

**Southern Arizona
Potential Sports and Tourism Authority Legislation**

CONFIDENTIAL DISCUSSION DRAFT

With the impending departure of the Chicago White Sox from Tucson to Glendale for spring training, the future of all spring training baseball in Southern Arizona has been put into jeopardy.

Recent studies, conducted by the Cactus League Baseball Association, put the economic impact in Pima County, of spring training in excess of \$31 million annually. Perhaps more importantly, spring training has been a staple in the community since 1947 and the loss would have a more far reaching impact to the destination. The business community, jurisdictions and impacted industries have come together to attempt to remedy the problem.

Both the Colorado Rockies and the Arizona Diamondbacks insist that there must be a minimum of three teams in the Tucson area to make training there viable.

Further, Hi Corbett field, the current venue for the Rockies is obsolete and would need to be virtually rebuilt, in order to serve the training and basic fan amenity needs of any Major League team.

Tucson Electric Park, the current site for White Sox and Diamondbacks Spring training, is already 10 years old and needs updating. The long-term viability of the White Sox training areas at TEP has been called into question, due to the location and orientation of practice fields - which creates climatic, noise and access issues.

In order to retain the remaining teams and attract new teams, the equivalent of a new facility, combined with the renovation of existing facilities will be required.

Youth and amateur sports have long been the source of substantial tourism revenue in the area. Numerous nationally recognized events are held annually. The social benefit of youth and amateur sports are widely recognized. Perpetuating these activities is a desirable regional goal.

On April 1st of this year, the Pima County Board of Supervisors voted 5-0 to create an interim Sports and Tourism Authority to begin the work of furthering youth and amateur sports and to begin a program aimed at saving and expanding spring training baseball. A permanent Authority must be created through legislative action to continue these activities and to allow for the renewable funding necessary to accomplish these goals.

The very effective template used by Maricopa County in establishing the Arizona Sports and Tourism Authority (AZSTA) seems to be a good starting point for the Tucson region. Notwithstanding, some of the key provisions should be localized to reflect the specific

conditions in Southern Arizona. It is recognized that any powers or tax provisions must be endorsed by the electorate.

Facilities

It should be the responsibility of the Sports and Tourism Authority to assess all existing facilities, their relative strengths and weaknesses and the cost to bring these facilities up to a reasonable standard.

At the same time, sites throughout the region, for potential new construction, need to be evaluated.

It is understood that no construction or major rehabilitation should begin without long-term commitments from the baseball teams.

In evaluating all options, weight should be given to potential matching funds or in-kind contributions from the various jurisdictions.

Potential ownership of the facilities has not been discussed at length; however reserving the right of the Authority to own and operate is desirable.

There is sentiment that spring training activities remain within the Tucson City limits. As mentioned earlier, most likely, there will no spring training unless three teams (and ideally four teams) are accommodated. It is not anticipated that funds raised through a regional Sports and Tourism Authority will be sufficient to fund more than one large scale construction/renovation project. It seems apparent therefore, that regardless of whether a third facility is constructed in another part of Pima County, since facilities for three teams currently exist within the city limits, at least one, likely two and potentially three team sites would, by necessity, be located within in Tucson proper.

Tax base

As related to the necessary renewable funding source, clearly, the less impact on the residents of Southern Arizona, the better. With AZSTA in Maricopa County, almost the entire burden has been absorbed using tourist related taxes.

In Pima County, this is not practical for two reasons. First, the depth of the car rental and hotel sources is insufficient to raise enough underlying annual revenue to accomplish the necessary work. Further, these sources have been tapped for other uses in Southern Arizona and as such, a material increase in these tax rates is not a viable alternative.

After extensive discussion with affected industries, a solution where a relatively small tax increase, spread equally among the various sources, has achieved widespread support.

Confidential Discussion draft

Under consideration is a .XX% annual tax on hotels, car rentals, restaurants and amusement revenues. An alternative would be a seasonal tax (skewed more toward tourists) of .XX% for a six month period between December and May. The term would be 30 years, with the thought that in later years, funds would be available for rehabilitation and refurbishment of facilities

The total current revenue stream from this program is estimated at between \$9 and \$10 million annually. We believe that this amount, combined with other potential revenue sources is sufficient for the intended purposes.

