



**PIMA COUNTY ELECTION INTEGRITY COMMISSION
MEETING MINUTES FOR APRIL 17, 2015**
<http://www.pima.gov/commission/ElectionIntegrity.shtml>

The Pima County Election Integrity Commission met in regular session on April 17, 2015 at 9:00 a.m. in the Herbert K. Abrams Building, 1st Floor Conference Room #1104 at 3950 S. Country Club Road, Tucson, Arizona.

ITEM 1. ROLL CALL

Present: Karen Schutte, Arnie Urken, Chris Cole, Matt Smith, Brad Nelson, Beth Borozan, Bill Beard, Barbara Tellman, Brian Bickel, Tom Ryan.

Absent: Jeff Rogers.

Others in Attendance: Ellen Wheeler, County Administrator's Office.

ITEM 2. PLEDGE OF ALLEGIANCE

The American flag was saluted with the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTE SUMMARY – March 20, 2015

It was moved by Barbara Tellman, seconded by Bill Beard and carried unanimously to approve the Minutes of the March 20, 2015 meeting.

ITEM 4. TRACKING LEGISLATION – Bill Beard

Bill Beard referenced his listing of Election Related Bills at the Legislature [a copy of this listing is incorporated into these minutes as Attachment 1]. There are eleven election-related bills signed by the Governor, and one vetoed. Barbara Tellman asked if there were any fixes on funding of the Presidential Primary Election; Bill responded that there weren't. Brad Nelson mentioned that the counties have been asked to put their costs together for the PPE and send them to the Secretary of State; President Biggs will try to find the necessary appropriations.

Tom Ryan asked Brad if any of the eleven bills signed by the Governor will affect the Elections Department. Brad responded that HB 2649 attempts to define who is required to file as a political committee, and they are waiting to see what the interpretation of that law will be and will seek input from the County Attorney's office.

ITEM 5. COST OF ELECTIONS

Tom asked Karen Schutte to give an update on the project she has undertaken on election cost comparison spreadsheets. Karen has begun the comparison of election costs for 2012 and 2014. She needs to talk to Chris Roads, because his 2014 costs are not broken down in equivalent line items. Once she gets more detail to enter, she will have Tom Ryan review the comparisons. She is doing

costs per election, comparing Primary Election to Primary Election, etc. What Tom wants to do with these comparisons is see if there is anything that stands out and then try and explain the changes.

Brian Bickel asked why the County is prohibited by law from conducting an all ballot-by-mail election. Brad Nelson responded that there certainly has been reluctance at the state legislature to make Primary and General Elections all mail. We are moving in the direction of having "lesser" elections be all mail. During this legislative session, there were bills to allow counties the option of having an election such as a bond election where there are no partisan candidates, as all mail. That died for whatever reason; Bill Beard noted that they did not get assigned to committee. Brad still feels that is the direction that nonpartisan elections may be moving; some of the arguments in favor are that it increases turnout and lowers costs. Brad brought up the proposition in 2008 that would have allowed all-mail balloting and that was defeated.

Chris Cole asked Karen if the comparison spreadsheet will break down the cost per ballot. She responded that she can try and do that. Brad noted that Karen can look at the Elections Department website to get the numbers of ballots cast for each election. If you take the total cost of an election, and the number of ballots cast, the average cost per ballot can be determined.

ITEM 6. OPEN MEETING LAW BRIEFING – Karen Friar, Pima County Attorney's Office

Karen Friar will arrive at 10:00, so this item will be moved till her arrival.

ITEM 7. AUDITING WITH BALLOT IMAGES – Tom Ryan

Tom Ryan referred to the memo that he wrote to the Pima County Board of Supervisors [a copy of this memo is incorporated into these minutes as Attachment 2].

MOTION

Chris Cole made a motion that the EIC approve the memo. Barbara Tellman seconded the motion. Tom opened the floor for discussion. Brad Nelson said it is a great letter, and asked once it is approved if it will go to the Board of Supervisors, and then perhaps to the Secretary of State? Tom responded it will stay in the County.

Arnie Urken said it is a good memo. Systems are changing and if we don't develop our own methods for managing changes, the vendors will decide for us. That's a point that can be passed along to the Supervisors so that they will be more interested in doing the pilot. Arnie is concerned that someone would look at the memo and try and find reasons not to do the study. We know that vendors are already doing things that change the standards on how things are done. This might be a benchmark in what we would require from vendors in the future, instead of the vendors deciding for us. Bill Beard takes it one step further in noting how the technology has expanded over the last twenty to thirty years, but the election laws have lagged in keeping up with the technology. The new systems have capabilities that Arizona law never contemplated.

