

1 INTERIM STUDY PROPOSAL 2015-015

2 State of Arkansas
3 90th General Assembly
4 Regular Session, 2015

As Engrossed: H1/27/15

A Bill

HOUSE BILL 1054

5
6 By: Representative Bell

7 Filed with: House Committee on State Agencies and Governmental Affairs
8 pursuant to A.C.A. §10-3-217.

9 **For An Act To Be Entitled**

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

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17 **Subtitle**

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

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

30 (20) A recording of an executive session under § 25-19-106(d)
31 and unpublished memoranda, working papers, and correspondence of proper law
32 enforcement authorities who request the recording of an executive session in
33 connection with an investigation of the legality of an executive session.
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1 SECTION 2. Arkansas Code § 25-19-106(c)(2), concerning the persons who
2 may attend an executive session of a governing body, board, commission, or
3 other public body, is amended to read as follows:

4 (2)(A) Only the person holding the top administrative position
5 in the public agency, department, or office involved, the immediate
6 supervisor of the employee involved, and the employee may be present at the
7 executive session when so requested by the governing body, board, commission,
8 or other public body holding the executive session.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (B)(i) A recording of an executive session under this
35 subsection (d) shall be provided by the custodian of the recording only to

1 proper law enforcement authorities who request the recording in connection
2 with an investigation of the legality of an executive session.

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

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

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

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

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

22 (ii) Is leaving the executive session.

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

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

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

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35 /s/Bell

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Referred by the Arkansas House of Representatives

Prepared by: VJF