Board Composition

Paralleling the AZSTA, appointments from the Governors office are anticipated to come from segments of the business community most impacted.

- Tourism marketing
- Hotel industry
- Car rental industry
- Restaurant industry
- Professional sports
- (Potentially a member representing the tribes)

Recognizing the regional nature of the Authority, one appointment from each jurisdiction in the county (including the county) has been recommended.

To complete the board, either an appointment from each legislative chamber could be included, or a further business community representative and amateur sports representative (or university representative) could be named by local organizations.

Terms and reappointment should probably look like the AZTA template.

We did include a removal provision, which has had widespread appeal among all who have seen it.

Amateur aspects

Our suggested bill includes a requirement that 25% of all revenue be spent to further youth and amateur sports.

We do not necessarily see this as a facilities driven activity (replacing the responsibilities of the various jurisdictions). Rather, whether facility specific or otherwise, our intent is to create opportunities to both further local youth and amateur sports activities while

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simultaneously creating a competitive environment that will attract tourism from the business of amateur sports.

It is probably important for the Authority to have the right to participate in the sponsorship of events.

Election date

Historically, November is a problematic time to compete for the attention of voters regarding issues like these.

Our intent would be to hold a special election, in March. Costs could be bourn by private sources (or the new STA if successful).

Both the Diamondbacks and Rockies have promised their visible support, most compelling in the middle of the spring training season.

OPEN MEETING LAW

A Reference Guide to A.R.S. § 38-431 through 38-431.09

Prepared by the Pima County Attorney's Office Civil Division
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Presented to the
PIMA COUNTY SPORTS AND TOURISM AUTHORITY
on April 23, 2008

The Open Meeting Law is specifically intended to *maximize the public access to the governmental process*. Therefore, official proceedings and deliberations by any public body are to be conducted openly. Uncertainty in whether or not the Open Meeting Law should apply should always be resolved in favor of openness.

Public Bodies covered by the Open Meeting Law:

- 1) Boards, commissions, and other multi-member governing bodies;
- 2) Corporations and other instrumentalities whose boards are appointed or elected by the State or political subdivision;
- 3) Quasi-judicial bodies;
- 4) Advisory committees;
- 5) Standing and special committees; and,
- 6) Subcommittees of any of the above.

The law applies only to multi-member bodies. It does not apply to: the deliberations or meetings conducted by the single head of an agency; the state legislature and its committees or subcommittees; a private non-profit hospital association with publicly-elected board members; advisory groups established by the single head of an agency (unless created pursuant to law or official act under legal authority); the courts; and, the Commissions on Appellate and Trial Court Appointments and the Commission on Judicial Qualifications.

Actions and Activities covered by the Open Meeting Law:

- 1) Any gathering of a quorum, *in person or through technological devices*, at which they discuss, propose or take *legal action*, including deliberations on the topic (or action); and,
- 2) Contested case proceedings or quasi-judicial or adjudicatory proceedings by the public body.

Legal action relates to *any matters which might foreseeably require final action or a decision by the quorum*. Therefore, meeting of a quorum must be open to the public whenever members:

Executive session allows for the private discussion of matters in categories specified above *No final action, no debate over what action to take, and no straw poll may take place in executive session*. If the proposed discussion does not plainly fall within one of the above mentioned categories, it should take place only in a public meeting. A quorum must vote to hold an executive session, and such vote must be public. All public notice provisions apply.

Personnel matters are confined to the discussion or consideration of employment, assignment, appointment, promotion, demotion, salary, discipline, resignation, or dismissal of a *specific* public officer, appointee, or employee. The affected individual must receive a minimum of 24 hour advanced notice of the executive session (no emergency exception) with sufficient content. The individual may request that the discussion be held in public and such request must be honored. The individual may be permitted to attend the executive session. It is unclear whether there is a right to attend.

