



Arizona State Senate Issue Brief

November 20, 2024

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Issue Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

ARIZONA'S OPEN MEETING LAW

INTRODUCTION

Arizona's Open Meeting Law (OML) was enacted in 1962 and establishes the following policy regarding meetings of public bodies:

- meetings must be conducted openly;
- notices and agendas must contain information reasonably necessary to inform the public of the matters to be discussed or decided; and
- the OML should always be construed in favor of open and public meetings.¹

PUBLIC MEETINGS

The OML requires all meetings of most public bodies to be open to the public, allowing all persons to attend and listen to the deliberations and proceedings.² A *meeting* is a gathering of a quorum of members of a public body, in person or through technological devices, at which the members discuss, propose or take legal action, including deliberations. This includes a one-way electronic communication by one member of a public body sent to a quorum of the members of a public body that proposes legal action or an exchange of electronic communications among a quorum of the members of a public body that involves a discussion of legal action concerning a matter that will likely come before the public body for action. Schools, school boards, executive boards and municipalities must provide sufficient seating for the anticipated attendance of public meetings when feasible.

Public bodies covered by the OML include: 1) all boards and commissions of the state and political subdivisions; 2) all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state and political subdivisions; 3) all quasi-judicial bodies; and 4) all standing, special or advisory committees or subcommittees of, or appointed by, a public body.³ *Public body* is also defined to include the Legislature, subject to certain exceptions.⁴

¹ [A.R.S. § 38-431.09](#)

² [A.R.S. § 38-431.01](#)

³ [A.R.S. §§ 38-431 and 33-431.01](#)

⁴ [A.R.S. § 38-431.08](#); [Ariz. Const. art. 4, pt. 2, § 8](#)

Exceptions

The Arizona Constitution and OML authorize the Legislature to adopt its own notice and agenda requirements. Therefore, meeting and notice requirements for the Legislature are addressed in the Senate and House of Representatives rules.⁵

In 2019, nonprofit organizations and individuals (Puente) filed a complaint against the Arizona Legislature alleging that 26 legislators, who comprised quorums for legislative committees, threatened to violate the OML by attending a private summit. In 2022, the Arizona Supreme Court ruled that whether the Legislature complied with the OML is a nonjusticiable political question. The Arizona Supreme Court maintains that although the OML applies to the Legislature it is entirely the prerogative of the Legislature to make, interpret and enforce the Legislature's own procedural rules and the judiciary cannot compel the Legislature to act in accordance with its own procedural rule if constitutional questions are not implicated.⁶

The OML does not apply to the following meetings and entities:

- 1) judicial proceedings of courts;
- 2) a political caucus of the Legislature;
- 3) a conference committee of the Legislature, except that all conference committee meetings must be open to the public;
- 4) commissions on appellate and trial court appointments;
- 5) the Commission on Judicial Qualifications;
- 6) Board of Fingerprinting hearings on good cause exceptions and central registry exceptions;⁶
- 7) homeowners associations;⁷
- 8) student disciplinary proceedings;⁸ and
- 9) insurance guaranty fund boards.⁹

Statute outlines limitations that the Director of the Arizona Department of Corrections,

Rehabilitation and Reentry may undertake regarding meetings in prison facilities.¹⁰

The OML does not apply to a member of a public body when they express an opinion or discuss an issue with the public either: 1) at a venue other than a public meeting, personally, through the media or other form of public broadcast; or 2) through technological means if the opinion or discussion is not principally directed at another member of the public body and there is no concerted plan to engage in collective deliberation to take legal action.¹¹

NOTIFICATION

Unless otherwise required, notice of all public meetings and executive sessions must be provided to members of the public body and to the general public at least 24 hours in advance.

Public bodies of the state, including charter school governing bodies, and public bodies of school districts, counties, cities and towns must: 1) conspicuously post a statement on their website stating where public notices of their meetings can be found, including the physical and electronic locations, and must give additional public notice as reasonable as to all meetings; and 2) post all public meeting notices on their website and provide additional public notice as is reasonable as to all public meetings.

For special taxing districts, if a statement or notice is not conspicuously posted on a website, then a statement must be filed with the clerk of the county board of supervisors disclosing where all public meeting notices will be posted.

A public meeting notice must include an agenda that contains the meeting date, time and place, a list of the specific matters to be discussed, considered or decided, or information on where to obtain an agenda, and notice of the time that the public will have physical access to the meeting place.

Only items specifically listed may be discussed, considered or decided at the meeting. A notice of an

⁵ [A.R.S. § 38-431.08](#)

⁶ [Puente et al. v Arizona State Legislature](#)

⁷ [AZ Attorney Gen. Op. No. 197-012 \(1997\)](#)

⁸ [A.R.S. 15-843](#)

⁹ [A.R.S. § 20-671](#)

¹⁰ [A.R.S. § 38-431.08](#)

¹¹ [A.R.S. § 38-431.09](#)

executive session is only required to contain a general description of matters to be considered.¹²

EXECUTIVE SESSIONS

A majority of the members constituting a quorum may vote publicly to convene an executive session on certain matters. The general public is excluded from an executive session and votes may not be taken. Any officer, appointee, employee and the Auditor General, in addition to any other individual necessary to carry out the executive session responsibilities, may attend.

