

REFERENCE TITLE: public employees; bargaining; open meetings

State of Arizona
House of Representatives
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2013

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 38-431. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Advisory committee" or "subcommittee" means any entity, however
7 designated, **WHETHER COMPOSED OF ONE OR MORE INDIVIDUALS**, that is officially
8 established, on motion and order of a public body or by the presiding officer
9 of the public body **OR OTHERWISE BY THE CHARTER, RULES, BYLAWS OR LAWS OF THE**
10 **PUBLIC BODY**, and whose **MEMBER OR** members have been appointed for the specific
11 purpose of making a recommendation concerning a decision to be made or
12 considered or a course of conduct to be taken or considered by the public
13 body.

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

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

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

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

35 6. "Public body" means the legislature, all boards and commissions of
36 this state or political subdivisions, all multimember governing bodies of
37 departments, agencies, institutions and instrumentalities of this state or
38 political subdivisions, including without limitation all corporations and
39 other instrumentalities whose boards of directors are appointed or elected by
40 this state or **A** political subdivision. Public body includes all
41 quasi-judicial bodies and all standing, special or advisory committees or
42 subcommittees of, or appointed by, the public body. Public body includes all
43 commissions and other public entities established by the Arizona Constitution
44 or by way of ballot initiative, including the independent redistricting

1 commission, and this article applies except and only to the extent that
2 specific constitutional provisions supersede this article.

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

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

9 38-431.01. Meetings shall be open to the public

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

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

20 1. The date, time and place of the meeting.

21 2. The members of the public body recorded as either present or
22 absent.

23 3. A general description of the matters considered.

24 4. An accurate description of all legal actions proposed, discussed or
25 taken, and the names of members who propose each motion. The minutes shall
26 also include the names of the persons, as given, making statements or
27 presenting material to the public body and a reference to the legal action
28 about which they made statements or presented material.

29 C. Minutes of executive sessions shall include items set forth in
30 subsection B, paragraphs 1, 2 and 3 of this section, an accurate description
31 of all instructions given pursuant to section 38-431.03, subsection A,
32 paragraphs ~~4, 5~~ and ~~7, 6~~ and such other matters as may be deemed appropriate
33 by the public body.

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

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

39 1. Within three working days after a meeting, except for subcommittees
40 and advisory committees, post on its website, if applicable, either:

41 (a) A statement describing the legal actions taken by the public body
42 of the city or town during the meeting.

43 (b) Any recording of the meeting.

1 2. Within two working days following approval of the minutes, post
2 approved minutes of city or town council meetings on its website, if
3 applicable, except as otherwise specifically provided by this article.

4 3. Within ten working days after a subcommittee or advisory committee
5 meeting, post on its website, if applicable, either:

6 (a) A statement describing legal action, if any.

7 (b) A recording of the meeting.

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

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

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

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

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

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

34 38-431.03. Executive sessions

35 A. ~~Upon~~ **ON** a public majority vote of the members constituting a
36 quorum, a public body may hold an executive session but only for the
37 following purposes:

38 1. Discussion or consideration of employment, assignment, appointment,
39 promotion, demotion, dismissal, salaries, disciplining or resignation of a
40 public officer, appointee or employee of any public body, except that, with
41 the exception of salary discussions, an officer, appointee or employee may
42 demand that the discussion or consideration occur at a public meeting. The
43 public body shall provide the officer, appointee or employee with written
44 notice of the executive session as is appropriate but not less than
45 twenty-four hours for the officer, appointee or employee to determine whether

1 the discussion or consideration should occur at a public meeting. THIS
2 PARAGRAPH DOES NOT APPLY TO ANY MEETING INVOLVING ONE OR MORE AGENTS,
3 REPRESENTATIVES OR OFFICERS OF A PUBLIC BODY WITH ANY AGENT OR OFFICER OF ANY
4 EMPLOYEE ORGANIZATION.

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

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

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

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

21 ~~6.~~ 5. Discussion, consultation or consideration for international and
22 interstate negotiations or for negotiations by a city or town, or its
23 designated representatives, with members of a tribal council, or its
24 designated representatives, of an Indian reservation located within or
25 adjacent to the city or town.

26 ~~7.~~ 6. Discussions or consultations with designated representatives of
27 the public body in order to consider its position and instruct its
28 representatives regarding negotiations for the purchase, sale or lease of
29 real property.

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

32 1. Members of the public body ~~which~~ THAT met in executive session.

33 2. Officers, appointees or employees who were the subject of
34 discussion or consideration pursuant to subsection A, paragraph 1 of this
35 section.

36 3. The auditor general on a request made in connection with an audit
37 authorized as provided by law.

38 4. A county attorney or the attorney general when investigating
39 alleged violations of this article.

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

42 D. Legal action involving a final vote or decision shall not be taken
43 at an executive session, except that the public body may instruct its
44 attorneys or representatives as provided in subsection A, paragraphs ~~4, 5~~ and

1 ~~7~~ 6 of this section. A public vote shall be taken before any legal action
2 binds the public body.

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

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

14 Sec. 4. Legislative intent

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