



**ARIZONA STATE SENATE**  
*Fifty-Third Legislature, Second Regular Session*

**AMENDED**

FACT SHEET FOR H.B. 2065

public meetings; definition; penalties

Purpose

Increases the civil penalty for a third or subsequent violation of open meeting law requirements to \$2,500 and removes the civil penalty for a first violation. Stipulates email communications and exchanges in which legal action is discussed or taken are subject to open meeting law requirements.

Background

Current statute requires all meetings of any public body to be open to all persons for attendance and observance of the deliberations and proceedings. Any legal action of a public body must be made during a public hearing, or is otherwise considered null and void. (A.R.S. §§ [38-431.01](#), [38-431.05](#)). All public bodies must provide written minutes or a recording of all meetings, which must include at least the following: 1) the date, time and place of the meeting; 2) the members of the public body recorded as either present or absent; 3) a general description of the matters considered; and 4) an accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion, and persons making statements or presenting material ([A.R.S. § 38-431.01](#)). A meeting is currently defined as a gathering of a quorum of the members of a public body, whether in person or through technological devices, in which legal action is discussed, proposed or taken ([A.R.S. § 38-431](#)).

In cases involving alleged violations of open meeting law, the Attorney General (AG) or a county attorney may commence a suit in the superior court of the county for the purposes of requiring compliance with, or the prevention of violations of open meeting law by members of the public body. Each violation currently constitutes a civil penalty not exceeding \$500 ([A.R.S. § 38-431.07](#)).

In an opinion issued in 2005, the AG concluded that email communications among a quorum of the members of a board are subject to the same restrictions that apply to all other forms of communication. Email exchanges among a quorum of the board that discuss or deliberate legal actions on matters that may reasonably come before the board constitute a meeting through technological means. Thus, email exchanges cannot be used to circumvent open meeting law ([AZ Att'y Gen. Op. No. I05-004 \(July 25, 2005\)](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Allows the AG to commence a suit against an individual of a public body who knowingly violates open meeting law.
2. Modifies civil penalties for violations of open meeting law requirements by:
  - a) removing the civil penalty for a first violation;
  - b) retaining the \$500 civil penalty for a second violation; and
  - c) increasing the civil penalty for a third or subsequent violation to not more than \$2,500.
3. Prohibits a public body from paying a civil penalty on behalf of, or reimbursing an individual against whom the civil penalty has been imposed.
4. Allows a court not to impose a civil penalty, in the event that a person who might otherwise be liable for a violation, objected to the action of the public body and the objection is noted on a public record.
5. Stipulates that a court may only impose a civil penalty if an individual member of the public body knowingly violates open meeting law.
6. Stipulates that a public officer, with intent to deprive the public of information, must have *knowingly* violated open meeting requirements in order for the court to remove that officer from public office and find them, or a person who knowingly aided, liable for all costs and attorney fees awarded to the plaintiff.
7. Expands the definition of a *meeting* to include the following:
  - a) a one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action; and
  - b) an exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter that will likely come before the public body for action.
8. Requires the written minutes or recording of all meetings of a public body to include a record of how each member voted on legal actions.
9. Makes technical and conforming changes.
10. Becomes effective on the general effective date.

Amendments Adopted by Committee of the Whole

1. Modifies civil penalties for violations of open meeting law requirements.
2. Removes the prohibition against a public body being able to indemnify or make whole any individual member of the public body subject to a civil penalty.
3. Makes clarifying changes.

FACT SHEET - Amended

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House Action

GOV            2/1/18    DPA    7-0-0-1  
3<sup>rd</sup> Read       2/21/18            55-2-3

Senate Action

GOV            3/7/18    DP    6-1-0

Prepared by Senate Research

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JO/ZD/lat