

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

A Bill

SENATE BILL 197

5 By: Senators J. Cooper, Burnett, J. English, J. Hendren, Hester, J. Hutchinson, K. Ingram, Irvin, B.
6 Johnson, Rapert, Teague
7 By: Representatives Jett, E. Armstrong, Baine, Ballinger, Baltz, Broadaway, Brown, Collins, Cozart,
8 Dotson, D. Douglas, Drown, Farrer, D. Ferguson, L. Fite, Hammer, Hillman, G. Hodges, M. Hodges,
9 Ladyman, Lowery, Lundstrum, Magie, D. Meeks, Nicks, B. Overbey, Petty, Scott, B. Smith, Sorvillo,
10 Sullivan, Talley, Tosh, Vines, Wallace, Womack, Wright
11

For An Act To Be Entitled

12 AN ACT TO EXEMPT CERTAIN CUSTOMER AND CRITICAL
13 INFRASTRUCTURE RECORDS OF MUNICIPALLY OWNED UTILITY
14 SYSTEMS FROM DISCLOSURE UNDER THE FREEDOM OF
15 INFORMATION ACT OF 1967; TO DECLARE AN EMERGENCY; AND
16 FOR OTHER PURPOSES.
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Subtitle

20 TO EXEMPT CERTAIN CUSTOMER AND CRITICAL
21 INFRASTRUCTURE RECORDS OF MUNICIPALLY
22 OWNED UTILITY SYSTEMS FROM DISCLOSURE;
23 AND TO DECLARE AN EMERGENCY.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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SECTION 1. Legislative findings and intent.

(a) The General Assembly finds that:

31 (1) On April 3, 2014, in the case of Hopkins v. City of
32 Brinkley, 2014 Ark. 139, 432 S.W.3d 609 (2014), the Supreme Court determined
33 that neither the Freedom of Information Act of 1967, § 25-19-101 et seq., nor
34 federal law currently offers protection for the personal information of
35 customers of municipally owned utility systems;

36 (2) Amendments to the Freedom of Information Act of 1967, § 25-



1 19-101 et seq., in recent years have provided exceptions to disclosure for
2 personal contact information of state, county, school, and municipal
3 employees, but have provided no such protection for municipal utility
4 customers;

5 (3) The Arkansas Public Service Commission has traditionally and
6 consistently protected the personal contact information of public utility
7 customers by exercising its authority under § 23-2-316(b), finding that the
8 protection of such information is in the public interest;

9 (4) Smart meters, which can record and transmit detailed data on
10 a customer's use of a utility, present unique privacy concerns, as evidenced
11 by a 2012 report of the United States Department of Energy on smart grid
12 privacy that included recommendations that customer data be protected from
13 release to third parties;

14 (5) Recent amendments to the Freedom of Information Act of 1967,
15 § 25-19-101 et seq., have also provided disclosure exemptions for sensitive
16 infrastructure information of public water systems;

17 (6) The federal government recognizes the importance of critical
18 infrastructure information, and has created special policies to address its
19 protection, including without limitation:

20 (A) The Critical Infrastructure Information Act of 2002, 6
21 U.S.C. § 131 et seq., which prohibits federal agencies from disclosing
22 certain information submitted to the United States Department of Homeland
23 Security; and

24 (B) Rules of the Federal Energy Regulatory Commission
25 addressing critical energy infrastructure information, which limit access to
26 certain information generated or collected by the commission and require the
27 use of nondisclosure agreements when the information is provided; and

28 (7) It is necessary to protect the security of the
29 infrastructure of Arkansas's utility systems, including without limitation
30 electric generation, transmission, and distribution.

31 (b) It is the intent of this act to:

32 (1) Protect the privacy of Arkansas citizens by exempting from
33 disclosure the personal information of customers of municipally owned utility
34 systems; and

35 (2) Ensure the security of Arkansas's infrastructure by
36 exempting utility infrastructure information from mandatory disclosure.

1
2 SECTION 2. Arkansas Code § 25-19-103 is amended to read as follows:

3 25-19-103. Definitions.

4 As used in this chapter:

5 (1)(A) "Custodian", with respect to any public record, means the
6 person having administrative control of that record.

7 (B) "Custodian" does not mean a person who holds public
8 records solely for the purposes of storage, safekeeping, or data processing
9 for others;

10 (2) "Format" means the organization, arrangement, and form of
11 electronic information for use, viewing, or storage;

12 (3) "Medium" means the physical form or material on which
13 records and information may be stored or represented and may include, but is
14 not limited to, paper, microfilm, microform, computer disks and diskettes,
15 optical disks, and magnetic tapes;

16 (4)(A) "Municipally owned utility system" means a utility system
17 owned or operated by a municipality that provides:

18 (i) Electricity;

19 (ii) Water;

20 (iii) Wastewater;

21 (iv) Cable television; or

22 (v) Broadband service.

