

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 229
HOUSE BILL 2065

AN ACT

AMENDING SECTIONS 38-431, 38-431.01 AND 38-431.07, 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, that is officially established, on motion and order of a
8 public body or by the presiding officer of the public body, and whose
9 members have been appointed for the specific purpose of making a
10 recommendation concerning a decision to be made or considered or a course
11 of conduct to be taken or considered by the public body.

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

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

24 4. "Meeting":

25 (a) Means the gathering, in person or through technological
26 devices, of a quorum of THE members of a public body at which they
27 discuss, propose or take legal action, including any deliberations by a
28 quorum with respect to ~~such~~ THAT action.

29 (b) INCLUDES:

30 (i) A ONE-WAY ELECTRONIC COMMUNICATION BY ONE MEMBER OF A PUBLIC
31 BODY THAT IS SENT TO A QUORUM OF THE MEMBERS OF A PUBLIC BODY AND THAT
32 PROPOSES LEGAL ACTION.

33 (ii) AN EXCHANGE OF ELECTRONIC COMMUNICATIONS AMONG A QUORUM OF THE
34 MEMBERS OF A PUBLIC BODY THAT INVOLVES A DISCUSSION, DELIBERATION OR THE
35 TAKING OF LEGAL ACTION BY THE PUBLIC BODY CONCERNING A MATTER LIKELY TO
36 COME BEFORE THE PUBLIC BODY FOR ACTION.

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

40 6. "Public body" means the legislature, all boards and commissions
41 of this state or political subdivisions, all multimember governing bodies
42 of departments, agencies, institutions and instrumentalities of this state
43 or political subdivisions, including without limitation all corporations
44 and other instrumentalities whose boards of directors are appointed or
45 elected by this state or A political subdivision. Public body includes

1 all quasi-judicial bodies and all standing, special or advisory committees
2 or subcommittees of, or appointed by, the public body. Public body
3 includes all commissions and other public entities established by the
4 Arizona Constitution or by way of ballot initiative, including the
5 independent redistricting commission, and this article applies except and
6 only to the extent that specific constitutional provisions supersede this
7 article.

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

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

14 38-431.01. Meetings shall be open to the public

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

19 B. All public bodies shall provide for the taking of written
20 minutes or a recording of all their meetings, including executive
21 sessions. For meetings other than executive sessions, ~~such~~ THE minutes or
22 recording shall include, ~~but not be limited to:~~

- 23 1. The date, time and place of the meeting.
- 24 2. The members of the public body recorded as either present or
25 absent.
- 26 3. A general description of the matters considered.
- 27 4. An accurate description of all legal actions proposed, discussed
28 or taken, ~~and the names of members who propose each motion~~ INCLUDING A
29 RECORD OF HOW EACH MEMBER VOTED. The minutes shall also include THE NAMES
30 OF THE MEMBERS WHO PROPOSE EACH MOTION AND the names of the persons, as
31 given, ~~making~~ WHO MAKE statements or ~~presenting~~ PRESENT material to the
32 public body and a reference to the legal action about which they made
33 statements or presented material.

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

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

1 E. A public body of a city or town with a population of more than
2 two thousand five hundred persons shall:
3 1. Within three working days after a meeting, except for
4 subcommittees and advisory committees, post on its website, if applicable,
5 either:
6 (a) A statement describing the legal actions taken by the public
7 body of the city or town during the meeting.
8 (b) Any recording of the meeting.
9 2. Within two working days following approval of the minutes, post
10 approved minutes of city or town council meetings on its website, if
11 applicable, except as otherwise specifically provided by this article.
12 3. Within ten working days after a subcommittee or advisory
13 committee meeting, post on its website, if applicable, either:
14 (a) A statement describing legal action, if any.
15 (b) A recording of the meeting.
16 F. All or any part of a public meeting of a public body may be
17 recorded by any person in attendance by means of a tape recorder or camera
18 or any other means of sonic reproduction, provided that there is no active
19 interference with the conduct of the meeting.
20 G. The secretary of state for state public bodies, the city or town
21 clerk for municipal public bodies and the county clerk for all other local
22 public bodies shall conspicuously post open meeting law materials prepared
23 and approved by the attorney general on their website. A person elected
24 or appointed to a public body shall review the open meeting law materials
25 at least one day before the day that person takes office.
26 H. A public body may make an open call to the public during a
27 public meeting, subject to reasonable time, place and manner restrictions,
28 to allow individuals to address the public body on any issue within the
29 jurisdiction of the public body. At the conclusion of an open call to the
30 public, individual members of the public body may respond to criticism
31 made by those who have addressed the public body, may ask staff to review
32 a matter or may ask that a matter be put on a future agenda. However,
33 members of the public body shall not discuss or take legal action on
34 matters raised during an open call to the public unless the matters are
35 properly noticed for discussion and legal action.
36 I. A member of a public body shall not knowingly direct any staff
37 member to communicate in violation of this article.
38 J. Any posting required by subsection E of this section must remain
39 on the applicable website for at least one year after the date of the
40 posting.

1 Sec. 3. Section 38-431.07, Arizona Revised Statutes, is amended to
2 read:

3 38-431.07. Violations; enforcement; civil penalty; removal
4 from office; in camera review

5 A. Any person affected by an alleged violation of this article, the
6 attorney general or the county attorney for the county in which an alleged
7 violation of this article occurred may commence a suit in the superior
8 court in the county in which the public body ordinarily meets, for the
9 purpose of requiring compliance with, or the prevention of violations of,
10 this article, by ~~members of~~ the public body AS A WHOLE, or to determine
11 the applicability of this article to matters or legal actions of the
12 public body. ~~For each violation~~ THE ATTORNEY GENERAL MAY ALSO COMMENCE A
13 SUIT IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE PUBLIC BODY
14 ORDINARILY MEETS AGAINST AN INDIVIDUAL MEMBER OF A PUBLIC BODY FOR A
15 KNOWING VIOLATION OF THIS ARTICLE, AND IN SUCH A SUIT the court may impose
16 a civil penalty ~~not to exceed five hundred dollars~~ against ~~a~~ EACH person
17 who KNOWINGLY violates this article or who knowingly aids, agrees to aid
18 or attempts to aid ~~another person~~ in violating this article and order ~~such~~
19 equitable relief as ~~it~~ THE COURT deems appropriate in the circumstances.
20 THE COURT MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS
21 FOR THE SECOND OFFENSE AND NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS
22 FOR THE THIRD AND SUBSEQUENT OFFENSES. IF THE COURT IMPOSES A CIVIL
23 PENALTY AGAINST AN INDIVIDUAL MEMBER OF THE PUBLIC BODY WHO KNOWINGLY
24 VIOLATES THIS ARTICLE, THE PUBLIC BODY MAY NOT PAY THE CIVIL PENALTY ON
25 BEHALF OF, OR OTHERWISE REIMBURSE, THE INDIVIDUAL AGAINST WHOM THE CIVIL
26 PENALTY HAS BEEN IMPOSED. IF THE COURT FINDS THAT A PERSON WHO MIGHT
27 OTHERWISE BE LIABLE UNDER THIS SUBSECTION OBJECTED TO THE ACTION OF THE
28 PUBLIC BODY AND THE OBJECTION IS NOTED ON A PUBLIC RECORD, THE COURT MAY
29 CHOOSE NOT TO IMPOSE A CIVIL PENALTY ON THAT PERSON. The civil penalties
30 awarded pursuant to this section shall be deposited into the general fund
31 of the public body concerned. The court may also order payment to a
32 successful plaintiff in a suit brought under this section of the
33 plaintiff's reasonable attorney fees, by the defendant state, the
34 political subdivision of the state or the incorporated city or town of
35 which the public body is a part or to which it reports. If the court
36 determines that a public officer with intent to deprive the public of
37 information KNOWINGLY violated any provision of this article, the court
38 may remove the public officer from office and shall assess the public
39 officer or a person who knowingly aided, agreed to aid or attempted to aid
40 the public officer in violating this article, or both, with all of the
41 costs and attorney fees awarded to the plaintiff pursuant to this section.

42 B. A public body shall not expend public monies to employ or retain
43 legal counsel to provide legal services or representation to the public
44 body or any of its officers in any legal action commenced pursuant to any
45 provisions of this article, unless the public body has authority to make

1 ~~such~~ THE expenditure pursuant to other provisions of law and takes a legal
2 action at a properly noticed open meeting approving ~~such~~ THE expenditure
3 ~~prior to~~ BEFORE incurring any ~~such~~ obligation or indebtedness.

4 C. In any action brought pursuant to this section challenging the
5 validity of an executive session, the court may review in camera the
6 minutes of the executive session, and if the court in its discretion
7 determines that the minutes are relevant and that justice so demands, the
8 court may disclose to the parties or admit in evidence part or all of the
9 minutes.

APPROVED BY THE GOVERNOR APRIL 17, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2018.