

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 197

By: Senators J. Cooper, Burnett, J. English, J. Hendren, Hester, J. Hutchinson, K. Ingram, Irvin, B. Johnson, Rapert, Teague

By: Representatives Jett, E. Armstrong, Baine, Ballinger, Baltz, Broadaway, Brown, Collins, Cozart, Dotson, D. Douglas, Drown, Farrer, D. Ferguson, L. Fite, Hammer, Hillman, G. Hodges, M. Hodges, Ladyman, Lowery, Lundstrum, Magie, D. Meeks, Nicks, B. Overbey, Petty, Scott, B. Smith, Sorvillo, Sullivan, Talley, Tosh, Vines, Wallace, Womack, Wright

For An Act To Be Entitled

AN ACT TO EXEMPT CERTAIN CUSTOMER AND CRITICAL
INFRASTRUCTURE RECORDS OF MUNICIPALLY OWNED UTILITY
SYSTEMS FROM DISCLOSURE UNDER THE FREEDOM OF
INFORMATION ACT OF 1967; TO DECLARE AN EMERGENCY; AND
FOR OTHER PURPOSES.

Subtitle

TO EXEMPT CERTAIN CUSTOMER AND CRITICAL
INFRASTRUCTURE RECORDS OF MUNICIPALLY
OWNED UTILITY SYSTEMS FROM DISCLOSURE;
AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Legislative findings and intent.

(a) The General Assembly finds that:

(1) On April 3, 2014, in the case of Hopkins v. City of Brinkley, 2014 Ark. 139, 432 S.W.3d 609 (2014), the Supreme Court determined that neither the Freedom of Information Act of 1967, § 25-19-101 et seq., nor federal law currently offers protection for the personal information of customers of municipally owned utility systems;

(2) Amendments to the Freedom of Information Act of 1967, § 25-



19-101 et seq., in recent years have provided exceptions to disclosure for personal contact information of state, county, school, and municipal employees, but have provided no such protection for municipal utility customers;

(3) The Arkansas Public Service Commission has traditionally and consistently protected the personal contact information of public utility customers by exercising its authority under § 23-2-316(b), finding that the protection of such information is in the public interest;

(4) Smart meters, which can record and transmit detailed data on a customer's use of a utility, present unique privacy concerns, as evidenced by a 2012 report of the United States Department of Energy on smart grid privacy that included recommendations that customer data be protected from release to third parties;

(5) Recent amendments to the Freedom of Information Act of 1967, § 25-19-101 et seq., have also provided disclosure exemptions for sensitive infrastructure information of public water systems;

(6) The federal government recognizes the importance of critical infrastructure information, and has created special policies to address its protection, including without limitation:

(A) The Critical Infrastructure Information Act of 2002, 6 U.S.C. § 131 et seq., which prohibits federal agencies from disclosing certain information submitted to the United States Department of Homeland Security; and

(B) Rules of the Federal Energy Regulatory Commission addressing critical energy infrastructure information, which limit access to certain information generated or collected by the commission and require the use of nondisclosure agreements when the information is provided; and

(7) It is necessary to protect the security of the infrastructure of Arkansas's utility systems, including without limitation electric generation, transmission, and distribution.

(b) It is the intent of this act to:

(1) Protect the privacy of Arkansas citizens by exempting from disclosure the personal information of customers of municipally owned utility systems; and

(2) Ensure the security of Arkansas's infrastructure by exempting utility infrastructure information from mandatory disclosure.

SECTION 2. Arkansas Code § 25-19-103 is amended to read as follows:
25-19-103. Definitions.

As used in this chapter:

(1)(A) "Custodian", with respect to any public record, means the person having administrative control of that record.

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

(2) "Format" means the organization, arrangement, and form of electronic information for use, viewing, or storage;

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

(4)(A) "Municipally owned utility system" means a utility system owned or operated by a municipality that provides:

(i) Electricity;

(ii) Water;

(iii) Wastewater;

(iv) Cable television; or

(v) Broadband service.

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

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

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

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

~~(4)(5)~~ "Public meetings" means the meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas,

except grand juries, supported wholly or in part by public funds or expending public funds;

~~(5)(A)~~(6)(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;

~~(6)(7)~~ “Public water system” means all facilities composing a system for the collection, treatment, and delivery of drinking water to the general public, including, ~~but not limited to,~~ without limitation reservoirs, pipelines, reclamation facilities, processing facilities, ~~and~~ distribution facilities, and regional water distribution districts under the Regional Water Distribution District Act, § 14-116-101 et seq.; and

~~(7)(8)~~ “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 3. Arkansas Code § 25-19-105(b)(18) and (19), concerning certain public records exempt from the Freedom of Information Act of 1967, are amended to read as follows:

(18)(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information relating to security for any public water system or municipally owned utility system.

(B) The records under subdivision (b)(18)(A) include:

- (i) Risk and vulnerability assessments;
- (ii) Plans and proposals for preventing and

mitigating security risks;

(iii) Emergency response and recovery records;

(iv) Security plans and procedures; ~~and~~

(v) Plans and related information for generation, transmission, and distribution systems; and

~~(v)~~(vi) Other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system or municipally owned utility system; ~~and~~

(19) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under § 5-73-301 et seq., including without limitation all records provided to or obtained by a local, state, or federal government or their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee, and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:

(A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency to assist in a criminal investigation or prosecution or to determine the validity of or eligibility for a license; and

(B) The name of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records; and

(20) Personal information of current and former public water system customers and municipally owned utility system customers, including without limitation:

(A) Home and mobile telephone numbers;

(B) Personal email addresses;

(C) Home and business addressees; and

(D) Customer usage data.

SECTION 4. Arkansas Code § 25-19-106(c)(6), concerning executive sessions under the Freedom of Information Act of 1967, is amended to read as follows:

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

considering, evaluating, or discussing matters pertaining to public water system security or municipally owned utility system security as described in § 25-19-105(b)(18).

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the public availability of certain information held by municipally owned utility systems jeopardizes the security of the utility system and of the citizens that receive services from the system; and that this act should become effective as soon as possible to safeguard utility services that are critical to Arkansas communities. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

APPROVED: 02/24/2015