

Stricken language would be deleted from and underlined language would be added to the law as it existed
prior to this session of the General Assembly.
Act 268 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1732

5 By: Representatives L. Evans, Wood
6 By: Senator Glover
7
8

For An Act To Be Entitled

9
10 AN ACT CONCERNING PUBLIC WATER SYSTEM
11 VULNERABILITY ASSESSMENTS; TO COMPLY WITH
12 REQUIREMENTS OF THE FEDERAL SAFE DRINKING WATER
13 ACT; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT CONCERNING PUBLIC WATER SYSTEM
16 VULNERABILITY ASSESSMENTS REQUIRED BY
17 THE FEDERAL LAW.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 25-19-103 is amended to read as follows:
24 25-19-103. Definitions.

25 As used in this chapter:

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

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

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

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



1 optical disks, and magnetic tapes;

2 (4) "Public meetings" means the meetings of any bureau,
 3 commission, or agency of the state or any political subdivision of the state,
 4 including municipalities and counties, boards of education, and all other
 5 boards, bureaus, commissions, or organizations in the State of Arkansas,
 6 except grand juries, supported wholly or in part by public funds or expending
 7 public funds;

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

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

19 (6)~~(A)~~ "Public water system" means all facilities composing a
 20 system for the collection, treatment, and delivery of drinking water to the
 21 general public, including, but not limited to, reservoirs, pipelines,
 22 reclamation facilities, processing facilities, and distribution facilities;
 23 and

24 ~~(B) This subdivision (6) shall expire on July 1, 2007.~~

25 (7) "Vulnerability assessment" means an assessment of the
 26 vulnerability of a public water system to a terrorist attack or other
 27 intentional acts intended to substantially disrupt the ability of the public
 28 water system to provide a safe and reliable supply of drinking water as
 29 required by Pub. L. No. 107-188.

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31 SECTION 2. Arkansas Code § 25-19-105(b), concerning the examination
 32 and copying of public records, is amended to read as follows:

33 (b) It is the specific intent of this section that the following shall
 34 not be deemed to be made open to the public under the provisions of this
 35 chapter:

36 (1) State income tax records;

1 (2) Medical records, adoption records, and education records as
 2 defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §
 3 1232g, unless their disclosure is consistent with the provisions of that act;

4 (3) The site files and records maintained by the Arkansas
 5 Historic Preservation Program of the Department of Arkansas Heritage and the
 6 Arkansas Archeological Survey;

7 (4) Grand jury minutes;

8 (5) Unpublished drafts of judicial or quasi-judicial opinions
 9 and decisions;

10 (6) Undisclosed investigations by law enforcement agencies of
 11 suspected criminal activity;

12 (7) Unpublished memoranda, working papers, and correspondence of
 13 the Governor, members of the General Assembly, Supreme Court Justices, Court
 14 of Appeals Judges, and the Attorney General;

15 (8) Documents that are protected from disclosure by order or
 16 rule of court;

17 (9)(A) Files that if disclosed would give advantage to
 18 competitors or bidders and records maintained by the Arkansas Economic
 19 Development Commission related to any business entity's planning, site
 20 location, expansion, operations, or product development and marketing, unless
 21 approval for release of those records is granted by the business entity.

22 (B) However, this exemption shall not be applicable to any
 23 records of expenditures or grants made or administered by the commission and
 24 otherwise disclosable under the provisions of this chapter;

25 (10)(A) The identities of law enforcement officers currently
 26 working undercover with their agencies and identified in the Arkansas Minimum
 27 Standards Office as undercover officers.

28 (B) Records of the number of undercover officers and
 29 agency lists are not exempt from this chapter;

30 (11) Records containing measures, procedures, instructions, or
 31 related data used to cause a computer or a computer system or network,
 32 including telecommunication networks or applications thereon, to perform
 33 security functions, including, but not limited to, passwords, personal
 34 identification numbers, transaction authorization mechanisms, and other means
 35 of preventing access to computers, computer systems or networks, or any data
 36 residing therein;

1 (12) Personnel records to the extent that disclosure would
 2 constitute a clearly unwarranted invasion of personal privacy;

3 (13) Home addresses of nonelected state employees, nonelected
 4 municipal employees, and nonelected county employees contained in employer
 5 records, except that the custodian of the records shall verify an employee's
 6 city or county of residence or address on record upon request;

7 (14) Materials, information, examinations, and answers to
 8 examinations utilized by boards and commissions for purposes of testing
 9 applicants for licensure by state boards or commissions;

10 (15) Military service discharge records or DD Form 214, the
 11 Certificate of Release or Discharge from Active Duty of the United States
 12 Department of Defense, filed with the county recorder as provided under § 14-
 13 2-102, for veterans discharged from service less than seventy (70) years from
 14 the current date; and

15 (16)(A) Vulnerability assessments submitted by a public water
 16 system on or before June 30, 2004, to the Administrator of the United States
 17 Environmental Protection Agency for a period of ten (10) years from the date
 18 of submission. Records, including analyses, investigations, studies,
 19 reports, recommendations, requests for proposals, drawings, diagrams,
 20 blueprints, and plans, containing information relating to security for any
 21 public water system.

22 ~~(B) The records shall include:~~

23 ~~(i) Risk and vulnerability assessments;~~

24 ~~(ii) Plans and proposals for preventing and~~
 25 ~~mitigating security risks;~~

26 ~~(iii) Emergency response and recovery records;~~

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

28 ~~(v) Any other records containing information that if~~
 29 ~~disclosed might jeopardize or compromise efforts to secure and protect the~~
 30 ~~public water system.~~

31 ~~(C) This subdivision (b)(16) shall expire on July 1, 2007.~~

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 33 SECTION 3. Arkansas Code § 25-19-106(c)(6), concerning executive
 34 sessions of public meetings regarding public water system security, is
 35 repealed.

36 ~~(6)(A) Subject to the provisions of subdivision (e)(4) of this~~

1 ~~section, any public agency may meet in executive session for the purpose of~~
2 ~~considering, evaluating, or discussing matters pertaining to public water~~
3 ~~system security as described in § 25-19-105(b)(16).~~

4 ~~(B) This subdivision (c)(6) shall expire on July 1, 2007.~~

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6 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
7 General Assembly of the State of Arkansas that safe and secure public water
8 systems are vital to the health and public well-being of the citizens of this
9 state; that information pertaining to the vulnerability assessments presently
10 subject to disclosure under the Arkansas Freedom of Information Act could be
11 obtained for domestic or foreign terroristic purposes, including the
12 contamination and destruction of public water systems; and that the threat of
13 acts of terrorism against public water systems is legitimate and real. To
14 deter such acts, and to protect the security of public water systems, the
15 Arkansas Freedom of Information Act should be amended immediately to exempt
16 vulnerability assessments created on or before June 30, 2004, from
17 disclosure. Therefore, an emergency is declared to exist and this act being
18 necessary for the preservation of the public peace, health, and safety shall
19 become effective on:

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

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

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

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27 APPROVED: 3/9/2007
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