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Summary of the Arizona Open Meeting Law Requirements[1]
A.R.S. §§ 38-431 to -431.09.

Introduction

The Arizona Legislature's intent in creating the Open Meeting Law is to maximize public access to governmental processes. As an advisory committee appointed by a "public body"[2], the Climate Change Advisory Group (CCAG) is subject to all Open Meeting Law requirements.

Actions and Activities Subject to Open Meeting Law

All discussions, deliberations, considerations or consultations among CCAG members regarding matters that may foreseeably require final action or a final decision by the CCAG constitute "legal action"[3] and, therefore, must be conducted in a "meeting"[4] either public or executive, as specified in the Open Meeting Law.

The Arizona Legislature modified the definition of meeting in 2000 to prohibit a quorum of a public body from intentionally or unintentionally communicating confidentially through any means, whether facsimile, telephone, e-mail, text message, etc. Any discussion or deliberation between less than a quorum of the members of a governing body, or other devices, when used to circumvent the Open Meeting Law, violates that law.[5]

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[1] Prepared by the ADEQ Administrative Counsel's office.
[2] "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees of, or appointed by, such public body. A.R.S. § 38-431(6)
[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 or appointment and the laws of this state. *Id.* -431(3).
[4] "Meeting" means a 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. *Id.* -431(4).
[5] Ariz. Att'y Gen. Ops. 75-8, 179-4. *See also* A.R.S. §§ 38-431.01(A), -431(3).

With few exceptions, a meeting may not be held without giving the required public notice posting at least twenty-four hours before the meeting. A.R.S. § 38-431.02(C). In practice it is best to provide as much public notice as possible – both in time and distribution.

Agendas

In general, in addition to time, place and date of the meeting, the CCAG must provide an agenda of the matters to be discussed, considered or decided at the meeting. *Id*. -431.02(G). Though the degree of specificity varies upon circumstances, the requirement for an agenda does not permit the use of generic agenda items such as "new business;" rather, it requires specificity.

Changes to the agenda can be made by modifying the list of matters or adding new ones, however, a new agenda must be prepared and distributed in the same manner as the original agenda, at least twenty-four hours in advance of the meeting.[6]

Even in social events where a quorum of the CCAG may be present, a "courtesy agenda" should be posted publicly to announce the social event and indicate that no business of the public body will be discussed and no action will be taken.

Executive Session

It is unlikely that the CCAG will need to meet in executive session. There are only seven topics permitted by law to be discussed in executive sessions: 1) Personnel matters; 2) Confidential records; 3) Legal advice; 4) Litigation, contract or settlement discussions; 5) Employee salary discussion; 6) International, Interstate, and Tribal Negotiations; and 7) Purchase, sale or lease of real property. The CCAG will bear the burden of proving actions fall within an executive session exception of the Open Meeting Law.

Before the CCAG may go into executive session a majority of the members constituting the quorum must vote in a public meeting to hold the executive session. A.R.S. § 38-431.03(A). Executive session requirements are that all public persons must leave and remove all materials such as briefcases and backpacks to ensure that no recording devices have been left in the room. Finally, the chairman should remind all present that the business conducted in executive session is confidential pursuant to A.R.S. § 38-431.03(C).

The agenda for an executive session must contain a "general description of the matters to be considered." *Id*. -431.02(I). As with public meetings, the agenda description must amount to more than simply a recital of statutory provisions authorizing the executive session, but should not contain any 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." *Id*.

[6] Ariz. Att'y Gen. Op. 179-45

If it is likely that the CCAG will find it necessary to discuss any particular agenda item in executive session with the CCAG's assigned attorney[7], the agenda should plainly say so.

Discussing and Deciding Matters Not Listed on the Agenda: "Other matters" and "Calls to the Public"

If a matter not specifically listed on the agenda is brought up during the meeting, with few exceptions, the best practice is to defer discussion and decision on the matter until a later meeting so the item can be specifically listed on the agenda. The interested party, the public and the CCAG should be informed both that the item will be entered for discussion on the next agenda, and/or CCAG staff engaged to review the matter. CCAG members may, however, respond to criticism made by those that have addressed the public body, ask staff to review a matter, or ask that the matter be put on a future agenda.

CCAG may make an open call to the public to allow individuals to address the CCAG on any issue within the jurisdiction of the public body. A.R.S. § 38-43101(G). Members of the CCAG may not discuss or take action on matter raised during a call to the public that are not specifically identified on the agenda. *Id.*

Public Access to Meetings

The public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings. A.R.S. § 38-431.01(A). However, the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the CCAG.[8]

CCAG members should always avoid the appearance of impropriety by avoiding whispering to other members, passing notes or letting members speak before the meeting while covering the microphone.

Telephone Conferences

It is proposed that the Technical Working Groups of the CCAG meet primarily by teleconference due to the disparate locations of CCAG members and staff consultants. To avoid violations of the Open Meeting Law, the CCAG must comply with the following guidelines:

1. The notice and the agenda should state that one or more members of the CCAG will participate telephonically.
2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone communications.
3. All CCAG members participating by teleconference must identify themselves.

[7] CCAG's assigned attorney is a lawyer for the PUBLIC BODY, and not personal counsel.
[8] Ariz. Att'y Gen. Op. 78-1.

4. No CCAG member shall communicate through other means that are not equally available to the public, whether by signal, e-mail, text message, or facsimile.