

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H1/27/15
A Bill

HOUSE BILL 1054

By: Representative Bell

For An Act To Be Entitled

AN ACT TO PRESERVE THE INTEGRITY OF EXECUTIVE SESSIONS; TO ENSURE THAT CLOSED MEETINGS HELD BY PUBLIC ENTITIES ARE CONDUCTED LAWFULLY; TO AMEND SECTIONS OF THE FREEDOM OF INFORMATION ACT OF 1967; AND FOR OTHER PURPOSES.

Subtitle

TO PRESERVE THE INTEGRITY OF EXECUTIVE SESSIONS; TO ENSURE THAT CLOSED MEETINGS HELD BY PUBLIC ENTITIES ARE CONDUCTED LAWFULLY; AND TO AMEND SECTIONS OF THE FREEDOM OF INFORMATION ACT OF 1967.

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

SECTION 1. Arkansas Code § 25-19-105(b), concerning exemptions from the public records requirements of the Freedom of Information Act of 1967, is amended to add an additional subdivision to read as follows:

(20) A recording of an executive session under § 25-19-106(d) and unpublished memoranda, working papers, and correspondence of proper law enforcement authorities who request the recording of an executive session in connection with an investigation of the legality of an executive session.

SECTION 2. Arkansas Code § 25-19-106(c)(2), concerning the persons who may attend an executive session of a governing body, board, commission, or other public body, is amended to read as follows:

(2)(A) Only the person holding the top administrative position



in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

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

(C)(i) The governing body, board, commission, or other public body holding an executive session may request the attendance of its legal counsel at the executive session to:

(a) Monitor compliance with this chapter during the executive session; and

(b) Provide legal advice concerning the employment, appointment, promotion, demotion, disciplining, or resignation of a public officer or employee.

(ii) Legal counsel requested to be present at an executive session under subdivision (c)(2)(C)(i) of this section shall not:

(a) Participate in the executive session in a manner other than allowed under subdivision (c)(2)(C)(i) of this section; and

(b) Discuss any other matters with the governing body, board, commission, or other public body during the executive session, including without limitation pending litigation affecting the governing body, board, commission, or other public body.

(iii) A governing body, board, commission, or other public body requesting the attendance of its legal counsel at an executive session shall announce the specific purpose of the legal counsel's attendance in public before going into executive session.

SECTION 3. Arkansas Code § 25-19-106, concerning open public meetings, is amended to add additional subsections to read as follows:

(d)(1) A governing body, board, commission, or other public body holding an executive session under this section shall:

(A) Make an audio recording of the executive session; and

(B)(i) Retain a copy of the audio recording of the executive session for one (1) year.

(ii) The custodian of the audio recording of the executive session shall erase or destroy the audio recording after one (1) year.

(2) A governing body, board, commission, or other public body holding an executive session:

(A) Shall make only one (1) official audio recording of the executive session and shall not permit unofficial recordings of the executive session; and

(B) Shall not make a transcript of an executive session recorded under subdivision (d)(1) of this section.

(3)(A) The governing body, board, commission, or other public body holding the executive session shall designate:

(i) A member of the public body as custodian of audio recordings of executive sessions; and

(ii) A member of the public body as the alternate custodian of audio recordings of executive sessions in case the member designated under subdivision (d)(3)(A)(i) of this section is unable to take possession of an audio recording of an executive session.

(B) The custodian of a recording of an executive session shall not:

(i) Listen to the recording of the executive session; or

(ii) Permit any other person to listen to the recording of the executive session, including without limitation employees of the governing body, board, commission, or other public body.

(4)(A) A recording of an executive session under this subsection (d) is confidential and exempt from disclosure except as provided in this subsection.

(B)(i) A recording of an executive session under this subsection (d) shall be provided by the custodian of the recording only to proper law enforcement authorities who request the recording in connection with an investigation of the legality of an executive session.

(ii) A recording of an executive session shall be exempt from subpoena for any purpose other than as stated in subdivision (d)(4)(B)(i) of this section.

(5) A custodian of a recording of an executive session under

this subsection (d) who knowingly discloses a recording of an executive session is guilty of a Class A misdemeanor and is not immune from civil liability for his or her actions.

(6) A member or employee of a governing body, board, commission, or other public body who listens to a recording of an executive session under this subsection (d) is guilty of a Class B misdemeanor and is not immune from civil liability for his or her actions.

(e)(1) It is an affirmative defense to prosecution for participating in an illegal executive session under this section if a member of a governing body, board, commission, or other public body attending an executive session or other person authorized to attend the executive session makes an announcement on the audio recording of the executive session produced under subsection (d) of this section that the member or person:

(i) Believes the executive session is not compliant with this chapter; and

(ii) Is leaving the executive session.

(2)(A) If a member leaves an executive session under subdivision (e)(1) of this section, he or she shall be immune from liability for any violations of this chapter that occur in the executive session of the governing body, board, commission, or other public body.

(B) Subdivision (e)(2)(A) of this section does not apply if the member of a governing body, board, commission, or other public body or other person authorized to attend the executive session initiated a discussion not compliant with this chapter before leaving the executive session.

SECTION 4. This act is effective on and after January 4, 2016.

/s/Bell