



Fifty-first Legislature - First Regular Session

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**REFERENCE TITLE: [political subdivision entities; public access](#)**

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# HB 2005

Introduced by  
Representative Ugenti

## AN ACT

**AMENDING SECTIONS 38-431, 38-431.02, 39-101, 39-103, 39-121.01, 39-123, 39-124 AND 41-1376.01, ARIZONA REVISED STATUTES; RELATING TO POLITICAL SUBDIVISION ENTITIES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 38-431, Arizona Revised Statutes, is amended to read:

**38-431. Definitions**

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.
2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.
4. "Meeting" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.
5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, **ALL POLITICAL SUBDIVISION ENTITIES AS DEFINED IN SECTION 38-711**, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities

whose boards of directors are appointed or elected by this state or A political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

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

38-431.02. Notice of meetings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. POLITICAL SUBDIVISION ENTITIES AS DEFINED IN SECTION 38-711 SHALL:

(a) CONSPICUOUSLY POST A STATEMENT ON THEIR WEBSITE STATING WHERE ALL PUBLIC NOTICES OF THEIR MEETINGS WILL BE POSTED, INCLUDING THE PHYSICAL AND ELECTRONIC LOCATIONS, AND SHALL GIVE ADDITIONAL PUBLIC NOTICE AS IS REASONABLE AND PRACTICABLE AS TO ALL MEETINGS.

(b) POST ALL PUBLIC MEETING NOTICES ON THEIR WEBSITE AND GIVE ADDITIONAL PUBLIC NOTICE AS IS REASONABLE AND PRACTICABLE AS TO ALL MEETINGS. A TECHNOLOGICAL PROBLEM OR FAILURE THAT EITHER PREVENTS THE POSTING OF PUBLIC NOTICES ON A WEBSITE OR THAT TEMPORARILY OR PERMANENTLY PREVENTS THE USE OF ALL OR PART OF THE WEBSITE DOES NOT PRECLUDE THE HOLDING OF THE MEETING FOR WHICH THE NOTICE WAS POSTED IF THE PUBLIC BODY COMPLIES WITH ALL OTHER PUBLIC NOTICE REQUIREMENTS REQUIRED BY THIS SECTION.

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

1. Members of the public body.

2. General public.

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

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

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

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

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

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

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

J. Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public

meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.

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

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

Sec. 3. Section 39-101, Arizona Revised Statutes, is amended to read:

39-101. Permanent public records; quality; storage; violation; classification

A. Permanent public records of the state, a county, city or town, ~~or other~~ A political subdivision of the state- **OR A POLITICAL SUBDIVISION ENTITY AS DEFINED IN SECTION 38-711** shall be transcribed or kept on paper or other material ~~which~~ **THAT** is of durable or permanent quality and ~~which~~ **THAT** conforms to standards established by the director of the Arizona state library, archives and public records.

B. Permanent public records transcribed or kept as provided in subsection A **OF THIS SECTION** shall be stored and maintained according to standards for the storage of permanent public records established by the director of the Arizona state library, archives and public records.

C. A ~~public officer~~ **PERSON WHO IS** charged with transcribing or keeping ~~such~~ public records **PURSUANT TO THIS SECTION AND** who violates this section is guilty of a class 2 misdemeanor.

Sec. 4. Section 39-103, Arizona Revised Statutes, is amended to read:

39-103. Size of public records; exemptions

A. All public records of this state, ~~or~~ a political subdivision of this state **OR A POLITICAL SUBDIVISION ENTITY AS DEFINED IN SECTION 38-711 THAT ARE** created on paper, regardless of weight or composition, shall conform to standard letter size of eight and one-half inches by eleven inches, within standard paper manufacturing tolerances.

B. This section does not apply to public records **THAT ARE** smaller than eight and one-half inches by eleven inches, public records **THAT ARE** otherwise required by law to be of a different size, engineering drawings, architectural drawings, maps, computer generated printout, output from test measurement and diagnostic equipment, machine generated paper tapes and public records **THAT ARE** otherwise exempt by law. Additionally, records **THAT ARE** kept exclusively on photography, film, microfiche, digital imaging or other type of reproduction or electronic media as provided in section 41-151.16, subsection A are exempt from the size restrictions of this section. On written application the director of the Arizona state library, archives and public records may approve additional exemptions from this section if based on such application the director finds that the cost of producing a particular type of public record in accordance with subsection A of this section is so great as to not be in the best interests of this state.

Sec. 5. Section 39-121.01, Arizona Revised Statutes, is amended to read:

39-121.01. Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index

A. In this article, unless the context otherwise requires:

- 1. "Officer" means any person **WHO IS** elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.
- 2. "POLITICAL SUBDIVISION ENTITY" **HAS THE SAME MEANING PRESCRIBED IN SECTION 38-711.**
- ~~2.~~ 3. "Public body" means this state, any county, city, town, school district, political subdivision or tax-supported district in this state, **ANY POLITICAL SUBDIVISION ENTITY**, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

B. All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, **THAT ARE** reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities ~~which~~ **THAT** are supported by monies from this state or any political subdivision of this state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. ~~It shall be the duty of Each such~~ **PUBLIC** body ~~to~~ **MUST** carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-151.15 and 41-151.19.