Tom would like to keep the memo as focused as possible. He also noted that a pilot study such as this could make us think about the system's capabilities more concretely. Bill Beard suggested that those on the Commission who speak with their appointing Supervisor could give this as the background reason for doing the study. Chris Cole said that if the memo is placed on a Board of Supervisors' agenda, as many Commission members as can should attend and make that point during the Call to the Public.

Brad asked Tom if this was a topic that will be discussed while Eric Spencer is here. Tom responded that it is, and then announced to the rest of the Commission that State Elections Director Eric Spencer will attend the May EIC meeting.

Brian Bickel asked if the manual for the new system was available electronically, so that it can be reviewed in advance of further discussion on the system's capability. Tom responded that he has the section on the reporting capability and will share that with the Commission.

Bill Beard asked for an update on the training of the new equipment. Brad responded that the training is scheduled for early August; the November ballot text will be finalized by then, and Elections Department staff training will actually be building the November ballot.

VOTE

Tom called the vote; the motion was carried unanimously to approve the memo to the Board of Supervisors recommending the pilot study on the use of ballot images for the purpose of enhancing the audit of early ballots.

Tom asked Sara Balentine to send the memo out to the Supervisors on Monday. He also requested that, once it has gone out, those who have been appointed by Supervisors or the County Administrator please contact them to discuss the memo.

ITEM 8. CHANGES TO EIC BYLAWS – Chris Cole

The question Arnie Urken raised was on abstentions from voting. He thinks the issue of voting should be looked at again, and he would be happy to help with that. [A copy of the most current draft of the EIC Bylaws is incorporated into these minutes as Attachment 3.] Bill Beard suggested that Arnie and Chris Cole work together on making revisions on this point. And since Brian Bickel created the mark-up version of the Bylaws, he will work with them.

ITEM 9. FUTURE AGENDA ITEMS

Barbara Tellman would like to have a status report on the construction project in the Elections Department tabulating room, and installation of the new equipment.

Barbara would also like a discussion of upcoming elections.

Chris Cole would like to discuss the security of the ES&S system.

If Secretary Reagan comes to the EIC meeting in June, Bill Beard would like to discuss the Elections Procedures Manual revisions.

Brian Bickel would like to discuss "Conflict of Interest" related to the Bylaws.

For State Elections Director Eric Spencer's visit to the Commission in May:

- State certification of election systems.
- Status of the Elections Procedures Manual and public participation.
- Funding for the Presidential Preference Election in 2016.
- Uniformity in election results reporting among counties and data systems.
- Auditing with ballot images.

ITEM 10. NEXT MEETING DATE

The next meeting will be Friday, May 15, 2015. For the June meeting, the first preference is June 26th, and the second preference is June 12th.

ITEM 6. OPEN MEETING LAW BRIEFING – Karen Friar, Pima County Attorney’s Office

Karen Friar gave a briefing on Arizona’s Open Meeting Law using A Reference Guide to A.R.S. § 38-431 through 38-431.09 for 2011-2012 [a copy of this reference guide is incorporated into these minutes as Attachment 4].

Karen was asked about the issue of abstention from voting by a Commission member, as the subject came up with respect to the EIC Bylaws. Karen told the Commission that members of a public body have a duty to vote; abstentions should only be used in very limited circumstances. The only time an abstention should be used is if there is a conflict of interest.

Another issue that was raised was the issue of “emergency meetings.” The term “emergency” refers to health and safety, and something has to be done in less than 24 hours or life or limb will be lost. “Special meetings” can be called using the same guidelines for noticing as a regular meeting.

There was a discussion on the circulation of information to Commission members. If the information—which can also be in the form of a news article of interest—has the potential for influencing a discussion or action brought by the public body in a future meeting, it needs to be provided in the members’ packets, and made available to the public for review prior to the meeting.

Karen handed out a guideline on use of E-mail communications [a copy of this guideline is incorporated into these minutes as Attachment 5].

ITEM 11. CALL TO PUBLIC

No comments from the audience.

ITEM 12. ADJOURNMENT

It was moved by Brian Bickel and seconded by Barbara Tellman and unanimously carried to adjourn the meeting. The meeting adjourned at 11:45 a.m.

Election Related Bills at the Legislature

April 2015

***Details on specific bills can be found at <http://www.azleg.gov/Bills.asp>. Follow the link to the appropriate numbered bill for ALL information and status of any bill you are interested in researching.

