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4

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A Bill

SENATE BILL 227

5 By: Senators C. Tucker, B. Davis, J. Boyd, C. Penzo, G. Stubblefield
6 By: Representative Eubanks
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF
10 1967; TO AMEND THE PROVISIONS OF THE FREEDOM OF
11 INFORMATION ACT OF 1967 CONCERNING PUBLIC MEETINGS;
12 AND FOR OTHER PURPOSES.
13
14

Subtitle

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

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 25-19-103(6) – (9), concerning the
24 definitions used under the Freedom of Information Act of 1967, are amended to
25 read as follows:

26 (6) ~~"Public meetings"~~ "Public entity" means ~~the meetings of any:~~

27 (i) A bureau, commission, or agency of the state; ~~or~~

28 ~~any~~

29 (ii) A political subdivision of the state, including
30 municipalities, and counties, and boards of education; ~~and all~~

31 (iii) All other boards, bureaus, commissions, or
32 organizations in the State of Arkansas, except grand juries, supported wholly
33 or in part by public funds or expending public funds;

34 (7)(A) "Public meeting" means the formal gathering together of a
35 governing body, whether in person or through electronic or telephonic means,
36 of a public entity.



1 (B) "Public meeting" does not include the gathering
2 together, whether in person or through electronic or telephonic means, of the
3 members of a governing body to discuss the settlement of a cause of action in
4 a court-ordered alternative dispute resolution process, including without
5 limitation a settlement conference or mediation;

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

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

17 ~~(8)~~(9) "Public water system" means all facilities composing a
18 system for the collection, treatment, and delivery of drinking water to the
19 general public, including without limitation reservoirs, pipelines,
20 reclamation facilities, processing facilities, distribution facilities, and
21 regional water distribution districts under The Regional Water Distribution
22 District Act, § 14-116-101 et seq.; and

23 ~~(9)~~(10) "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 § 25-19-103, concerning the definitions used
31 under the Freedom of Information Act of 1967, is amended to add additional
32 subdivisions to read as follows:

33 (11) "Cybersecurity" means the measures taken to achieve
34 protection against the criminal or unauthorized use of electronic data; and

35 (12) "Poll" means a series of communications between an agent,
36 employee, or person paid by a public entity and one (1) or more members of

1 the governing body of that public entity to determine:

2 (A) How the member of the governing body intends to vote;

3 or

4 (B) Whether the member of the governing body supports or
5 opposes certain proposed action by the governing body.

6
7 SECTION 3. Arkansas Code § 25-19-106 is amended to read as follows:

8 25-19-106. ~~Open public~~ Public meetings – Requirements, exceptions, and
9 penalties.

10 (a) ~~Except as otherwise specifically provided by law, all meetings,~~
11 ~~formal or informal, special or regular, of the governing bodies of all~~
12 ~~municipalities, counties, townships, and school districts and all boards,~~
13 ~~bureaus, commissions, or organizations of the State of Arkansas, except grand~~
14 ~~juries, supported wholly or in part by public funds or expending public~~
15 ~~funds, shall be public meetings. To lawfully hold a public meeting, a~~
16 governing body shall ensure that:

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

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

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

23 (4) The public is permitted reasonable access to the public
24 meeting as provided under subsection (e) of this section; and

25 (5) The public meeting is conducted in a manner that allows the
26 public to attend and hear the governing body's meaningful discussion and
27 deliberation, if any, on official business.

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

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

35 (2)(A) In the event of an emergency or special ~~meetings~~ public
36 meeting, the person calling the public meeting shall notify the

1 representatives of the newspapers, radio stations, and television stations,
 2 if any, located in the county in which the public meeting is to be held and
 3 any news media located elsewhere that cover regular public meetings of the
 4 governing body and that have requested to be so notified of emergency or
 5 special public meetings of the time, place, and date of the public meeting.

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

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

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

15 (B)(i) The governing body shall furnish the most current
 16 agenda for a public meeting upon request and shall publish the most current
 17 agenda for a public meeting online if the governing body or the public entity
 18 it governs maintains a website or social media page at least three (3) days
 19 before a regular public meeting and at least two (2) hours before an
 20 emergency or special public meeting.

