

AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE THE “ARKANSAS GOVERNMENT TRANSPARENCY AMENDMENT”.

Section 1. Title.

This amendment shall be known as the “Arkansas Government Transparency Amendment”.

Section 2. Policy, duties, rights, and interpretation.

(a)(1) It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy.

(2) In furtherance of subdivision (a)(1) of this section the state legislature adopted the Freedom of Information Act of 1967, and by this constitutional amendment, the people confirm this statement of intent.

(3) Government transparency is central to democracy, and is a right of the citizens of Arkansas.

(b) It is the duty of public officers to conduct government business in a manner that is open to Arkansans in its disclosure of public records upon a citizen’s request and conduct of public meetings.

(c) To promote the transparency and openness of public business and government operations:

(1) The provisions requiring the disclosure of a public record or the openness of a public meeting shall be liberally construed; and

(2) Any exemption from or exception to disclosure of a public record or the openness of a public meeting shall be narrowly construed.

Section 3. Definitions.

(a) As used in this Amendment:

(1) “Freedom of Information Act of 1967” means the:

(A) Freedom of Information Act of 1967, Ark. Code Ann. §§ 25-19-101, et seq., as it existed on September 1, 2023; and

(B) Any provision of the Arkansas Code as it existed on September 1, 2023 concerning:

(i) A public meeting;

(ii) Disclosure of a public record; and

(iii) Any exemption or exception to a requirement of a public entity or governing body concerning a public record or public meeting; and

(2) "Governing body" means any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds.

Section 4. Repeal of existing laws.

(a) Act 7 of the First Extraordinary Session of the Arkansas General Assembly, 2023 is repealed.

(b) Any law enacted by the Arkansas General Assembly after September 1, 2023 and before adoption of this constitutional amendment by the people is repealed if it:

(1) Amends the Freedom of Information Act of 1967; or

(2) Creates an exemption or exception to the disclosure of public records and public meeting requirements under the Freedom of Information Act of 1967.

(c) Section 3 of Arkansas Act 883 of 2023 is repealed.

Section 5. Enactment of amendments to existing law - Majority, supermajority, and approval of the people.

(a) The Freedom of Information Act of 1967, as it was effective on September 1, 2023, shall only be amended or repealed by the process and requirements described in this section.

(b)(1) The General Assembly may adopt a bill that amends the Freedom of Information Act of 1967 in a manner that makes a government or public process, meeting, or record more transparent to the people by majority vote of the House of Representatives and the Senate.

(2) The Governor may approve or veto a bill under this subsection (b) in the manner provided under Arkansas Constitution, Article 6, § 15.

(c)(1) The General Assembly may, by bill, amend the Freedom of Information Act of 1967 in a manner that makes a government or public process, meeting, or record less transparent to the people only by referral of the bill to the electors at the next general election.

(2) The General Assembly may refer the bill under this subsection (c) by a two thirds (2/3) majority vote of both the House of Representatives and the Senate.

(3)(A) If the General Assembly refers a bill under this subsection (c) to the people, the bill shall be presented to the Governor.

(B) If the Governor approves the bill by his or her signature, the bill shall be referred to the people.

(C) If the Governor does not approve the bill:

(i) The Governor shall veto the bill by returning it with his or her objections to the house in which it originated;

(ii) The General Assembly may override the Governor's veto:

(a) In the manner provided under Arkansas Constitution, Article 6, § 15; and

(b) By a two thirds (2/3) majority vote of both houses of the General Assembly.

(4) The referred bill shall be published in at least one (1) newspaper in each county where a newspaper is published, for six (6) months immediately preceding the next general election at which time the bill shall be submitted to the electors of the State for approval or rejection.

(5) A referred bill under this subsection (c) is not a constitutional amendment under Arkansas Constitution, Article 19, § 22.

(6)(A) In the case of an emergency, the General Assembly may declare the emergency by nine tenths (9/10) majority vote of both the House of Representatives and the Senate.

(B) If the Governor approves the emergency declaration by his or her signature, the bill shall become immediately effective.

(C) If the Governor does not approve the emergency declaration:

(i) The Governor shall veto the emergency declaration by returning it with his or her objections to the house in which it originated;

(ii) The General Assembly may override the Governor's veto:

(a) In the manner provided under Arkansas Constitution, Article 6, § 15; and

(b) By a nine tenths (9/10) majority vote of both houses of the General Assembly.

(D) If the General Assembly overrides the Governor's veto of the emergency declaration:

(i) The bill shall become immediately effective; and

(ii) The electors reject the referred bill at the next general election, the referred bill will no longer be in effect.

