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A Bill

3 Regular Session, 2025

SENATE BILL 227

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5 By: Senators C. Tucker, B. Davis, J. Boyd, C. Penzo, G. Stubblefield

6 By: Representative Eubanks

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For An Act To Be Entitled

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AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF

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1967; TO AMEND THE PROVISIONS OF THE FREEDOM OF

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INFORMATION ACT OF 1967 CONCERNING PUBLIC MEETINGS;

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AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND THE FREEDOM OF INFORMATION ACT

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OF 1967; AND TO AMEND THE PROVISIONS OF

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THE FREEDOM OF INFORMATION ACT OF 1967

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CONCERNING PUBLIC MEETINGS.

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

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SECTION 1. Arkansas Code § 25-19-103(6) – (9), concerning the

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definitions used under the Freedom of Information Act of 1967, are amended to

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read as follows:

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

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

28 *~~any~~*

29

(ii) A political subdivision of the state, including

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municipalities, and counties, and boards of education; ~~and all~~

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(iii) All other boards, bureaus, commissions, or

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organizations in the State of Arkansas, except grand juries, supported wholly

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or in part by public funds or expending public funds;

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(7)(A) "Public meeting" means the formal gathering together of a

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governing body, whether in person or through electronic or telephonic means,

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of a public entity.



(B) "Public meeting" does not include:

(i) The gathering together, whether in person or through electronic or telephonic means, of the members of a governing body to discuss the settlement of a cause of action in a court-ordered alternative dispute resolution process, including without limitation a settlement conference or mediation; and

(ii) A meeting of the Child Maltreatment Investigations Oversight Committee under § 10-3-3201 et seq.;

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

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

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

~~(9)(10)~~ "Vulnerability assessment" means an assessment of the vulnerability of a public water system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the public water system to provide a safe and reliable supply of drinking water as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188.

SECTION 2. Arkansas Code § 25-19-103, concerning the definitions used under the Freedom of Information Act of 1967, is amended to add additional subdivisions to read as follows:

(11) "Cybersecurity" means the measures taken to achieve

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

2 (12) "Poll" means:

3 (A) A series of communications:

4 (i) Between:

5 (a) One (1) or more persons paid by a public
6 entity or agents or employees of that public entity; and

7 (b) One (1) or more members of the governing
8 body of that public entity;

9 (ii) Concerning any matter on which official action
10 will foreseeably be taken by the governing body;

11 (iii) To determine:

12 (a) How the member of the governing body
13 intends to vote; or

14 (b) Whether the member of the governing body
15 supports or opposes certain proposed action by the governing body; and

16 (iv) For the purpose of exercising a responsibility,
17 authority, power, or duty of the governing body; and

18 (13) "Remotely" means through electronic means, including
19 without limitation by telephone, video conference, or video broadcast.

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

22 25-19-106. ~~Open public~~ Public meetings – Requirements, exceptions, and
23 penalties.

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

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

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

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

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

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

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

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

13 (2)(A) In the event of an emergency or special meetings public
14 meeting, the person calling the public meeting shall notify the
15 representatives of the newspapers, radio stations, and television stations,
16 if any, located in the county in which the public meeting is to be held and
17 any news media located elsewhere that cover regular public meetings of the
18 governing body and that have requested to be so notified of emergency or
19 special public meetings of the time, place, and date of the public meeting.

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

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

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

29 (B)(i) The governing body shall furnish the most current
30 agenda for a public meeting upon request and shall publish the most current
31 agenda for a public meeting online if the governing body or the public entity
32 it governs maintains a website or social media page at least three (3) days
33 before a regular public meeting and at least two (2) hours before an
34 emergency or special public meeting.

35 (ii) The requirement of subdivision (b)(3)(B)(i) of
36 this section does not preclude a governing body from adding items to an

1 agenda after the agenda has been furnished or posted pursuant to subdivision
 2 (b)(3)(B)(i) of this section.

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

5 (A)(i) ~~considering~~ Considering the employment,
 6 appointment, promotion, demotion, disciplining, or resignation of any public
 7 officer or employee.

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

13 ~~(2)(A)(iii)~~ Only the person holding the top
 14 administrative position in the *public agency, department, or office* involved,
 15 the immediate supervisor of the employee involved, and the employee may be
 16 present at the executive session when so requested by the governing body,
 17 ~~board, commission, or other public body~~ holding the executive session.

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

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

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

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

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

34 ~~(3)(2)~~ Executive sessions must never be called for the purpose
 35 of defeating the reason or the spirit of this chapter.

