to examination materials that are
2 administered to applicants for licensure from a state agency.

3 (ii) Boards and commissions are excluded from this
4 chapter for the administering of examinations to applicants for licensure;
5 and

6 (D) A governing body considering, evaluating, or discussing
7 matters pertaining to a public water system's security or municipally owned
8 utility system's security as described in § 25-19-105(b)(17).

9 ~~(3)(2) Executive sessions must never shall not be called for the~~
10 ~~purpose of defeating the reason or the spirit of this chapter.~~

11 ~~(4) No resolution, ordinance, rule, contract, regulation, or~~
12 ~~motion considered or arrived at in executive session will be legal unless,~~
13 ~~following the executive session, the public body reconvenes in public session~~
14 ~~and presents and votes on the resolution, ordinance, rule, contract,~~
15 ~~regulation, or motion.~~

16 ~~(5)(A) Boards and commissions of this state may meet in~~
17 ~~executive session for purposes of preparing examination materials and answers~~
18 ~~to examination materials that are administered to applicants for licensure~~
19 ~~from state agencies.~~

20 ~~(B) Boards and commissions are excluded from this chapter~~
21 ~~for the administering of examinations to applicants for licensure.~~

22 ~~(6) Subject to the provisions of subdivision (c)(4) of this~~
23 ~~section, a public agency may meet in executive session for the purpose of~~
24 ~~considering, evaluating, or discussing matters pertaining to public water~~
25 ~~system security or municipally owned utility system security as described in~~
26 ~~§ 25-19-105(b)(17).~~

27 ~~(7) An executive session held by the Child Maltreatment~~
28 ~~Investigations Oversight Committee under § 10-3-3201 et seq. is exempt from~~
29 ~~this section.~~

30 (d)(1) All officially scheduled, special, and called open public
31 meetings Except as provided under subdivision (d)(5) of this section, a
32 public meeting shall be recorded in a manner that allows for the capture of
33 sound, including without limitation:

34 (A) A sound-only recording;

35 (B) A video recording with sound and picture; or

36 (C) A digital or analog broadcast capable of being

1 recorded.

2 (2) If a member of a governing body attends a public meeting
3 remotely, the remote portion of the public meeting that is recorded under
4 subdivision (d)(1) of this section shall be recorded in the format in which
5 it is conducted.

6 (3) A recording of ~~an open~~ a public meeting under subdivision
7 (d)(1) or subdivision (d)(2) of this section shall be maintained by a public
8 entity for a minimum of one (1) year from the date of the ~~open~~ public
9 meeting.

10 ~~(3)(4)~~ The recording shall be maintained in a format that may be
11 reproduced upon a request under this chapter.

12 ~~(4)(5)~~ Subdivisions Subdivision (d)(1) and (2) of this section
13 ~~do~~ does not apply to:

14 (A) Executive sessions; or

15 (B) Volunteer fire departments.

16 ~~(5) Cities of the second class and incorporated towns are exempt~~
17 ~~from subdivisions (d)(1) and (2) of this section until July 1, 2020.~~

18 (e)(1) A governing body shall ensure that Arkansas residents have
19 reasonable access to attend a public meeting, including through remote means,
20 if such remote means are utilized by the governing body.

21 ~~(2) If the Governor declares a disaster emergency under the~~
22 ~~Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., a public entity~~
23 ~~may assemble, gather, meet, and conduct an open public meeting through~~
24 ~~electronic means, including without limitation by:~~

25 ~~(A) Telephone;~~

26 ~~(B) Video conference; or~~

27 ~~(C) Video broadcast.~~ Except as provided under subdivisions
28 (e)(3)-(5) of this section, a member of a governing body shall be physically
29 present at a public meeting to be counted for purposes of establishing a
30 quorum or to vote.

31 ~~(2)(3) If an open public meeting is held under subdivision~~
32 ~~(e)(1) of this section:~~ Other than governing bodies of municipalities,
33 counties, or public school districts, a governing body may adopt a policy
34 permitting members of the governing body to attend a public meeting remotely.

35 ~~(A) The public may attend the open public meeting using~~
36 ~~electronic means; and~~

1 ~~(B) Notice of the method the public may attend the open~~
2 ~~public meeting shall be published with the notice of the open public meeting.~~

3 (4) The ability of the governing body of a public school
4 district to conduct a public meeting remotely shall be governed by § 6-13-
5 619.

6 ~~(3)(5) Physical presence of the public or of an individual~~
7 ~~member of the public entity at the open public meeting is not required under~~
8 ~~this subsection. If the Governor declares a disaster emergency under the~~
9 ~~Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., a governing~~
10 ~~body may conduct a public meeting remotely.~~

11 ~~(4)(6) The open public meeting shall be recorded in the format~~
12 ~~in which it is conducted, including without limitation:~~

13 ~~(A) A sound-only recording;~~

14 ~~(B) A video recording with sound and picture; or~~

15 ~~(C) A digital or analog broadcast capable of being~~

16 ~~recorded. For a member of a governing body who attends a meeting remotely to~~
17 ~~be counted for a quorum or to vote, the method used to permit the member of~~
18 ~~the governing body to attend remotely shall:~~

19 (A) Provide a method for the governing body to verify the
20 identity of the member of the governing body attending remotely;

21 (B) Allow other members of the governing body and members
22 of the public, whether physically present at the public meeting or attending
23 the public meeting remotely, at all times to:

24 (i) Hear the member of the governing body attending
25 remotely;

26 (ii) Observe or otherwise understand a vote of a
27 member of the governing body attending remotely; and

28 (iii) Know the identity of the member of the
29 governing body attending remotely when that member is speaking or voting; and

30 (C) Allow a member of the governing body attending
31 remotely to hear the other members of the governing body and any public
32 comment.

33 ~~(5)(7) A public entity shall maintain the records of an open~~
34 ~~public meeting held under this subsection for a minimum of one (1) year from~~
35 ~~the date of the open public meeting. A member of a governing body who attends~~
36 ~~a public meeting remotely shall not receive mileage or per diem for attending~~

1 the public meeting.

2 (8) If one (1) or more members of a governing body attends a
3 public meeting remotely:

4 (A) The governing body shall enable members of the public
5 to attend the public meeting by the same means that the members of the
6 governing body attending the public meeting remotely are attending the public
7 meeting; and

8 (B) Notice of the method the public may attend the public
9 meeting shall be published with the notice of the public meeting.

10 (f) A member of a governing body shall not participate in a
11 communication, whether oral, written, electronic, or otherwise, that:

12 (1)(A) He or she knows or reasonably should know is a poll.

13 (B)(i) It is not a violation of subdivision (f)(1)(A) of
14 this section if a secretary or administrative assistant of a governing body
15 communicates in writing with one (1) or more members of the governing body
16 for the purpose of conducting a ministerial act, including without limitation
17 scheduling a public meeting of the governing body or setting the agenda for a
18 public meeting of the governing body.

19 (ii) It is a violation of subdivision (f)(1)(A) of this
20 section if a secretary or administrative assistant of a governing body
21 communicates with one (1) or more members of the governing body to schedule a
22 public meeting of the governing body or set the agenda for a public meeting
23 of the governing body and the communication functionally conducts substantive
24 business of the governing body concerning any matter on which official action
25 would foreseeably be taken by the governing body.

26 (C)(i) It is not a violation of subdivision (f)(1)(A) of
27 this section if an employee or an agent of a public entity communicates
28 background and nondecisional information to one (1) or more members of the
29 governing body of the public entity.

30 (ii) Except as provided in subdivision (f)(1)(B)(i)
31 of this section, it is a violation of subdivision (f)(1)(A) of this section
32 if an employee or agent of a public entity communicates to a member of the
33 governing body of the public entity:

34 (a) How another member of the governing body
35 intends to vote; or

36 (b) Whether another member of the governing

1 body supports or opposes a certain proposed action by the governing body; or
2 (2)(A) Occurs outside of a public meeting with another member of
3 the governing body about a matter on which official action will foreseeably
4 be taken by the governing body.

5 (B) It is not a violation of subdivision (f)(2)(A) of this
6 section if a member of a governing body communicates background and
7 nondecisional information to one (1) or more members of the same governing
8 body.

9 (C) It is a violation of subdivision (f)(2)(A) of this
10 section if a member of a governing body engages in any communication with one
11 (1) or more members of the same governing body that constitutes deliberation,
12 as deliberation may only occur at a public meeting of the governing body.

13 (g) An informal meeting that includes deliberation or that is for the
14 purpose of exercising a responsibility, authority, power, or duty of a
15 governing body is strictly prohibited.

16 (h) Two (2) or more employees or agents of a public entity may
17 communicate for the purpose of exercising an authorized responsibility,
18 authority, power, or duty of an employee or agent of the public entity
19 outside of a public meeting.

20 (i)(1) If a circuit court finds under § 25-19-107 that a governing
21 body is in violation of this section, the circuit court may invalidate any
22 action the governing body took at the unlawful public meeting.

23 (2) If a circuit court finds under § 25-19-107 that a member of
24 a governing body engaged in a communication prohibited under subsection (f)
25 of this section or in an informal meeting prohibited under subsection (g) of
26 this section, the circuit court may invalidate any action the governing body
27 took that is the direct or indirect result of the prohibited communication or
28 informal meeting.

29 (3) An action taken in an executive session is void unless the
30 governing body conducts a public vote on the matter discussed in the
31 executive session at the conclusion of the executive session.

32
33 /s/C. Tucker

34
35 APPROVED: 4/10/25