

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.

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

# A Bill

HOUSE BILL 1732

4  
5 By: Representatives L. Evans, Wood  
6 By: Senator Glover

## For An Act To Be Entitled

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8  
9 AN ACT CONCERNING PUBLIC WATER SYSTEM  
10 VULNERABILITY ASSESSMENTS; TO COMPLY WITH  
11 REQUIREMENTS OF THE FEDERAL SAFE DRINKING WATER  
12 ACT; AND FOR OTHER PURPOSES.  
13

## Subtitle

14  
15 AN ACT CONCERNING PUBLIC WATER SYSTEM  
16 VULNERABILITY ASSESSMENTS REQUIRED BY  
17 THE FEDERAL LAW.  
18

19  
20  
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,  
36 optical disks, and magnetic tapes;



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

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

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

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

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

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

29  
 30 SECTION 2. Arkansas Code § 25-19-105(b), concerning the examination  
 31 and copying of public records, is amended to read as follows:

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

- 35 (1) State income tax records;
- 36 (2) Medical records, adoption records, and education records as

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

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

6 (4) Grand jury minutes;

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

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

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

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

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

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

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

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

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

36 (12) Personnel records to the extent that disclosure would

1 constitute a clearly unwarranted invasion of personal privacy;

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

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

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

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

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

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

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

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

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

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

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

31  
 32 SECTION 3. Arkansas Code § 25-19-106(c)(6), concerning executive  
 33 sessions of public meetings regarding public water system security, is  
 34 repealed.

35 ~~(6)(A) Subject to the provisions of subdivision (c)(4) of this~~  
 36 ~~section, any public agency may meet in executive session for the purpose of~~

1 ~~considering, evaluating, or discussing matters pertaining to public water~~  
2 ~~system security as described in § 25-19-105(b)(16).~~

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

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

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

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

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