

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

*As Engrossed: H4/8/21*

# A Bill

HOUSE BILL 1872

5 By: Representative Beaty Jr.  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF  
9 1967; TO PROVIDE THAT A MUNICIPALITY SHALL MAKE AN  
10 AUDIO RECORDING OF CERTAIN EXECUTIVE SESSIONS; TO  
11 *PROVIDE FOR THE* FILING AND RETENTION OF THE AUDIO  
12 RECORDING; TO REQUIRE THE MUNICIPALITY TO PAY CERTAIN  
13 LEGAL EXPENSES OF A PLAINTIFF WHO SUCCESSFULLY ARGUES  
14 THAT DISCUSSION DURING THE EXECUTIVE SESSION WAS  
15 IMPROPER; AND FOR OTHER PURPOSES.  
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## Subtitle

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19 *TO REGULATE THE AUDIO RECORDING AT*  
20 *CERTAIN EXECUTIVE SESSIONS HELD BY*  
21 *MUNICIPALITIES; AND TO REQUIRE*  
22 *MUNICIPALITIES TO REIMBURSE PLAINTIFFS*  
23 *UNDER CERTAIN CONDITIONS.*  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code § 25-19-106(c)(1) and (2), concerning open  
29 public meetings under the Freedom of Information Act of 1967, are amended to  
30 read as follows:

31 (c)(1)(A) Except as provided under subdivision (c)(6) of this section,  
32 an executive session will be permitted only for the purpose of considering  
33 the employment, appointment, promotion, demotion, disciplining, or  
34 resignation of any public officer or employee.

35 (B) The specific purpose of the executive session shall be  
36 announced in public before going into executive session.



1           (2)(A) Only If an executive session is called under subdivision  
2 (c)(1)(A) of this section, only the following people shall be permitted to  
3 attend when invited by the governing body holding the executive session:

4           (i) The person holding the top administrative  
5 position 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; and

9           ~~(B)(ii)~~ 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 board, commission, or other public body holding the executive session.

13           (B) If a municipality holds an executive session under  
14 subdivision (c)(1)(A) of this section, the governing body holding the  
15 executive session shall:

16           (i)(a) Make an audio recording of the entire executive session and  
17 promptly file the audio recording with the city clerk, who shall retain it  
18 for at least three (3) years from the date of the executive session.

19           (b) The audio recording of the executive  
20 session held under subdivision (c)(1)(A) of this section is exempt from  
21 disclosure under this chapter;

22           (ii) At the conclusion of the executive session,  
23 give a public oral summary of the discussion during the executive session and  
24 record the oral summary in the minutes of the meeting; and

25           (iii)(a) Within thirty (30) calendar days of the  
26 executive session, prepare a written transcript of the executive session.

27           (b) The written transcript:

28           (1) Shall be redacted as necessary to  
29 shield from disclosure any information that qualifies for an exemption under  
30 either § 25-19-105(b) or a law that specifically provides for the  
31 nondisclosure of certain information; and

32           (2) Is subject to disclosure in response  
33 to a request for public records.

34           (c) The municipality shall publish the written  
35 transcript in a local newspaper within sixty (60) calendar days of the  
36 executive session.

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

(f) If a citizen files suit in circuit court under this section claiming that improper discussion occurred during an executive session called under § 25-19-106(c)(1), then:

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

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

*/s/Beaty Jr.*