

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

State of Arkansas As Engrossed: S2/20/25 S2/26/25 S3/3/25 S3/10/25 S3/12/25
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95th General Assembly
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A Bill

SENATE BILL 227

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

By: Representatives Eubanks, A. Collins, Gazaway, Gramlich, Hawk, L. Johnson, M. McElroy, J. Richardson, Womack, Wooldridge

For An Act To Be Entitled

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

Subtitle

TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967; AND TO AMEND THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT OF 1967 CONCERNING PUBLIC MEETINGS.

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

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

25-19-103. Definitions.

As used in this chapter:

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

(1)(A)(2)(A) "Custodian", except as otherwise provided by law and 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;

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



protection against the criminal or unauthorized use of electronic data;

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

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

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

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

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

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

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

~~(4)~~(9) "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;

~~(5)~~~~(A)~~(10)(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.;

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

(A) Between:

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

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

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

(C) To determine:

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

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

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

~~(6)(12) "Public meetings" "Public entity" means the meetings of any:~~

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

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

(C) 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;

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

(B) "Public meeting" does not include:

(i) The gathering together, whether in person or remotely, 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)(14)(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)(15)~~ “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~~

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

~~(9)(17)~~ “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 § 25-19-106 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(2)(A)(iii)~~ 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)(iv)~~ 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 ~~board, commission, or other public~~ body holding the executive session;

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

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

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

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

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

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

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

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

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

~~(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)(17).~~

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

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

- (A) A sound-only recording;
- (B) A video recording with sound and picture; or
- (C) A digital or analog broadcast capable of being

recorded.

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

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

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

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

- (A) Executive sessions; or
- (B) Volunteer fire departments.

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

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

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

- ~~(A) Telephone;~~
- ~~(B) Video conference; or~~
- ~~(C) Video broadcast.~~ Except as provided under subdivisions

(e)(3)-(5) of this section, a member of a governing body shall be physically present at a public meeting to be counted for purposes of establishing a quorum or to vote.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the public meeting.

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

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

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

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

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

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

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

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

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

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

(b) Whether another member of the governing

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

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

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

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

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

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

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

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

/s/C. Tucker