



# Arizona State Senate *Issue Brief*

August 27, 2008

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **ARIZONA'S OPEN MEETING LAW**

### **INTRODUCTION**

Arizona's Open Meeting Law (OML), in effect since 1962, establishes the following public policy regarding meetings of public bodies:

- meetings must be open.
- notices and agendas that contain all information that is reasonably necessary to inform the public of the matters to be discussed or decided must be provided.
- the OML should always be construed in favor of open and public meetings.

### **PUBLIC MEETINGS**

The OML requires all meetings of any public body to be public meetings and all persons so desiring to be permitted to attend and listen to the deliberations and proceedings. A gathering of a quorum of members, in any fashion (in person, electronically, telephonically, etc.), at which the members discuss, propose or take any legal action, constitutes a meeting.

Public bodies covered by the OML include all boards and commissions of the state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities whose boards of directors are appointed or elected by the state or a political subdivision. They also include all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

Public body is also defined to include the Legislature, except that the OML and the Arizona Constitution authorize the Legislature to adopt its own rules to address notice and agenda requirements. Therefore, meeting and notice requirements for the Legislature are addressed in the Senate and House of Representatives rules.

### **Exceptions**

The OML does not apply to the following meetings and entities:

- a judicial proceeding of any court.
- a political caucus of the Legislature.
- a conference committee of the Legislature, except that all conference committee meetings must be open to the public.
- commissions on appellate and trial court appointments.
- the commission on judicial qualifications.
- good cause determinations and hearings conducted by the Board of Fingerprinting.
- homeowners' associations.

A member of a public body is not subject to the OML when the member expresses an opinion or discusses an issue personally, through the media or other form of public broadcast if the opinion or discussion is not principally directed at another member of the public body and there is no concerted plan to engage in collective deliberation.

Special exceptions are also made for the Arizona Department of Corrections.

## ***Executive Sessions***

A majority of the members constituting a quorum may vote publicly to convene an executive session. The general public is excluded from such a session and votes may not be taken. Any officer, appointee, employee and the Auditor General, in addition to any other individual necessary to carry out the executive session responsibilities, may attend.

An executive session or closed meeting may occur for discussion and consideration of any of the following seven purposes:

- personnel matters involving a specific individual.
- confidential records.
- legal advice provided by the public body's attorney.
- discussion of pending or contemplated litigation with the public body's attorney.
- instruction of designated representatives concerning negotiations with employee organizations.
- international and interstate negotiations and negotiations by a city or town with a tribal council.
- instruction of designated representatives concerning negotiations for the sale or purchase of real property.

## ***Notification***

A public body must give notice of all public meetings and executive sessions to members of the public and to members of the body. In giving notice, a statement including information on where all public notices of meetings will be posted must be filed with the following designated entity:

- the Secretary of State for state public bodies.
- the clerk of the board of supervisors for public bodies of counties, school districts and other special districts.
- the city clerk or mayor's office for public bodies of cities and towns.

All bodies must provide additional notice as is reasonable and practicable. City or town public bodies that have an Internet site must post all notices on their website.

Unless otherwise required, notice must be given more than 24 hours before the meeting or executive session. It must include an agenda that contains the date, time and place of the meeting, as well as a list of the specific matters to be discussed, considered or decided, or information on where to obtain an agenda. An agenda for an executive session is only required to contain a general description of matters to be considered. Only items specifically listed may be discussed, considered or decided by the body, but a body may allow individuals to speak on any issue within the body's jurisdiction. Exceptions exist for emergencies.

## ***Minutes and Recordings***

All public bodies must take written minutes or record meetings, including executive sessions. The minutes or a recording of a meeting must be available for public inspection within three working days after a meeting takes place. Public bodies, excluding subcommittees and advisory

committees, of cities and towns with populations greater than 2,500 persons must post either a statement describing any legal action or a recording of the meeting on their website, if available, within three working days after a meeting takes place. Subcommittees and advisory committees of cities and towns with populations greater than 2,500 persons must post either a statement describing any legal action or a recording of the meeting on their website, if available, within ten working days after a meeting takes place. Minutes from a city or town council meeting must be posted on their website, if available, within two working days after their approval.

Any person may record a meeting by tape recorder, camera or other similar means, provided that it does not interfere with the conduct of the meeting.

## ***Violations***

If any business of a public body is conducted in violation of the OML, the actions taken at such a meeting are null and void. The Attorney General (AG) or the appropriate county attorney (CA) may begin an investigation of a violation on his own initiative or after receiving a signed, written complaint. Beginning January 1, 2007, the Office of the Ombudsman-Citizens Aide is also authorized to investigate complaints relating to public access laws, including open meetings, and must educate public officials and the public on such laws.

Any person affected, the AG or the CA may file an action to require compliance or prevent violations and obtain civil penalties, attorneys' fees and court injunctions against the offending body or official. If the court finds that a public officer intentionally violated the OML, the court may remove the public officer from office and assess the public officer personally with the attorneys' fee award.

A public body may ratify legal action previously taken in violation of the OML at a public meeting within 30 days after the discovery of the violation. The meeting must be noticed with a detailed written description of the ratification at least 72 hours in advance. Ratification is appropriate when the public body

needs to validate retroactively a prior act in order to preserve the earlier effective date of the action. Ratification merely validates the prior action and does not eliminate liability of the public body for violation.

## ***ADDITIONAL RESOURCES***

- Open Meeting Law Statutes: Arizona Revised Statutes, Title 38, Chapter 3, Article 3.1
- Office of the Ombudsman-Citizens' Aide Statutes: Arizona Revised Statutes § 41-1376.01
- Attorney General's Office  
602-542-5025  
[www.azag.gov](http://www.azag.gov)
- Arizona Ombudsman-Citizens' Aide  
3737 N. 7th Street, Suite 209  
Phoenix, AZ 85014  
(602)277-7292  
(800)872-2879  
[www.azleg.gov/ombudsman/default.asp](http://www.azleg.gov/ombudsman/default.asp)
- Arizona Agency Handbook, prepared by the Attorney General