D. Subject to section 39-121.03:

- 1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if the facilities are available, except that public records for purposes listed in section 39-122 or 39-127 shall be furnished without charge.
- 2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in section 41-1001, but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.
- 3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record ~~which~~ **THAT** a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of such custodian.

E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

Sec. 6. Section 39-123, Arizona Revised Statutes, is amended to read:

39-123. Information identifying eligible persons; confidentiality; definitions

A. Nothing in this chapter requires disclosure from a personnel file by a law enforcement agency, ~~or~~ employing state or local governmental entity **OR POLITICAL SUBDIVISION ENTITY** of the home address or home telephone number of eligible persons.

B. The agency, ~~or~~ governmental entity **OR POLITICAL SUBDIVISION ENTITY** may release the information in subsection A of this section only if either:

- 1. The person consents in writing to the release.
- 2. The custodian of records of the agency, ~~or~~ governmental entity **OR POLITICAL SUBDIVISION ENTITY** determines that release of the information does not create a reasonable risk of physical injury to the person or the person's immediate family or damage to the property of the person or the person's immediate family.

C. A law enforcement agency may release a photograph of a peace officer if either:

- 1. The peace officer has been arrested or has been formally charged by complaint, information or indictment for a misdemeanor or a felony offense.
- 2. The photograph is requested by a representative of a newspaper for a specific newsworthy event unless:

(a) The peace officer is serving in an undercover capacity or is scheduled to be serving in an undercover capacity within sixty days.

(b) The release of the photograph is not in the best interest of this state after taking into consideration the privacy, confidentiality and safety of the peace officer.

(c) An order pursuant to section 28-454 is in effect.

D. This section does not prohibit the use of a peace officer's photograph that is either:

- 1. Used by a law enforcement agency to assist a person who has a complaint against an officer to identify the officer.
- 2. Obtained from a source other than the law enforcement agency.

E. This section does not apply to a certified peace officer or code enforcement officer who is no longer employed as a peace officer or code enforcement officer by a state or local government entity.

F. For the purposes of this section:

1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.

2. "Commissioner" means a commissioner of the superior court.

3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.

4. "Eligible person" means a peace officer, border patrol agent, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counterterrorism center in the department of public safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.

5. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.

6. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.

7. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.

8. "Peace officer" has the same meaning prescribed in section 13-105.

9. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

10. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

Sec. 7. Section 39-124, Arizona Revised Statutes, is amended to read:

**39-124. Releasing information identifying an eligible person; violations; classification; definitions**

A. Any person who is employed by a state or local government entity **OR A POLITICAL SUBDIVISION ENTITY** and who, in violation of section 39-123, knowingly releases the home address or home telephone number of an eligible person with the intent to hinder an investigation, cause physical injury to an eligible person or the eligible person's immediate family or cause damage to the property of an eligible person or the eligible person's immediate family is guilty of a class 6 felony.

B. Any person who is employed by a state or local government entity **OR A POLITICAL SUBDIVISION ENTITY** and who, in violation of section 39-123, knowingly releases a photograph of a peace officer with the intent to hinder an investigation, cause physical injury to a peace officer or the peace officer's immediate family or cause damage to the property of a peace officer or the peace officer's immediate family is guilty of a class 6 felony.

C. For the purposes of this section:

1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.

2. "Commissioner" means a commissioner of the superior court.

3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.

4. "Eligible person" means a peace officer, border patrol agent, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counterterrorism center in the department of public safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.

5. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.

6. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.

7. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.

8. "Peace officer" has the same meaning prescribed in section 13-105.

9. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

10. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

Sec. 8. Section 41-1376.01, Arizona Revised Statutes, is amended to read:

**41-1376.01. Additional powers and duties; definitions**

A. In addition to the powers and duties prescribed in section 41-1376, the ombudsman-citizens aide shall appoint two assistants, one of whom shall be an attorney, to help the ombudsman-citizens aide investigate complaints relating to public access laws involving an agency. The assistants shall train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws. The assistants shall prepare interpretive and educational materials and programs in cooperation with the ombudsman-citizens aide and shall distribute to elected or appointed public officials the public access laws and educational materials concerning the public access laws.

B. The annual report of the ombudsman-citizens aide shall include the following information about public access:

- 1. The number of inquiries that are received from the public, the media and government agencies.
- 2. The number of inquiries that are received about state agencies, county agencies, city or town agencies, school districts and other local jurisdictions.
- 3. The number of requests that are received concerning public records and public meetings.
- 4. The number of investigations that are conducted and the results of the investigations.

C. For investigations made pursuant to this section, the ombudsman-citizens aide may:

- 1. Make inquiries and obtain information considered necessary subject to the restrictions in section 41-1377.
- 2. Enter without notice to inspect agency premises with agency staff on the premises.
- 3. Hold hearings.
- 4. Notwithstanding any other law, have access to all agency records, including confidential records, except:

