

REFERENCE TITLE: public meetings; executive sessions

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

# HB 2804

Introduced by  
Representatives Pingerelli: Biasiucci, Burges, Cobb, Finchem, Hoffman,  
Parker, Payne, Roberts, Toma, Weninger

AN ACT

AMENDING SECTIONS 38-431.02 AND 38-431.03, ARIZONA REVISED STATUTES;  
RELATING TO PUBLIC MEETINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-431.02, Arizona Revised Statutes, is amended  
3 to read:

4 38-431.02. Notice of meetings

5 A. Public notice of all meetings of public bodies shall be given as  
6 follows:

7 1. The public bodies of this state, including governing bodies of  
8 charter schools, shall:

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

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

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

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

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

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

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

39 (b) May post all public meeting notices on their website and shall  
40 give additional public notice as is reasonable and practicable as to all  
41 meetings. A technological problem or failure that either prevents the  
42 posting of public notices on a website or that temporarily or permanently  
43 prevents the use of all or part of the website does not preclude the  
44 holding of the meeting for which the notice was posted if the public body

1 complies with all other public notice requirements required by this  
2 section.

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

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

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

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

22 B. If an executive session is scheduled, a notice of the executive  
23 session shall state the provision of law authorizing the executive session  
24 AND, IN THE CASE OF LEGAL ADVICE, SHALL INCLUDE THE SPECIFIC PROVISION OF  
25 SECTION 38-431.03 TO WHICH THE LEGAL ADVICE PERTAINS, and the notice shall  
26 be provided to the:

- 27 1. Members of the public body.
- 28 2. General public.

29 C. Except as provided in subsections D and E of this section,  
30 meetings shall not be held without at least twenty-four hours' notice to  
31 the members of the public body and to the general public. The twenty-four  
32 hour period includes Saturdays if the public has access to the physical  
33 posted location in addition to any website posting, but excludes Sundays  
34 and other holidays prescribed in section 1-301.

35 D. In case of an actual emergency, a meeting, including an  
36 executive session, may be held on such notice as is appropriate to the  
37 circumstances. If this subsection is ~~utilized~~ USED for conduct of an  
38 emergency session or the consideration of an emergency measure at a  
39 previously scheduled meeting the public body must post a public notice  
40 within twenty-four hours declaring that an emergency session has been held  
41 and setting forth the information required in subsections H and I of this  
42 section.

1 E. A meeting may be recessed and resumed with less than twenty-four  
2 hours' notice if public notice of the initial session of the meeting is  
3 given as required in subsection A of this section, and if, before  
4 recessing, notice is publicly given as to the time and place of the  
5 resumption of the meeting or the method by which notice shall be publicly  
6 given.

7 F. A public body that intends to meet for a specified calendar  
8 period, on a regular day, date or event during the calendar period, and at  
9 a regular place and time, may post public notice of the meetings at the  
10 beginning of the period. The notice shall specify the period for which  
11 notice is applicable.

12 G. Notice required under this section shall include an agenda of  
13 the matters to be discussed or decided at the meeting or information on  
14 how the public may obtain a copy of such an agenda. The agenda must be  
15 available to the public at least twenty-four hours before the meeting,  
16 except in the case of an actual emergency under subsection D of this  
17 section. The twenty-four hour period includes Saturdays if the public has  
18 access to the physical posted location in addition to any website posting,  
19 but excludes Sundays and other holidays prescribed in section 1-301.

20 H. Agendas required under this section shall list the specific  
21 matters to be discussed, considered or decided at the meeting. The public  
22 body may discuss, consider or make decisions only on matters listed on the  
23 agenda and other matters related thereto.

24 I. Notwithstanding the other provisions of this section, notice of  
25 executive sessions shall be required to include only a general description  
26 of the matters to be considered. The agenda shall provide more than just  
27 a recital of the statutory provisions authorizing the executive session,  
28 but need not contain information that would defeat the purpose of the  
29 executive session, compromise the legitimate privacy interests of a public  
30 officer, appointee or employee or compromise the attorney-client  
31 privilege.

32 J. Notwithstanding subsections H and I of this section, in the case  
33 of an actual emergency a matter may be discussed and considered and, at  
34 public meetings, decided, if the matter was not listed on the agenda and a  
35 statement setting forth the reasons necessitating the discussion,  
36 consideration or decision is placed in the minutes of the meeting and is  
37 publicly announced at the public meeting. In the case of an executive  
38 session, the reason for consideration of the emergency measure shall be  
39 announced publicly immediately before the executive session.

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

- 44 1. The summary is listed on the agenda.

1           2. The public body does not propose, discuss, deliberate or take  
2 legal action at that meeting on any matter in the summary unless the  
3 specific matter is properly noticed for legal action.

4           Sec. 2. Section 38-431.03, Arizona Revised Statutes, is amended to  
5 read:

6           38-431.03. Executive sessions; definitions

7           A. On a public majority vote of the members constituting a quorum,  
8 a public body may hold an executive session but only for the following  
9 purposes:

10           1. Discussion or consideration of employment, assignment,  
11 appointment, promotion, demotion, dismissal, salaries, disciplining or  
12 resignation of a public officer, appointee or employee of any public body,  
13 except that, with the exception of salary discussions, an officer,  
14 appointee or employee may demand that the discussion or consideration  
15 occur at a public meeting. **DISCUSSION OR CONSIDERATION OF THE GOALS AND**  
16 **OBJECTIVES ESTABLISHED BY THE PUBLIC BODY ON WHICH AN OFFICER, APPOINTEE**  
17 **OR EMPLOYEE OF THE PUBLIC BODY WILL BE EVALUATED MUST BE CONDUCTED IN A**  
18 **PUBLIC MEETING.** The public body shall provide the officer, appointee or  
19 employee with written notice of the executive session as is appropriate  
20 but not less than twenty-four hours for the officer, appointee or employee  
21 to determine whether the discussion or consideration should occur at a  
22 public meeting.

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

27           3. Discussion or consultation for legal advice with the attorney or  
28 attorneys of the public body **SOLELY FOR THE PURPOSE OF ADVICE IN THE AREAS**  
29 **AS PRESCRIBED IN PARAGRAPHS 1, 2, 4, 5, 6, 7, 8 AND 9 OF THIS SUBSECTION.**

30           4. Discussion or consultation with the attorneys of the public body  
31 in order to consider its position and instruct its attorneys regarding the  
32 public body's position regarding contracts that are the subject of  
33 negotiations, in pending or contemplated litigation or in settlement  
34 discussions conducted in order to avoid or resolve litigation.

35           5. Discussions or consultations with designated representatives of  
36 the public body in order to consider its position and instruct its  
37 representatives regarding negotiations with employee organizations  
38 regarding the salaries, salary schedules or compensation paid in the form  
39 of fringe benefits of employees of the public body.

40           6. Discussion, consultation or consideration for international and  
41 interstate negotiations or for negotiations by a city or town, or its  
42 designated representatives, with members of a tribal council, or its  
43 designated representatives, of an Indian reservation located within or  
44 adjacent to the city or town.

1           7. Discussions or consultations with designated representatives of  
2 the public body in order to consider its position and instruct its  
3 representatives regarding negotiations for the purchase, sale or lease of  
4 real property.

5           8. Discussion or consideration of matters relating to school safety  
6 operations or school safety plans or programs.

7           9. Discussions or consultations with designated representatives of  
8 the public body in order to discuss security plans, procedures,  
9 assessments, measures or systems relating to, or having an impact on, the  
10 security or safety of buildings, facilities, operations, critical  
11 infrastructure information and information technology maintained by the  
12 public body. Records, documentation, notes, or other materials made by,  
13 or provided to, the representatives pursuant to this paragraph are  
14 confidential and exempt from public disclosure under this chapter and  
15 title 39, chapter 1.

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

18           1. Members of the public body that met in executive session.

19           2. Officers, appointees or employees who were the subject of  
20 discussion or consideration pursuant to subsection A, paragraph 1 of this  
21 section.

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

24           4. A county attorney or the attorney general when investigating  
25 alleged violations of this article.

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

29           D. Legal action involving a final vote or decision shall not be  
30 taken at an executive session, except that the public body may instruct  
31 its attorneys or representatives as provided in subsection A, paragraphs  
32 4, 5 and 7 of this section. A public vote shall be taken before any legal  
33 action binds the public body.

34           E. Except as provided in section 38-431.02, subsections I and J, a  
35 public body shall not discuss any matter in an executive session that is  
36 not described in the notice of the executive session.

37           F. Disclosure of executive session information pursuant to this  
38 section or section 38-431.06 does not constitute a waiver of any  
39 privilege, including the attorney-client privilege. Any person receiving  
40 executive session information pursuant to this section or section  
41 38-431.06 shall not disclose that information except to the attorney  
42 general or county attorney, by agreement with the public body or to a  
43 court in camera for purposes of enforcing this article. Any court that

1 reviews executive session information shall take appropriate action to  
2 protect privileged information.

3 G. For the purposes of this section:

4 1. "Critical infrastructure" has the same meaning prescribed in  
5 section 41-1801.

6 2. "Information technology" has the same meaning prescribed in  
7 section 18-101.