



Open Meeting Law Changes Are Coming!

Last month, Governor Ducey signed legislation ([H.B. 2065](#)) that makes several changes to the Open Meeting Law. The new legislation is not yet effective—it will be effective 90 days after the legislature adjourns its current session—but you should start planning for the changes.

Email Messages

The legislation changes the definition of a “meeting” under the Open Meeting Law to include certain email messages that are sent to a quorum of a public body. These changes mirror the Attorney General’s 2005 guidance on email messages and the Open Meeting Law. As a reminder, email messages may violate the Open Meeting Law in two different scenarios:

- Exchanging emails: A quorum of members of the public body may not exchange email messages that involve a “discussion, deliberation or the taking of legal action” concerning a matter that may foreseeably come before the public body for action. Serial email communications can cause problems if they are eventually sent to a quorum, even if the original email was not sent to a quorum.
- Single email: A member of a public body may not propose legal action even if there is no exchange of messages. In other words, even a one-way email may violate the Open Meeting Law if it is sent to a quorum.

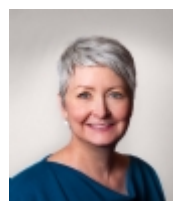
Meeting Minutes

After the effective date of the legislation, meetings minutes of public bodies will need to include “a record of how each member voted.” Thus, “motion passed unanimously” or similar statements in the governing body’s minutes will no longer be enough. Instead, the minutes will need to list each member in attendance and their vote. For example, “Lynne Adams, for; David Garner, against; Nathan Arrowsmith, for.” For unanimous votes, you could record “motion passed unanimously (Adams, Garner, Arrowsmith voting in favor).” Of course, a public body can make this change now—there is no reason to wait for the effective date to start making this a habit.

Enforcement

Education, Government and Regulatory Law

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The legislation will allow the Attorney General to file suit for a violation of the Open Meeting Law not just against a public body as a whole, but against individual members of the public body.

Penalties

The court may impose a civil penalty against each member of a public body or other individual who it finds *knowingly* violated the Open Meeting Law. The potential penalties will no longer be limited to “no more than \$500” for each violation. Instead, the new legislation imposes incremental penalties. For their first violation, members receive a “pass”—there will no longer be any authority to impose a fine for the first violation. For a second violation, a court may impose up to a \$500 fine, and up to a \$2,500 fine for the third or additional violations. If a member objects to an action that violates the Open Meeting Law and the objection is noted in the meeting minutes or another “public record,” the court can forego imposing a fine on that member. Finally, if a civil penalty is imposed against an individual member, the public body may not pay the penalty or reimburse the member for any penalty—in other words, it is a purely personal fine.

If you have any questions about the changes in the law or how to implement them, please let us know.



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