21 (ii) The requirement of subdivision (b)(3)(B)(i) of
 22 this section does not preclude a governing body from adding items to an
 23 agenda after the agenda has been furnished or posted pursuant to subdivision
 24 (b)(3)(B)(i) of this section.

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

27 (A)(i) considering Considering the employment,
 28 appointment, promotion, demotion, disciplining, or resignation of any public
 29 officer or employee.

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

35 ~~(2)(A)(iii)~~ (iii) Only the person holding the top
 36 administrative position in the public agency, department, or office involved,

1 the immediate supervisor of the employee involved, and the employee may be
2 present at the executive session when so requested by the governing body,
3 ~~board, commission, or other public body~~ holding the executive session.

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

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

11 (C)(i) A board or commission of the state preparing
12 examination materials and answers to examination materials that are
13 administered to applicants for licensure from a state agency.

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

16 (D) Subject to subdivision (h)(3) of this section, a
17 governing body considering, evaluating, or discussing matters pertaining to a
18 public water system's security or municipally owned utility system's security
19 as described in § 25-19-105(b)(17); and

20 (E) Holding an executive session of the Child Maltreatment
21 Investigations Oversight Committee under § 10-3-3201 et seq.

22 ~~(3)(2)~~ Executive sessions must never be called for the purpose
23 of defeating the reason or the spirit of this chapter.

24 ~~(4) No resolution, ordinance, rule, contract, regulation, or~~
25 ~~motion considered or arrived at in executive session will be legal unless,~~
26 ~~following the executive session, the public body reconvenes in public session~~
27 ~~and presents and votes on the resolution, ordinance, rule, contract,~~
28 ~~regulation, or motion.~~

29 ~~(5)(A) Boards and commissions of this state may meet in~~
30 ~~executive session for purposes of preparing examination materials and answers~~
31 ~~to examination materials that are administered to applicants for licensure~~
32 ~~from state agencies.~~

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

35 ~~(6) Subject to the provisions of subdivision (c)(4) of this~~
36 ~~section, a public agency may meet in executive session for the purpose of~~

1 ~~considering, evaluating, or discussing matters pertaining to public water~~
 2 ~~system security or municipally owned utility system security as described in~~
 3 ~~§ 25-19-105(b)(17).~~

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

7 (d)(1) ~~All officially scheduled, special, and called open public~~
 8 ~~meetings~~ Except as provided under subdivision (d)(4) of this section, a
 9 public meeting shall be recorded in a manner that allows for the capture of
 10 sound, including without limitation:

11 (A) A sound-only recording;

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

13 (C) A digital or analog broadcast capable of being
 14 recorded.

15 (2) A recording of ~~an open~~ a public meeting shall be maintained
 16 by a *public entity* for a minimum of one (1) year from the date of the ~~open~~
 17 public meeting.

18 (3) The recording shall be maintained in a format that may be
 19 reproduced upon a request under this chapter.

20 (4) ~~Subdivisions~~ Subdivision (d)(1) ~~and (2)~~ of this section ~~do~~
 21 does not apply to:

22 (A) Executive sessions; or

23 (B) Volunteer fire departments.

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

26 (e)(1) A governing body shall ensure that Arkansas residents have
 27 reasonable access to attend a public meeting, including through electronic
 28 means, if such electronic means are available for use to the governing body.

29 ~~(2) If the Governor declares a disaster emergency under the~~
 30 ~~Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., a public entity~~
 31 ~~may assemble, gather, meet, and~~ Except for the governing body of a quorum
 32 court, city council, or school district, a governing body may conduct ~~an open~~
 33 a public meeting through electronic means, including without limitation by:

34 (A) Telephone;

35 (B) Video conference; or

36 (C) Video broadcast.

1 ~~(2)(3)~~ ~~If an open public meeting is held under subdivision~~
2 ~~(e)(1) of this section.~~ If the Governor declares a disaster emergency under
3 the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., the
4 governing body of a quorum court, city council, or school board may conduct a
5 public meeting through electronic means, including without limitation by:

6 (A) ~~The public may attend the open public meeting using~~
7 ~~electronic means; and~~ Telephone;

8 (B) ~~Notice of the method the public may attend the open~~
9 ~~public meeting shall be published with the notice of the open public meeting.~~
10 Video conference; or

11 (C) Video broadcast.