Confidential Records are those which are exempt from public inspection either expressly or by implication.

Legal advice may be discussed with the attorney for the public body. The attorney must represent the public body either as a full time employee, as a contract hire, or as provided by an insurance company. The discussions are limited to advice on the legal ramifications of facts and situations. *Debate and discussion on what actions to take based on the advice must be conducted in open public session!* The mere presence of an attorney in the room does not justify an executive session.

Litigation, either pending or contemplated, may be discussed with the attorney for the public body. The discussion or consultation is to consider the public body's position and instruct the attorney on how to proceed.

Contract under negotiation may be discussed with the attorney for the public body. The discussion or consultation is to consider the public body's position and instruct the attorney on how to proceed.

Employee salary discussions and consultations may be held to consider the position of the public body on negotiating salaries and/or benefits and instruct representatives on how to deal with employee organizations. Meetings with the employees' representatives are to be held in public, as are any negotiations conducted by the public body.

International and interstate negotiations permit a city or town to conduct an executive session with members of a tribal council, or its representatives, of a reservation within or adjacent to the city or town.

Purchase or lease of real property negotiations may be discussed in executive session. Instructions may be given to the representative (for example, authorizing negotiations to a certain dollar amount). Any meeting with the seller, or lessor, or representative of the seller or lessor are to be held in public and the contract must be approved in a public meeting.

- 3) Information on how the public may obtain a written description of the action to be ratified.

Notice must be given at least 24 hours in advance of the meeting unless one of three situations exists:

- 1) An **actual emergency exists** when, due to unforeseen circumstances, immediate action is necessary to avoid the serious consequences which would result from delaying 24 hours. (This does not apply to notice to an employee to be discussed in executive session);
- 2) The meeting is for the **ratification** of a prior act taken in violation of the Open Meeting Law. In such an instance, **72 hours** notice is required; and,
- 3) A properly noticed meeting is **recessed and resumed within less than 24 hours**. Before recessing, notice must be given publicly on the time and place for the resumption. (If an executive session is recessed and resumed within less than 24 hours, the public body should reconvene to provide public notice of the resumption place and time.)

Agendas must inform the public of matters to be discussed:

The agenda for any meeting of the public body is the road map for the conduct of the meeting. Carefully crafting and following the agenda provides protection to the members of the public body and promotes public confidence.

The agenda must be **available 24 hours before** the meeting, unless one of the exceptions noted above applies. The agenda **must be sufficiently detailed** to advise the public of the specific matters to be discussed, considered, or decided at the meeting. Use of **generic or broad terms**, such as: “staff reports”, “personnel”, “new business”, “old business”, or “other matters”, is **not permitted**. The degree of specificity depends upon the circumstances. **When in doubt, resolve in favor of more disclosure**. If there are any changes in an agenda, a new agenda must be prepared and distributed at least 24 hours in advance of the meeting.

There is one general term which may now be placed on the agenda. It is the “summary of current events.” This summary may only be presented by **the chief administrator, presiding officer, or member of a public body** if:

- 1) The summary is listed on the agenda; and,
- 2) No discussions, deliberations, proposals or legal actions may take place regarding the current event presented.

The agenda may provide for a “**call to the public**” (but not a “call to members”). The purpose of the “call to the public” is to allow citizens to address the public body. As there is no way to

- must include the name of the person making each motion. It is wise to also include how the body voted and the numerical breakdown of the vote;
- 5) The names of each member of the public addressing the public body and the specific legal action to which the comments are related;
 - 6) Sufficient information to allow the public to investigate the background or specific facts involved in a decision, when the subject matter is not adequately disclosed in public session (i.e. consent agenda items);
 - 7) A full description of the nature of the emergency that precipitated an emergency discussion of items not on the agenda; and,
 - 8) A copy of the required disclosure statement, when a prior act is ratified.

