



# Arizona State Senate Issue Brief

November 2, 2016

## 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 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) was enacted in 1962 and establishes the following policy regarding meetings of public bodies:

- meetings must be conducted openly;
- notices and agendas must contain information reasonably necessary to inform the public of the matters to be discussed or decided; and
- the OML should always be construed in favor of open and public meetings.<sup>1</sup>

### PUBLIC MEETINGS

The OML requires all meetings of any public body to be open to the public allowing all persons to attend and listen to the deliberations and proceedings.<sup>2</sup> A gathering of a quorum of members of a public body, in person or through technological devices, at which the members discuss, propose or take any legal action, including deliberations, constitutes a meeting.

Public bodies covered by the OML include: 1) all boards and commissions of the state including its political subdivisions; 2) all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state and political subdivisions whose boards of directors are appointed or elected by the state or political subdivision; 3) all quasi-judicial bodies; or 4) all standing, special or advisory committees or subcommittees of, or appointed by, such public body.<sup>3</sup> *Public body* is also defined to include the Legislature, except that the OML and the Arizona Constitution, article IV, part 2, section 8, 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.<sup>4</sup>

<sup>1</sup> A.R.S. § 38-431.09

<sup>2</sup> A.R.S. § 38-431.01 (A)

<sup>3</sup> A.R.S. § 38-431 (6)

<sup>4</sup> A.R.S. § 38-431.08(D)

## Exceptions

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

- 1) judicial proceedings of courts;
- 2) a political caucus of the Legislature;
- 3) a conference committee of the Legislature, except that all conference committee meetings must be open to the public;
- 4) The Commissions on Appellate and Trial Court Appointments;
- 5) The Commission on Judicial Qualifications;
- 6) good cause exception and determinations and hearings conducted by the Board of Fingerprinting;<sup>5</sup>
- 7) homeowners associations;<sup>6</sup>
- 8) student disciplinary proceedings;<sup>7</sup>
- 9) insurance guaranty fund boards;<sup>8</sup> and
- 10) hearings in prison facilities, except under certain conditions.<sup>9</sup>

The OML does not apply to a member of a public body when they express an opinion or discuss an issue with the public either: 1) at a venue, other than at a public meeting; 2) personally, through the media or other form of public broadcast or technological means if: a) the opinion or discussion is not principally directed at another member of the public body; and b) there is no concerted plan to engage in collective deliberation to take legal action.<sup>10</sup>

## NOTIFICATION

Unless otherwise required, notice of all public meetings and executive sessions must be given to members of the public body and to the general public at least 24 hours in advance.

Public bodies of this state, including governing bodies of charter schools, public bodies of the counties and school districts, and public bodies of the cities and towns must:

a) conspicuously post a statement on their website stating where public notices of their meetings can be found, including the physical and electronic locations, and must give additional public notice as reasonable as to all meetings; and b) post all public meeting notices on their website and provide additional public notice as is reasonable as to all public meetings.<sup>11</sup>

For special districts formed according to Arizona Statute, if a statement or notice is not conspicuously posted on a website, then a statement must be filed with the clerk of the board of supervisors disclosing where all public meeting notices will be posted.<sup>12</sup>

The notice must also 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.<sup>13</sup>

Only items specifically listed may be discussed, considered or decided at the meeting. A notice of an executive session is only required to contain a general description of matters to be considered.<sup>14</sup>

## EXECUTIVE SESSIONS

A majority of the members constituting a quorum may vote publicly to convene an executive session.<sup>15</sup> 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.<sup>16</sup>

Disclosure of information from the executive session does not constitute a waiver of any privilege, including the attorney-client privilege.<sup>17</sup> Members of a public body who are present in an executive session must be instructed in confidentiality requirements

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<sup>5</sup> A.R.S. § 38-431.08(A)

<sup>6</sup> Ariz. Att'y Gen. Op. 97-012

<sup>7</sup> A.R.S. 15-843(A)

<sup>8</sup> A.R.S. § 20-671

<sup>9</sup> A.R.S. § 38-431.08 (B)

<sup>10</sup> A.R.S. § 38-431.09

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<sup>11</sup> A.R.S. § 38-431.02

<sup>12</sup> A.R.S. § 38-431.02(3)(C)

<sup>13</sup> A.R.S. § 38-431.02(G)(H)

<sup>14</sup> A.R.S. § 38-431.02(I)

<sup>15</sup> A.R.S. § 38-431.03

<sup>16</sup> A.R.S. § 38-431 (2)

<sup>17</sup> A.R.S. § 38-431.03(F)

regarding discussion or consideration of records considered confidential by state and federal law.

