

REFERENCE TITLE: open meetings; capacity; posting; violation

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2144

Introduced by
Representatives Dunn: Carbone

AN ACT

AMENDING SECTIONS 38-431.01 AND 38-431.02, 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 38-431.01, Arizona Revised Statutes, is amended
3 to read:

4 38-431.01. Meetings shall be open to the public; violation;
5 classification

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

10 B. ALL PUBLIC BODIES SHALL PROVIDE FOR AN AMOUNT OF SEATING
11 SUFFICIENT TO ACCOMMODATE THE REASONABLY ANTICIPATED ATTENDANCE OF ALL
12 PERSONS DESIRING TO ATTEND THE DELIBERATIONS AND PROCEEDINGS, WHEN
13 FEASIBLE. ANY HEAD OF A PUBLIC BODY THAT VIOLATES THIS SUBSECTION IS
14 LIABLE FOR A CIVIL PENALTY AS PRESCRIBED BY SECTION 38-431.07.

15 ~~B.~~ C. All public bodies shall provide for the taking of written
16 minutes or a recording of all their meetings, including executive
17 sessions. For meetings other than executive sessions, the minutes or
18 recording shall include:

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

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

22 3. A general description of the matters considered.

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

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

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

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

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

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

44 (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
5 committee 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.~~ G. 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
10 or any other means of sonic reproduction, provided that there is no active
11 interference with the conduct of the meeting.

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

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

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

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

33 Sec. 2. Section 38-431.02, Arizona Revised Statutes, is amended to
34 read:

35 38-431.02. Notice of meetings; violation; classification

36 A. Public notice of all meetings of public bodies shall be given as
37 follows:

38 1. The public bodies of this state, including governing bodies of
39 charter schools, shall:

40 (a) Conspicuously post a statement on their website stating where
41 all public notices of their meetings will be posted, including the
42 physical and electronic locations, and shall give additional public notice
43 as is reasonable and practicable as to all meetings.

44 (b) Post all public meeting notices on their website and give
45 additional public notice as is reasonable and practicable as to all

1 meetings. A technological problem or failure that either prevents ~~the~~
2 posting ~~of~~ public notices on a website or that temporarily or permanently
3 prevents ~~the use of~~ USING all or part of the website does not preclude ~~the~~
4 holding ~~of~~ the meeting for which the notice was posted if the public body
5 complies with all other public notice requirements required by this
6 section.

7 2. The public bodies of the counties and school districts shall:

8 (a) Conspicuously post a statement on their website stating where
9 all public notices of their meetings will be posted, including the
10 physical and electronic locations, and shall give additional public notice
11 as is reasonable and practicable as to all meetings.

12 (b) Post all public meeting notices on their website and give
13 additional public notice as is reasonable and practicable as to all
14 meetings. A technological problem or failure that either prevents ~~the~~
15 posting ~~of~~ public notices on a website or that temporarily or permanently
16 prevents ~~the use of~~ USING all or part of the website does not preclude ~~the~~
17 holding ~~of~~ the meeting for which the notice was posted if the public body
18 complies with all other public notice requirements required by this
19 section.

20 3. Special districts that are formed pursuant to title 48:

21 (a) May conspicuously post a statement on their website stating
22 where all public notices of their meetings will be posted, including the
23 physical and electronic locations, and shall give additional public notice
24 as is reasonable and practicable as to all meetings.

25 (b) May post all public meeting notices on their website and shall
26 give additional public notice as is reasonable and practicable as to all
27 meetings. A technological problem or failure that either prevents ~~the~~
28 posting ~~of~~ public notices on a website or that temporarily or permanently
29 prevents ~~the use of~~ USING all or part of the website does not preclude ~~the~~
30 holding ~~of~~ the meeting for which the notice was posted if the public body
31 complies with all other public notice requirements required by this
32 section.

33 (c) If a statement or notice is not posted pursuant to subdivision
34 (a) or (b) of this paragraph, shall file a statement with the clerk of the
35 board of supervisors stating where all public notices of their meetings
36 will be posted and shall give additional public notice as is reasonable
37 and practicable as to all meetings.

38 4. The public bodies of the cities and towns shall:

39 (a) Conspicuously post a statement on their website or on a website
40 of an association of cities and towns stating where all public notices of
41 their meetings will be posted, including the physical and electronic
42 locations, and shall give additional public notice as is reasonable and
43 practicable as to all meetings.

