

Arizona Open Meeting Law

A.R.S. §§ 38-431 through 38-431.09

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Arizona's Open Meeting Law

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Accordingly, Arizona’s Open Meeting Law must be construed in favor of open and public meetings.”

- Arizona Ombudsman Citizens’ Aide,
Arizona State Legislature

Arizona Open Meeting Law (OML)

In 10 topic areas:

1. Purpose of the Law
2. Definition of a “Meeting”
3. Contents of a Meeting
4. Notice
5. Agenda
6. Minutes
7. Executive Session
8. Access to Meetings
9. Ratification
10. Sanctions

Purpose of the Law

- a. All 50 States Have an Open Meeting law
- b. Accountability Through Transparency
- c. Public Policy of this State
 - a. Meetings of Public Bodies be conducted openly
 - b. Maximize public access to the governmental process
 - c. Notices and agendas be provided with information reasonably necessary to inform the public

Definition of a “Meeting”

- a. “The gathering, in person or through technological devices of a quorum of the members of a public body at which they discuss, propose or take legal action, including deliberations by a quorum with respect to that action.”
- b. Label placed on a gathering doesn’t matter
- c. Matters that may foreseeably require final action or decision by the body constitutes legal action
- d. Difficult to say precisely when this foreseeability test has been met
- e. Doubts resolved in favor of compliance with OML
- f. Safest course of action is to assume the OML applies
- g. Communications need not take place at the same time or place
- h. Splintering a Quorum
- i. OML doesn’t prohibit a member from voicing an opinion or discussing an issue with the public at a venue other than a public meeting

Contents of a Meeting

- a. Discussions and presentations
- b. Executive Sessions
- c. Final actions
- d. Calls to the public

Notice

- a. 48 hours for IRC (24 hours for other public bodies)
- b. Sufficient Notice
- c. Notice to Members
- d. Notice to the Public
- e. Disclosure Statement
- f. Contents of the Notice
- g. 3 Exceptions to 24-hour notice
 - i. Actual Emergency
 - ii. Ratification
 - iii. Recessed meeting
- h. Notice of Executive Sessions

Agendas

- a. A Public Body must provide an agenda of the matters to be discussed, considered or decided at a meeting
- b. Agendas must “contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.”
- c. Resolve questions in favor of greater disclosure or information
- d. The agenda must contain a listing of the “specific matters or items to be discussed, considered or decided at the meeting.”
- e. The degree of specificity depends upon the circumstances

Agendas (continued)

- f. Generic terms are not adequate. E.g. Personnel, new business, old business, etc.
- g. Reference Executive Sessions
- h. “Other matters related thereto.”
- i. Distribution of the agenda
- j. Consent agendas
- k. Changes to the agenda

Minutes

- a. Must be taken of all public meetings and executive sessions
- b. Available for public inspection within 3 working days after the meeting
- c. Minutes of executive session should be stored separately from regular session meetings
- d. Contents
 - i. Date, Time and Place
 - ii. General description of matters discussed or considered
 - iii. Accurate description of all legal actions
 - iv. Names of members who proposed each motion
 - v. Names of persons who made statements or presentations
- e. Contents of Minutes of an Executive Session

Executive Sessions

- a. An exception to the general requirement that all meetings be open to the public
- b. Proper notice must be provided before going into it
- c. A quorum must vote in a public meeting to hold one
- d. Discuss and consider only the specific matters authorized by statute
- e. May not take a vote or a final decision during the session
- f. Reconvene in a public meeting to make a final decision (vote)
- g. Confidentiality

Executive Sessions (continued)

- h. Seven Specific Instances:
 1. Personnel Matters
 2. Confidential Records
 3. Legal Advice
 4. Litigation, Contract Negotiations and Settlement Discussions
 5. Salary Negotiations
 6. International, Interstate and Tribal Negotiations
 7. Purchase, Sale or Lease of Real Property

Access to Meetings

- a. Public must be allowed to attend and listen to deliberations and proceedings
- b. No right for the public to participate
- c. Avoid procedures or devices that obstruct or inhibit public attendance
- d. Remote conferencing

Ratification

- A public body may ratify action previously taken in violation of OML
- Within 30 days after discovery of the violation
- Ratification merely validates the prior action
- Sanctions are still applicable
- Procedure for Ratification

Sanctions

- Null and Void unless subsequently ratified
- Attorney General/County Attorney Civil Investigative Demand (CID)
- Any person affected by an alleged OML violation may file suit in Superior Court
- Civil Penalties
 - i. Against an individual member, a court may impose up to \$500 for a second offense
 - ii. Up to \$2500 for a third and subsequent offense
 - iii. Attorney's Fees
 - iv. Removal from Office

Pending and Recent Legislation

SB 1012 amended A.R.S. 38-431.03

Essentially adds an additional type of permissible executive session, in which a public body could discuss or consider matters related to school safety operations, plans, or programs. SB 1012 was passed by the Senate 29-0 on 2/13 and the House 49-11 on 5/19. Both passed it as an emergency measure.

The Governor signed the bill into law on June 5, 2020. Now in effect.

SB 1042 amended A.R.S. § 38-431.03

Essentially adds an additional type of permissible executive session in which a public body can discuss or consult with designated representatives. Would make the “records, documentation, notes, or other materials made by, or provided to, the representatives” confidential and exempt from disclosure under the public records law.

SB 1042 passed the Senate with a minor amendment on 2/13/2020 and then passed the House 52-8 on 5/21/2020.

The Governor signed the bill into law on June 5, 2020. Now in effect.

Pending and Recent Legislation (continued)

SB 1030: would add A.R.S. § 15-189.07 and amend A.R.S. §§ 15-341

Bill would allow the governing boards of charter schools and school districts to “discuss or consider an emergency response plan developed pursuant to this paragraph in executive session. An emergency response plan is not subject to inspection pursuant to Title 39, Chapter 1, Article 2.”

The bill was passed by the Senate 30-0 on February 13, 2020.

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