Minutes for an executive session (which are confidential) must contain:

- 1) The date, time, and place of the meeting;
- 2) The members present or absent;
- 3) A general description of the matters considered;
- 4) An accurate description of instructions given under A.R.S. § 431.03(4), (5) and (6);
- 5) A statement of reasons for emergency consideration, when appropriate; and,
- 6) Other information deemed appropriate.

The public must be allowed to attend and listen to deliberations:

Under the Open Meeting Law the public has a right to attend and listen to the meetings of the public body. But, there is no public right to participate in the discussion or decision-making activities of the public body.

Because the right to attend and listen is paramount, nothing should be done which in any way obstructs or inhibits public attendance. Reasonable efforts must be made to accommodate persons with disabilities. Access requirements are not met when things occur such as:

- 1) Requiring the public to sign an attendance sheet (except a member of the public who wishes to speak at the meeting may be required to register, as it complies with minute-taking requirements);
- 2) Using remote locations or ones where public access is prohibited;
- 3) Using small rooms; or,
- 4) Conducting the meeting at unreasonable times.

The public must be allowed to record the public meeting (either audio recording or video recording is allowed), as long as there is no active interference in the conduct of the meeting.

E-mail communications can be a meeting:

When e-mail communications are made between a quorum of the members those e-mails constitute a meeting and are subject to all of the provisions of the Open Meeting Law. When discussions via e-mail contain all of the elements to qualify as a meeting (gathering of quorum, in person or via technological device, where discussions, deliberations, proposals or legal actions take place) those e-mail communications constitute a public meeting.

E-mails between a quorum of members that concern matters that have come before the public body or might foreseeably come before the public body, including the exchange of facts regarding these matters, could be construed as a legal action which must occur in public. (It is irrelevant if the materials shared in the e-mails (such as a newspaper article) are part of the public domain.)

Because the original sender of an e-mail cannot control its dissemination once it has been sent the risks of using e-mail are great. E-mails can be copied and forwarded and exchanged from one member to another, then forwarded or printed and shown to other members and a communication between a quorum of members has suddenly occurred. It is better to avoid using e-mail to discuss the business of the public body.

Splintering the Quorum or Polling:

As mentioned previously, it may be possible to conduct discussions and/or deliberations between less than a quorum of members, but it is a violation of the Open Meeting Law to do so when the meeting of less than a quorum is used to circumvent the purposes of the Open Meeting Law.

“Splintering the quorum” or “polling” is not allowed. These practices occur when individual members have separate or serial discussions with a majority of the members and tell the information received from each member to the other members or when a non-member is used as a spokesperson in the same manner. It is advisable to always avoid even the appearance of impropriety in this regard.

Social gatherings can be a meeting:

When a quorum of members of the public body are at the same social gathering, they must be very careful not to discuss anything that is even remotely (or tangentially) related to the business of the public body.

A FAX transmission can be a meeting:

Facsimile transmissions pose the same threats as e-mail.

ARIZONA OPEN MEETING LAW – March 2008

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 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 or subcommittees of, or appointed by, the public body.
 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.
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- (a) A statement describing legal action, if any.
- (b) A recording of the meeting.

F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.

H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

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 the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.
2. The public bodies of the counties, school districts and other special districts 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 such additional public notice as is reasonable and practicable as to all meetings.
3. The public bodies of the cities and towns shall file a statement with the city clerk or mayor's office stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.

J. Notwithstanding subsections H and I, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, where the matter was not listed on the agenda provided that a statement setting forth the reasons necessitating such 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 prior to the executive session.

K. Notwithstanding subsection H, 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, provided that:

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.

38-431.03. Executive sessions

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

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
 2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
 3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.
 4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.
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38-431.06. Investigations; written investigative demands

A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

B. In addition to other powers conferred by this article, in order to carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.
2. Administer an oath or affirmation to any person for testimony.
3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
4. Examine by means of inspecting, studying or copying any account, book, computer, document, minutes, paper, recording or record.
5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

C. The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.

minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

38-431.08. Exceptions; limitation

A. This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to section 41-619.55.

B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.
3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.
4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in section 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

38-431.09. Declaration of public policy

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe any provision of this article in favor of open and public meetings.