

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

As Engrossed: H1/27/15

A Bill

HOUSE BILL 1054

5 By: Representative Bell
6

For An Act To Be Entitled

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

15 TO PRESERVE THE INTEGRITY OF EXECUTIVE
16 SESSIONS; TO ENSURE THAT CLOSED MEETINGS
17 HELD BY PUBLIC ENTITIES ARE CONDUCTED
18 LAWFULLY; AND TO AMEND SECTIONS OF THE
19 FREEDOM OF INFORMATION ACT OF 1967.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code § 25-19-105(b), concerning exemptions from
26 the public records requirements of the Freedom of Information Act of 1967, is
27 amended to add an additional subdivision to read as follows:

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29 and unpublished memoranda, working papers, and correspondence of proper law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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (ii) Is leaving the executive session.

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

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

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

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29 /s/Bell
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