23 (B) "Municipally owned utility system" includes without
24 limitation a:

25 (i) Consolidated waterworks system under the
26 Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

27 (ii) Utility system managed or operated by a
28 nonprofit corporation under § 14-199-701 et seq.; and

29 (iii) Utility system owned or operated by a
30 municipality or by a consolidated utility district under the General
31 Consolidated public Utility System Improvement District Law, § 14-217-101 et
32 seq.;

33 ~~(4)(5)~~ "Public meetings" means the meetings of any bureau,
34 commission, or agency of the state or any political subdivision of the state,
35 including municipalities and counties, boards of education, and all other
36 boards, bureaus, commissions, or organizations in the State of Arkansas,

1 except grand juries, supported wholly or in part by public funds or expending
 2 public funds;

3 ~~(5)(A)~~(6)(A) “Public records” means writings, recorded sounds,
 4 films, tapes, electronic or computer-based information, or data compilations
 5 in any medium required by law to be kept or otherwise kept and that
 6 constitute a record of the performance or lack of performance of official
 7 functions that are or should be carried out by a public official or employee,
 8 a governmental agency, or any other agency or improvement district that is
 9 wholly or partially supported by public funds or expending public funds. All
 10 records maintained in public offices or by public employees within the scope
 11 of their employment shall be presumed to be public records.

12 (B) “Public records” does not mean software acquired by
 13 purchase, lease, or license;

14 ~~(6)(7)~~ “Public water system” means all facilities composing a
 15 system for the collection, treatment, and delivery of drinking water to the
 16 general public, including, ~~but not limited to,~~ without limitation reservoirs,
 17 pipelines, reclamation facilities, processing facilities, ~~and~~ distribution
 18 facilities, and regional water distribution districts under the Regional
 19 Water Distribution District Act, § 14-116-101 et seq.; and

20 ~~(7)(8)~~ “Vulnerability assessment” means an assessment of the
 21 vulnerability of a public water system to a terrorist attack or other
 22 intentional acts intended to substantially disrupt the ability of the public
 23 water system to provide a safe and reliable supply of drinking water as
 24 required by the Public Health Security and Bioterrorism Preparedness and
 25 Response Act of 2002, Pub. L. No. 107-188.

26
 27 SECTION 3. Arkansas Code § 25-19-105(b)(18) and (19), concerning
 28 certain public records exempt from the Freedom of Information Act of 1967,
 29 are amended to read as follows:

30 (18)(A) Records, including analyses, investigations, studies,
 31 reports, recommendations, requests for proposals, drawings, diagrams,
 32 blueprints, and plans containing information relating to security for any
 33 public water system or municipally owned utility system.

34 (B) The records under subdivision (b)(18)(A) include:

- 35 (i) Risk and vulnerability assessments;
- 36 (ii) Plans and proposals for preventing and

1 mitigating security risks;

2 (iii) Emergency response and recovery records;

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

4 (v) Plans and related information for generation,
5 transmission, and distribution systems; and

6 ~~(v)~~(vi) Other records containing information that if
7 disclosed might jeopardize or compromise efforts to secure and protect the
8 public water system or municipally owned utility system; and

9 (19) Records pertaining to the issuance, renewal, expiration,
10 suspension, or revocation of a license to carry a concealed handgun, or a
11 present or past licensee under § 5-73-301 et seq., including without
12 limitation all records provided to or obtained by a local, state, or federal
13 government or their officials, agents, or employees in the investigation of
14 an applicant, licensee, or past licensee, and all records pertaining to a
15 criminal or health history check conducted on the applicant, licensee, or
16 past licensee except that:

17 (A) Information or other records regarding an applicant,
18 licensee, or past licensee may be released to a law enforcement agency to
19 assist in a criminal investigation or prosecution or to determine the
20 validity of or eligibility for a license; and

21 (B) The name of an applicant, licensee, or past licensee
22 may be released as contained in investigative or arrest reports of law
23 enforcement that are subject to release as public records; and

24 (20) Personal information of current and former public water
25 system customers and municipally owned utility system customers, including
26 without limitation:

27 (A) Home and mobile telephone numbers;

28 (B) Personal email addresses;

29 (C) Home and business addressees; and

30 (D) Customer usage data.

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32 SECTION 4. Arkansas Code § 25-19-106(c)(6), concerning executive
33 sessions under the Freedom of Information Act of 1967, is amended to read as
34 follows:

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

1 considering, evaluating, or discussing matters pertaining to public water
2 system security or municipally owned utility system security as described in
3 § 25-19-105(b)(18).

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5 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
6 General Assembly of the State of Arkansas that the public availability of
7 certain information held by municipally owned utility systems jeopardizes the
8 security of the utility system and of the citizens that receive services from
9 the system; and that this act should become effective as soon as possible to
10 safeguard utility services that are critical to Arkansas communities.
11 Therefore, an emergency is declared to exist, and this act being immediately
12 necessary for the preservation of the public peace, health, and safety shall
13 become effective on:

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

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

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