12 ~~(3)(4)~~ ~~Physical presence of the public or of an individual~~
13 ~~member of the public entity at the open public meeting is not required under~~
14 ~~this subsection.~~ If a public meeting is held through electronic means under
15 subdivision (e)(2) or (e)(3) of this section:

16 (A) The public may attend the public meeting using
17 electronic means;

18 (B) Notice of the method the public may attend the public
19 meeting shall be published with the notice of the public meeting;

20 (C) Members of the governing body who participate in the
21 public meeting through electronic means rather than attend in person may not
22 receive mileage or per diem for attending the public meeting; and

23 (D) Votes by members of the governing body who participate
24 in the public meeting through electronic means shall be clearly cast, such
25 that other members of the governing body and the public can observe and
26 understand how each member voted.

27 ~~(4)(5)~~ ~~The open public meeting shall be recorded in the format~~
28 ~~in which it is conducted, including without limitation:~~

29 (A) A sound-only recording;

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

31 (C) A digital or analog broadcast capable of being
32 recorded.

33 ~~(5)(6)~~ A public entity shall maintain the records of ~~an open a~~
34 public meeting held under this subsection for a minimum of one (1) year from
35 the date of the ~~open~~ public meeting.

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

3 (1) He or she knows or reasonably should know is a poll; or

4 (2)(A) Occurs outside of a public meeting with another member of
5 the governing body about a matter on which official action will foreseeably
6 be taken by the governing body.

7 (B) It is not a violation of subdivision (f)(2)(A) of this
8 section if a member of a governing body communicates information that is
9 background or otherwise non-decisional in nature to one (1) or more members
10 of the same governing body.

11 (g) Two (2) or more employees of a governing body may communicate for
12 the purpose of exercising a responsibility, authority, power, or duty of an
13 employee without notice and an open meeting under this section.

14 (h)(1) Except as provided in subdivision (h)(2) of this section, if a
15 circuit court finds under § 25-19-107 that a governing body violated this
16 section, the circuit court may invalidate any action the governing body took
17 at the unlawful public meeting.

18 (2) If a circuit court finds under § 25-19-107 that a member of
19 a governing body engaged in a communication prohibited under subsection (f)
20 of this section, the circuit court shall invalidate any action the governing
21 body took that is the direct or indirect result of the prohibited
22 communication.

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

26 (i)(1)(A) Except as provided in subdivision (i)(1)(B) of this section,
27 a governing body may cure an action that violates this section if, after
28 taking the action that violated this section, the governing body, in a manner
29 that complies with this section:

30 (i) Holds a public meeting;

31 (ii) Publicly acknowledges and discusses at the
32 public meeting the action that violated this section; and

33 (iii) Takes other action, if necessary, to correct
34 the violation.

35 (B) Subdivision (i)(1)(A) of this section does not apply
36 to a violation of subdivision (f)(1) of this section.

1 (2)(A) If the governing body cures the action under subsection
2 (i)(1) of this section that would be subject to invalidation or declared void
3 before any lawsuit is filed concerning such action, then attorney’s fees
4 shall not be recoverable for such a lawsuit.

5 (B) If the governing body cures the action under
6 subdivision (i)(1) of this section that would be subject to being invalidated
7 or declared void after a lawsuit is filed concerning such action, then
8 attorney’s fees may be recoverable under § 25-19-107.

9 (3)(A) Any lawsuit filed under subdivisions (h)(1) or (h)(2) of
10 this section to invalidate an action taken by a governing body or filed
11 pursuant to subdivision (h)(3) of this section to declare an action taken in
12 an executive session to be void shall be filed within one (1) year of the
13 action sought to be invalidated or declared void.

14 (B) The limitations period under subdivision (i)(3)(A) of
15 this section shall not otherwise limit in any way any civil or criminal
16 liability for a violation of this subchapter.

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18 /s/C. Tucker
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