44 (b) Post all public meeting notices on their website or on a
45 website of an association of cities and towns and give additional public

1 notice as is reasonable and practicable as to all meetings. A
2 technological problem or failure that either prevents ~~the~~ posting ~~of~~
3 public notices on a website or that temporarily or permanently prevents
4 ~~the use of~~ USING all or part of the website does not preclude ~~the~~ holding
5 ~~of~~ the meeting for which the notice was posted if the public body complies
6 with all other public notice requirements required by this section.

7 B. If an executive session is scheduled, a notice of the executive
8 session shall state the provision of law authorizing the executive
9 session, and the notice shall be provided to the:

- 10 1. Members of the public body.
- 11 2. General public.

12 C. Except as provided in subsections D and E of this section,
13 meetings shall not be held without at least twenty-four hours' notice to
14 the members of the public body and to the general public. The ~~twenty-four~~
15 ~~hour~~ TWENTY-FOUR-HOUR period includes Saturdays if the public has access
16 to the physical posted location in addition to any website posting, but
17 excludes Sundays and other holidays prescribed in section 1-301.

18 D. In case of an actual emergency, a meeting, including an
19 executive session, may be held on such notice as is appropriate to the
20 circumstances. If this subsection is ~~utilized~~ USED for conduct of an
21 emergency session or the consideration of an emergency measure at a
22 previously scheduled meeting the public body must post a public notice
23 within twenty-four hours declaring that an emergency session has been held
24 and setting forth the information required in subsections H and I of this
25 section.

26 E. A meeting may be recessed and resumed with less than twenty-four
27 hours' notice if public notice of the initial session of the meeting is
28 given as required in subsection A of this section, and if, before
29 recessing, notice is publicly given as to the time and place of the
30 resumption of the meeting or the method by which notice shall be publicly
31 given.

32 F. A public body that intends to meet for a specified calendar
33 period, on a regular day, date or event during the calendar period, and at
34 a regular place and time, may post public notice of the meetings at the
35 beginning of the period. The notice shall specify the period for which
36 notice is applicable.

37 G. Notice required under this section shall include an agenda of
38 the matters to be discussed or decided at the meeting or information on
39 how the public may obtain a copy of such an agenda. The agenda must be
40 available to the public at least twenty-four hours before the meeting,
41 except in the case of an actual emergency under subsection D of this
42 section. The ~~twenty-four-hour~~ TWENTY-FOUR-HOUR period includes Saturdays
43 if the public has access to the physical posted location in addition to
44 any website posting, but excludes Sundays and other holidays prescribed in
45 section 1-301.

1 H. Agendas required under this section shall list the specific
2 matters to be discussed, considered or decided at the meeting. THE AGENDA
3 SHALL ALSO INCLUDE NOTICE OF THE TIME THAT THE PUBLIC WILL HAVE PHYSICAL
4 ACCESS TO THE MEETING PLACE. A HEAD OF A PUBLIC BODY THAT VIOLATES THE
5 REQUIREMENT TO INCLUDE NOTICE OF THE TIME THAT THE PUBLIC WILL HAVE
6 PHYSICAL ACCESS TO THE MEETING PLACE ON THE AGENDA IS LIABLE FOR A CIVIL
7 PENALTY AS PRESCRIBED BY SECTION 38-431.07. The public body may discuss,
8 consider or make decisions only on matters listed on the agenda and other
9 matters related thereto.

10 I. Notwithstanding the other provisions of this section, notice of
11 executive sessions shall be required to include only a general description
12 of the matters to be considered. The agenda shall provide more than just
13 a recital of the statutory provisions authorizing the executive session,
14 but need not contain information that would defeat the purpose of the
15 executive session, compromise the legitimate privacy interests of a public
16 officer, appointee or employee or compromise the attorney-client
17 privilege.

18 J. Notwithstanding subsections H and I of this section, in the case
19 of an actual emergency a matter may be discussed and considered and, at
20 public meetings, decided, if the matter was not listed on the agenda and a
21 statement setting forth the reasons necessitating the discussion,
22 consideration or decision is placed in the minutes of the meeting and is
23 publicly announced at the public meeting. In the case of an executive
24 session, the reason for consideration of the emergency measure shall be
25 announced publicly immediately before the executive session.

26 K. Notwithstanding subsection H of this section, the chief
27 administrator, presiding officer or a member of a public body may present
28 a brief summary of current events without listing in the agenda the
29 specific matters to be summarized, if:

- 30 1. The summary is listed on the agenda.
- 31 2. The public body does not propose, discuss, deliberate or take
32 legal action at that meeting on any matter in the summary unless the
33 specific matter is properly noticed for legal action.