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

- 1) personnel matters involving a specific individual;
- 2) confidential records;
- 3) legal advice provided by the public body's attorney;
- 4) discussion or consultation in pending or contemplated litigation or settlement with the public body's attorney;
- 5) discussion and instruction of designated representatives concerning negotiations with employee organizations;
- 6) international and interstate negotiations or negotiations by a city or town with a tribal council; or
- 7) instruction of designated representatives concerning negotiations for the sale, purchase or lease of real property.

**CALL TO THE PUBLIC**

Although the OML permits the public to attend public meetings, it does not require public participation in the public body's discussions and deliberations. During an open call to the public, individuals may speak on any issue within the body's jurisdiction.<sup>18</sup> Members of the public body may respond to comments from those who addressed the body, may direct staff to review a matter or may ask that a matter be added to a future agenda. However, members may not discuss or take legal action on matters raised during an open call to the public unless they are noticed for discussion or legal action.

A person may record any part of a public meeting by tape recorder, camera or other similar means, provided that it does not interfere with the conduct of the meeting.<sup>19</sup>

**MINUTES AND RECORDINGS**

All public bodies must take written minutes or record meetings, including executive sessions. Public and executive session meeting minutes must include the date, time and place of the meeting, members recorded as present or absent and a general description of matters considered. Public session meeting minutes must also include an accurate description of all legal actions proposed, discussed or taken, and the names of members who proposed each motion. Executive session minutes must include an accurate description of all instructions given and such other matters as may be deemed appropriate by the public body.<sup>20</sup>

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 or 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 applicable, within three working days after a meeting takes place.

Subcommittees or advisory committees of cities or 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 applicable, within ten working days after a meeting takes place.

Approved minutes from a city or town council meeting must be posted on their website, if applicable, within two working days after their approval.

**VIOLATIONS**

Any legal action taken by the public body during a meeting held in violation of the OML, are null and void.<sup>21</sup> The Attorney General (AG) or the appropriate county attorney may begin an investigation of a violation on his own initiative or after receiving a signed, written complaint. The Office of the Ombudsman-Citizens Aide is also authorized to investigate complaints relating

<sup>18</sup> A.R.S. § 38-431.01(H)

<sup>19</sup> A.R.S. § 38-431.01 (F)

<sup>20</sup> A.R.S. § 38-431.01 (C)

<sup>21</sup> A.R.S. § 38-431.05 (A)

to public access laws, including open meetings, and must educate public officials and the public on such laws.<sup>22</sup>

If any person is affected, the AG or the county attorney 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 violated the OML, the court may remove the public officer from office. Additionally, the court may require the public officer or a person who knowingly aided, or both, to personally pay the attorneys' fees.<sup>23</sup>

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 and include a detailed written description of the action to be ratified at least 72 hours in advance of the public meeting.<sup>24</sup>

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 validates the prior action and does not eliminate the liability of the public body or others for sanctions under OML.<sup>25</sup>

## ADDITIONAL RESOURCES

- **Open Meeting Law Statutes:**  
*Public Meetings and Proceedings*  
Arizona Revised Statutes, Title 38,  
Chapter 3, Article 3.1
- **Arizona Ombudsman-Citizens' Aide**  
(602) 277-7292  
(800) 872-2879  
ombuds@azoca.gov  
<http://www.azoca.gov/>

- **The Arizona Open Meeting Law**  
<http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/>
- **Arizona Attorney General**  
Open Meeting Law Enforcement Team  
(602) 542-5025  
<https://www.azag.gov/complaints/omlet>

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<sup>22</sup> A.R.S. § 41-1376.01

<sup>23</sup> A.R.S. § 38-431.07(A)

<sup>24</sup> A.R.S. § 38-431.05

<sup>25</sup> The Arizona Ombudsman-Citizen's Aide,

*The Arizona Open Meeting Law*

<http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/>