

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H3/9/21 H3/30/21

A Bill

HOUSE BILL 1280

5 By: Representative Haak
6 By: Senator L. Eads
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF
10 1967 TO PERMIT AN EXECUTIVE SESSION FOR CONSIDERING
11 CERTAIN ECONOMIC DEVELOPMENT PROJECTS; TO PERMIT A
12 GOVERNING BODY'S ATTORNEY TO ATTEND CERTAIN EXECUTIVE
13 SESSIONS; AND FOR OTHER PURPOSES.
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Subtitle

16 TO PERMIT AN EXECUTIVE SESSION UNDER THE
17 FREEDOM OF INFORMATION ACT OF 1967 TO
18 CONSIDER CERTAIN ECONOMIC DEVELOPMENT
19 PROJECTS; AND TO PERMIT A GOVERNING
20 BODY'S ATTORNEY TO ATTEND CERTAIN
21 EXECUTIVE SESSIONS.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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27 SECTION 1. Arkansas Code § 25-19-106(c)(1) and (2), concerning open
28 public meetings under the Freedom of Information Act of 1967, are amended to
29 read as follows:

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

32 ~~(i) considering~~ Considering the employment,
33 appointment, promotion, demotion, disciplining, or resignation of any public
34 officer or employee; or

35 (ii) Consideration of an economic development
36 project under the Local Job Creation, Job Expansion, and Economic Development



1 Act of 2017, § 14-176-101 et seq. if:

2 (a) A public discussion would give an
3 advantage to competitors or bidders; or

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5 (b) The discussion concerns records
6 maintained by an economic development service provider for a municipality or
7 county related to an economic development project; or

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9 (c) The discussion concerns records
10 maintained by the municipality or county related to an economic development
11 project's:

12
13 (1) Planning;

14 (2) Site location;

15 (3) Expansion;

16 (4) Operations; or

17 (5) Product development and marketing.

18 (B)(i) The specific purpose of the executive session shall be
19 announced in public before going into executive session.

20 (ii) If an executive session is called under
21 subdivision (c)(1)(A)(ii), notice of the intent to call an executive session
22 to discuss an economic development project and the specific purpose of the
23 executive session shall be published with the notice of the open public
24 meeting.

25 (2)(A) Only If an executive session is called under subdivision
26 (c)(1)(A)(i) of this section, only the following people shall be permitted to
27 attend when invited by the governing body board, commission, or other public
28 body holding the executive session:

29 (i) the The person holding the top administrative
30 position in the public agency, department, or office involved, the immediate
31 supervisor of the employee involved, and the employee may be present at the
32 executive session when so requested by the governing body, board, commission,
33 or other public body holding the executive session; and

34 (B) (ii) Any person being interviewed for the top
35 administrative position in the public agency, department, or office involved
36 may be present at the executive session when so requested by the governing

1 ~~board, commission, or other public body holding the executive session.~~

2 (B) If an executive session is called under subdivision
3 (c)(1)(A)(ii) of this section, the governing body holding the executive
4 session:

5 (i) May invite its attorney to attend and
6 participate in the executive session;

7 (ii)(a) Shall make an audio recording of the entire
8 executive session and promptly file the audio recording with the city clerk,
9 who shall retain it for at least one (1) year from the date of the executive
10 session.

11 (b) The audio recording of the executive
12 session held under subdivision (c)(1)(A)(ii) of this section is exempt from
13 disclosure under this chapter; and

14 (iii)(a) Shall, at the conclusion of the executive
15 session, give a public oral summary of the discussion during the executive
16 session and record the oral summary in the minutes of the meeting.

17 (b) The oral summary required under
18 subdivision (c)(2)(B)(iii)(a) may exclude the information under subdivision
19 (c)(1)(A)(ii)(c).

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21 SECTION 2. Arkansas Code § 25-19-107, concerning the right to file
22 suit in circuit court to appeal an alleged denial of rights under the Freedom
23 of Information Act of 1967, is amended to add an additional subsection to
24 read as follows:

25 (f) If a citizen files suit in circuit court under this section
26 claiming that improper discussion occurred during an executive session called
27 for the stated purpose of considering an economic development project under
28 the Local Job Creation, Job Expansion, and Economic Development Act of 2017,
29 § 14-176-101 et seq., then:

30 (1) The audio recording of the executive session required under
31 § 25-19-106 shall be made available to the circuit court for an in camera
32 review; and

33 (2) If the circuit court determines that the discussion during
34 the executive session was improper, the defendant shall pay the plaintiff's
35 reasonable attorney's fees or other litigation expenses that the plaintiff
36 reasonably incurred.

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/s/Haak