HB 2330

Introduced by
Representatives Montenegro, Forese, Petersen, Stevens

AN ACT

AMENDING SECTIONS 38-431, 38-431.01 AND 38-431.03, ARIZONA REVISED STATUTES; RELATING TO PUBLIC MEETINGS AND PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-431, Arizona Revised Statutes, is amended to read:

38-431. Definitions
In this article, unless the context otherwise requires:
1. "Advisory committee" or "subcommittee" means any entity, however designated, WHETHER COMPOSED OF ONE OR MORE INDIVIDUALS, that is officially established, on motion and order of a public body or by the presiding officer of the public body OR OTHERWISE BY THE CHARTER, RULES, BYLAWS OR LAWS OF THE PUBLIC BODY, and whose MEMBER OR members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.

3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

4. "Meeting" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action. MEETING INCLUDES ANY MEETING OF ONE OR MORE AGENTS, REPRESENTATIVES OR OFFICERS OF A PUBLIC BODY WITH ANY AGENT OR OFFICER OF ANY EMPLOYEE ORGANIZATION INVOLVING NEGOTIATIONS REGARDING THE SALARIES, SALARY SCHEDULES OR COMPENSATION PAID IN THE FORM OF FRINGE BENEFITS OF EMPLOYEES OF THE PUBLIC BODY OR ANY OTHER EMPLOYMENT RELATED MATTER.

5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.

6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or A political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting
commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

Sec. 2. Section 38-431.01, Arizona Revised Statutes, is amended to read:

38-431.01. Meetings shall be open to the public

A. All meetings of any public body shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. FOR ANY MEETING INVOLVING ONE OR MORE AGENTS, REPRESENTATIVES OR OFFICERS OF A PUBLIC BODY WITH ANY AGENT OR OFFICER OF ANY EMPLOYEE ORGANIZATION, THE MEETING SHALL BE RECORDED BY AUDIOVISUAL MEANS. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 6 and such other matters as may be deemed appropriate by the public body.

D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting, except as otherwise specifically provided by this article.

E. A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:
   (a) A statement describing the legal actions taken by the public body of the city or town during the meeting.
   (b) Any recording of the meeting.
2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.

3. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:
   (a) A statement describing legal action, if any.
   (b) A recording of the meeting.

F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall conspicuously post open meeting law materials prepared and approved by the attorney general on their website. A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.

H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

J. Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.

Sec. 3. Section 38-431.03, Arizona Revised Statutes, is amended to read:

38-431.03. Executive sessions
A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:
   1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether
the discussion or consideration should occur at a public meeting. THIS
PARAGRAPH DOES NOT APPLY TO ANY MEETING INVOLVING ONE OR MORE AGENTS,
REPRESENTATIVES OR OFFICERS OF A PUBLIC BODY WITH ANY AGENT OR OFFICER OF ANY
EMPLOYEE ORGANIZATION.

2. Discussion or consideration of records exempt by law from public
inspection, including the receipt and discussion of information or testimony
that is specifically required to be maintained as confidential by state or
federal law.

3. Discussion or consultation for legal advice with the attorney or
attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body in
order to consider its position and instruct its attorneys regarding the
public body's position regarding contracts that are the subject of
negotiations, in pending or contemplated litigation or in settlement
discussions conducted in order to avoid or resolve litigation.

5. Discussions or consultations with designated representatives of the
public body in order to consider its position and instruct its
representatives regarding negotiations with employee organizations regarding
the salaries, salary schedules or compensation paid in the form of fringe
benefits of employees of the public body.

6. Discussion, consultation or consideration for international and
interstate negotiations or for negotiations by a city or town, or its
designated representatives, with members of a tribal council, or its
designated representatives, of an Indian reservation located within or
adjacent to the city or town.

7. Discussions or consultations with designated representatives of
the public body in order to consider its position and instruct its
representatives regarding negotiations for the purchase, sale or lease of
real property.

B. Minutes of and discussions made at executive sessions shall be kept
confidential except from:

1. Members of the public body which THAT met in executive session.
2. Officers, appointees or employees who were the subject of
discussion or consideration pursuant to subsection A, paragraph 1 of this
section.
3. The auditor general on a request made in connection with an audit
authorized as provided by law.
4. A county attorney or the attorney general when investigating
alleged violations of this article.

C. The public body shall instruct persons who are present at the
executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken
at an executive session, except that the public body may instruct its
attorneys or representatives as provided in subsection A, paragraphs 4, 5 and
7—6 of this section. A public vote shall be taken before any legal action
binds the public body.

E. Except as provided in section 38-431.02, subsections I and J, a
public body shall not discuss any matter in an executive session which THAT
is not described in the notice of the executive session.

F. Disclosure of executive session information pursuant to this
section or section 38-431.06 does not constitute a waiver of any privilege,
including the attorney-client privilege. Any person receiving executive
session information pursuant to this section or section 38-431.06 shall not
disclose that information except to the attorney general or county attorney,
by agreement with the public body or to a court in camera for purposes of
enforcing this article. Any court that reviews executive session information
shall take appropriate action to protect privileged information.

Sec. 4. Legislative intent
It is the intent of the legislature that the inspection of public
records laws of this state be strictly enforced regarding all physical or
electronic records of communications, discussions or consultations between
any agent, representative or officer of a public body and any agent or
officer of any employee organization.