Disclosure of information from the executive session does not constitute a waiver of any privilege, including the attorney-client privilege. Members of a public body who are present in an executive session must be instructed in confidentiality requirements regarding discussion or consideration of records considered confidential by state and federal law.

An executive session or closed meeting may occur for discussion and consideration of:

- 1) personnel matters involving a specific individual;
- 2) confidential records;
- 3) legal advice provided by the public body's attorney;
- 4) discussion or consultation in pending or contemplated litigation or settlement with the public body's attorney;
- 5) discussion and instruction of designated representatives concerning negotiations with employee organizations;
- 6) international and interstate negotiations or negotiations by a city or town with a tribal council;
- 7) instruction of designated representatives concerning negotiations for the sale, purchase or lease of real property;
- 8) matters relating to school safety operations or school safety plans or programs; or
- 9) discussion of security plans, procedures, assessments, measures or systems relating to

¹² A.R.S. §§ [38-431.02](#) and [38-431.03](#)

the security or safety of buildings, facilities, operations or information technology maintained by the public body.¹³

CALL TO THE PUBLIC

Although the OML allows the public to attend public meetings, it does not require public participation in the public body's discussions and deliberations. During an open call to the public, individuals may speak on any issue within the body's jurisdiction. Members of the public body may respond to comments from those who addressed the body, may direct staff to review a matter or may ask that a matter be added to a future agenda. However, members may not discuss or take legal action on matters raised during an open call to the public unless they are noticed for discussion or legal action.

A person may record any part of a public meeting by tape recorder, camera or other similar means if it does not interfere with the conduct of the meeting.¹⁴

MINUTES AND RECORDINGS

Public bodies must take written minutes or record meetings, including executive sessions. Public and executive session meeting minutes must include the date, time and place of the meeting, members recorded as present or absent, a general description of matters considered and a record of how each member voted on legal actions. Public session meeting minutes must also include an accurate description of all legal actions proposed, discussed or taken, and the names of members who proposed each motion. Executive session minutes must include an accurate description of all instructions given and such other matters as may be deemed appropriate by the public body.

The minutes or a recording of a meeting must be available for public inspection within three

¹³ [A.R.S. § 38-431.01](#)

¹⁴ [A.R.S. § 38-431.01](#)

working days after a meeting takes place, unless otherwise specified.¹⁵

VIOLATIONS

Any legal action taken by a public body during a meeting that is held in violation of the OML, is null and void.¹⁶ The Attorney General (AG) or the appropriate county attorney may begin an investigation of a violation on their own initiative or after receiving a signed, written complaint. The Office of the Ombudsman-Citizens Aide may also investigate complaints relating to public access laws, including open meetings, and must educate public officials and the public on public access laws.¹⁷

If any person is affected, the AG or the county attorney may file an action to require compliance or prevent violations and obtain civil penalties, attorneys' fees and court injunctions against the offending body or official. If the court finds that a public officer violated the OML, the court may remove the public officer from office. Additionally, the court may require the public officer or a person who knowingly aided the officer, or both, to personally pay the attorneys' fees.¹⁸

Laws 2018, Chapter 229 allowed the AG to commence a suit against an individual of a public body for a violation of OML, rather than just the public body as a whole. This codified a 2005 AG Opinion that concluded email communications among a quorum of a public body are subject to the same OML requirements that apply to all other forms of communication.¹⁹

In this case, the public body may not pay on behalf of or reimburse the individual for a civil penalty. However, a court may choose not to impose a civil penalty if the person liable for the violation objected to the action of a public body and the objection is noted in the record. Additionally, the 2018 legislation removed civil penalties for a first violation of OML and

increased the penalties for third and subsequent violations to \$2,500.²⁰

A public body may ratify legal action previously taken in violation of the OML at a public meeting within 30 days after the discovery of the violation. The meeting must be noticed and include a detailed written description of the action to be ratified at least 72 hours in advance of the public meeting.²¹

Ratification is appropriate when the public body needs to validate retroactively a prior act to preserve the earlier effective date of the action. Ratification validates the prior action and does not eliminate the liability of the public body or others for sanctions under OML.²²

ADDITIONAL RESOURCES

- Arizona Open Meeting Law
[A.R.S. Title 38, Chapter 3, Article 3.1](#)
- Arizona Ombudsman-Citizens' Aide
ombuds@azoca.gov
<http://www.azoca.gov/>
[Open Meetings – Overview](#)
- Arizona Attorney General
Open Meeting Law Enforcement Team
(602) 542-5025
<https://www.azag.gov/complaints/omlet>
[Open Meeting Law Complaint Form](#)

¹⁵ [A.R.S. § 38-431.01](#)

¹⁶ [A.R.S. § 38-431.05](#)

¹⁷ [A.R.S. § 41-1376.01](#)

¹⁸ [A.R.S. § 38-431.07](#)

¹⁹ [AZ Attorney Gen. Op. No. I05-004 \(July 25, 2005\)](#)

²⁰ [Laws 2018, Chapter 229](#)

²¹ [A.R.S. § 38-431.05](#)

²² [Ombudsman: Arizona Open Meeting Law](#)