36 ~~(4) No resolution, ordinance, rule, contract, regulation, or~~

1 ~~motion considered or arrived at in executive session will be legal unless,~~
2 ~~following the executive session, the public body reconvenes in public session~~
3 ~~and presents and votes on the resolution, ordinance, rule, contract,~~
4 ~~regulation, or motion.~~

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

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

11 ~~(6) Subject to the provisions of subdivision (c)(4) of this~~
12 ~~section, a public agency may meet in executive session for the purpose of~~
13 ~~considering, evaluating, or discussing matters pertaining to public water~~
14 ~~system security or municipally owned utility system security as described in~~
15 ~~§ 25-19-105(b)(17).~~

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

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

23 (A) A sound-only recording;

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

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

26 recorded.

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

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

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

34 (A) Executive sessions; or

35 (B) Volunteer fire departments.

36 ~~(5) Cities of the second class and incorporated towns are exempt~~

1 ~~from subdivisions (d)(1) and (2) of this section until July 1, 2020.~~

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

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

9 ~~(A) Telephone;~~

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

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

15 ~~(2)(3) If an open public meeting is held under subdivision~~
16 ~~(e)(1) of this section:~~ Other than governing bodies of municipalities,
17 counties, or public school districts, a governing body may adopt a policy
18 permitting members of the governing body to attend a public meeting remotely.

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

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

23 (4) The ability of the governing body of a public school
24 district to conduct a public meeting remotely shall be governed by § 6-13-
25 619.

26 ~~(3)(5) Physical presence of the public or of an individual~~
27 ~~member of the public entity at the open public meeting is not required under~~
28 ~~this subsection.~~ If the Governor declares a disaster emergency under the
29 Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., a governing
30 body may conduct a public meeting remotely.

31 ~~(4)(6) The open public meeting shall be recorded in the format~~
32 ~~in which it is conducted, including without limitation:~~

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

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

35 ~~(C) A digital or analog broadcast capable of being~~
36 ~~recorded.~~ For a member of a governing body who attends a meeting remotely to

1 be counted for a quorum or to vote, the method used to permit the member of
2 the governing body to attend remotely shall:

3 (A) Provide a method for the president or the secretary of
4 the governing body to verify the identity of the member of the governing body
5 attending remotely;

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

9 (i) Hear the member of the governing body attending
10 remotely;

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

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

15 (C) Allow a member of the governing body attending
16 remotely to hear the other members of the governing body and any public
17 comment.

18 ~~(5)(7) A public entity shall maintain the records of an open~~
19 ~~public meeting held under this subsection for a minimum of one (1) year from~~
20 ~~the date of the open public meeting. A member of a governing body who attends~~
21 ~~a public meeting remotely shall not receive mileage or per diem for attending~~
22 ~~the public meeting~~

23 (8) If a public meeting is held remotely with no members of the
24 governing body physically present at the public meeting:

25 (A) The governing body shall enable members of the public
26 to attend the public meeting by the same means that the public meeting is
27 held for the members of the governing body; and

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

30 (9) The public meeting shall be recorded in the format in which
31 it is conducted, including without limitation:

32 (A) A sound-only recording;

33 (B) A video recording with sound and picture; and

34 (C) A digital or analog broadcast capable of being
35 recorded.

36 (10) A public entity shall maintain the records of a public

1 meeting held under this subsection for a minimum of one (1) year from the
2 date of the public meeting.

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

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

6 (B) It is not a violation of subdivision (f)(1)(A) of this
7 section if a secretary or administrative assistant of a governing body
8 communicates in writing with one (1) or more members of the governing body
9 for the purpose of conducting a ministerial act, including without limitation
10 scheduling a public meeting of the governing body or setting the agenda for a
11 public meeting of the governing body.

12 (C) It is a violation of subdivision (f)(1)(A) of this
13 section if a secretary or administrative assistant of a governing body
14 communicates with one (1) or more members of the governing body to schedule a
15 public meeting of the governing body or set the agenda for a public meeting
16 of the governing body and the communication functionally conducts substantive
17 business of the governing body concerning any matter on which official action
18 would foreseeably be taken by the governing body; or

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

22 (B) It is not a violation of subdivision (f)(2)(A) of this
23 section if a member of a governing body or employee or agent of a public
24 entity communicates information that is background or otherwise non-
25 decisional in nature to one (1) or more members of the same governing body.

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

29 (h)(1) If a circuit court finds under § 25-19-107 that a governing
30 body violated this section, the circuit court may invalidate any action the
31 governing body took at the unlawful public meeting.

32 (2) If a circuit court finds under § 25-19-107 that a member of
33 a governing body engaged in a communication prohibited under subsection (f)
34 of this section, the circuit court may invalidate any action the governing
35 body took that is the direct or indirect result of the prohibited
36 communication.

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

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5 */s/C. Tucker*
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