Section 6. Substantive amendments to the Freedom of Information Act of 1967.

(a)(1) Records that reflect the planning or provision of security services provided to the following individuals shall be exempt from disclosure under the Freedom of Information Act of 1967:

(A) Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of State, Treasurer of State, Commissioner of State Lands, members of the General Assembly, Justices of the Supreme Court, or Judges of the Court of Appeals; or

(B) Minor children of the Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of State, Treasurer of State, Commissioner of State Lands, members of the General Assembly, Justices of the Supreme Court, or Judges of the Court of Appeals.

(2)(A) A record under subdivision (a)(1) of this section that is more than three (3) months old is:

(i) Presumed to be public; and

(ii) Subject to disclosure under the Freedom of Information Act of 1967.

(B)(i) To rebut this presumption and prevent the disclosure of the requested record:

(a) The custodian shall initiate review by a circuit court with jurisdiction within three (3) days of receiving the request for disclosure naming the requester as a defendant; and

(b) The custodian has the burden to prove that confidentiality of the record is essential to the ongoing security of an individual listed in subdivision (a)(1) of this section.

(ii) The circuit court shall set the hearing or trial on the matter no later than seven (7) days after the initial filing requesting review under subdivision (a)(2)(B)(i)(a) of this section.

(C) The circuit court may prohibit disclosure of the requested record to ensure the security of the individual listed in subdivision (a)(1) of this section for a period not to exceed two (2) years.

(b) The State of Arkansas may be made a defendant for failure to comply with the requirements of the Freedom of Information Act of 1967 or this Arkansas Government Transparency Amendment.

(c)(1) The circuit court shall assess a civil penalty against the custodian if:

(A) A person appeals to a circuit court from a denial of rights granted by the Freedom of Information Act of 1967 or this Arkansas Government Transparency Amendment;

(B) The appeal is filed no more than one (1) year after the alleged violation; and

(C) The circuit court finds by clear and convincing evidence that the defendant:

(i) Acting as a custodian, withheld a public record that the defendant knew was subject to disclosure under the Freedom of Information Act of 1967 or the Arkansas Government Transparency Amendment; or

(ii) Conducted a public meeting in a manner that the defendant knew did not comply with the requirements of the Freedom of Information Act of 1967 or the Arkansas Government Transparency Amendment.

(2) The defendant shall be personally liable under this subsection (c), and the civil penalty shall:

(A) Not be satisfied by public funds; and

(B) Be paid to a fund to be used for the purpose of government transparency which shall be determined by majority vote of the General Assembly.

(3) The civil penalty shall be no less than:

(A) One thousand dollars (\$1,000.00); or

(B) An amount that is:

(i) Greater than one thousand dollars (\$1,000.00); and

(ii) Set by majority vote of both houses of the General Assembly.

(d)(1) "Public meeting" includes without limitation:

(A) A meeting at which two (2) or more voting or nonvoting members of a governing body communicate for the purpose of exercising the responsibilities, authority, power, or duties delegated to the governing body on any matter on which official action will foreseeably be taken by the governing body; and

(B)(i) Except as provided in subdivision (d)(1)(B)(ii) of this section, a series of two (2) or more formal or informal, one-on-one communications:

(a) Made between an agent or employee of a voting or nonvoting member of the governing body and more than one (1) member of the governing body; and

(b) To discuss any matter on which official action will foreseeably be taken by the governing body.

(ii) Two (2) or more employees of a voting or non-voting member of a governing body may communicate for the purpose of exercising the responsibilities, authority, power, or duties delegated to the employee.

(2) As used in subsection (d) of this section, "communication" includes without limitation a communication made in person, by telephone, electronically, or by other means.

(e)(1) In any action to enforce the rights granted by the Freedom of Information Act of 1967 or this Arkansas Government Transparency Amendment, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified.

(2) Once an action has been filed, a court may find that a plaintiff has substantially prevailed:

- (A) After a trial on the merits;
- (B) Through a defendant's voluntary compliance; or
- (C) Through an agreed resolution with a defendant.

(3) If the defendant has substantially prevailed in the action, the court may assess litigation costs against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

(f) The provisions of this section may be amended as provided under Section 5 of this Arkansas Government Transparency Amendment.

Section 7. Inconsistent provisions inapplicable.

All provisions of the Constitution, statutes, and common law of this State to the extent inconsistent or in conflict with any provision of this Amendment are expressly declared null and void.

Section 8. Severability.

If any provision or section of this amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the amendment that can be given effect without the invalid provision or application, and to this end the provisions of this amendment are declared to be severable.