Bill	Description	Sponsor	Status
HB 2002	Removal of Political Signs	Allen J	2 nd Read
HB 2015	PPE – Same Day as Iowa Caucus	Lovas	2 nd Read
HB 2048	Establish a Primary in a Recall	Townsend	2 nd Read
HB 2067	Ind. Expenditure Com – Aggregate Reporting	Mesnard	Senate 2nd Read
HB 2071	Nominating – Candidate Address – PRIVATE	Townsend	2 nd Read
HB 2072	Ballot Measures – Prop 105 – Ballot give voters Notice that $\frac{3}{4}$ leg can overturn	Ugenti	2 nd Read
HB 2078	Board of Supes to 7 members over 1 million	Petersen	2 nd Read
HB 2079	Add Ballot language – “Property Tax Measure”	Petersen	Senate 3rd Read
HB 2080	School District Board Vacancy	Petersen	2 nd Read
HB 2081	Clean Elections – Prohibit Cash Contributions	Petersen	2 nd Read
HB 2093	Presidential Elector Change – Add Candidate	Coleman	2 nd Read
HB 2109	Bond Vote Language Change	Fann	GOV SIGNED
HB 2119	Provisional Ballot – Partial Count Allowed	Friese	2 nd Read
HB 2133	Counties Can Order All Mail In Balloting	Shope	2 nd Read
HB 2138	May Primary Date	Shope	3rd Read
HB 2154	Irr/H2O District Elections – Technical Corrections	Gray	1 ST Read
HB 2183	Ballot Measures – Prop 105 – Ballot give voters Notice that $\frac{3}{4}$ leg can overturn	Boyer	2 nd Read
HB 2187	JTED – Nominating Petition Signatures	Shope	2 nd Read
HB 2265	Add Lt Governor Office	Mesnard	Senate 2nd Read
HB 2268	Ranked Choice Voting	Mendez	1 st Read
HB 2367	Precinct Committeemen Nominating Signatures	Thorpe	2 nd Read
HB 2391	Change Early Ballot Mailing Dates	Mesnard	2 nd Read

ATTACHMENT 1

Bill	Description	Sponsor	Status
HB 2406	Fire District Override Election Changes	Stevens	2 nd Read
HB 2407	Recall/Referendum Changes	Stevens	GOV SIGNED
HB 2409	Change Early Ballot Mailing Dates	Stevens	2 nd Read
HB 2414	Community College Tuition Financing Districts	Stevens	GOV SIGNED
HB 2427	Early Ballot Daily Reporting Applies Statewide	Barton	Senate 2nd Read
HB2428	Candidate Petitions – Circulating/Filing	Barton	2 nd Read
HB 2434	Automatic Voter Registration with Dr. License	Sherwood	1 st Read
HB 2437	Early Voting Location – Extended Hours	Sherwood	2 nd Read
HB 2441	Special Tax District Boundary Changes	Livingston	Senate 1st Read
HB 2497	June Primary Date	Carter	1 st Read
HB 2529	Creation of Officeholder Accounts	Thorpe	Senate COW
HB 2531	Special District Elections – Technical Corrections	Livingston	1 st Read
HB 2533	Campaign Finance – Public Svc Corp	Clark	2 nd Read
HB 2534	Ballot Defects – Notification/Cure	Clark	2 nd Read
HB 2536	Ballot Contents Disclosure – Prohibition	Boyer	Senate 2nd Read
HB 2543	Municipal Elections – Calculate Majority Vote	Ugenti	2 nd Read
HB 2547	Campaign Finance – Corporations Disclosure	Wheeler	2 nd Read
HB 2549	Independent Expenditures – Corp Audits	Wheeler	2 nd Read
HB 2551	Allow State/County Employees to be PC's	Weninger	GOV SIGNED
HB 2589	Campaign Finance – Electronic Filing	Stevens	GOV SIGNED
HB 2595	Campaign Finance – Late Filing	Mesnard	GOV SIGNED
HB 2608	Elections – Signatures of Active Registered Voters	Mesnard	GOV SIGNED
HB 2613	Political Activity with Public Resources Prohibited	Petersen	GOV SIGNED
HB 2633	Lobbyist Disclosure	Meyer	2 nd Read
HB 2644	Political Signs	Carter	2 nd Read
HB 2649	Campaign Finance – Political Committee Defined	Ugenti	GOV SIGNED

ATTACHMENT 1

Bill	Description	Sponsor	Status
HB 2664	Provide for a Caucus to Nominate	Kern	2 nd Read
HB 2667	Campaign Finance Violations	Sherwood	1 st Read
HCR 2001	Constitutional Amendment - 60% Requirement	Lovas	2 nd Read
HCR 2004	Clean Elections Repeal – Education Funding	Petersen	2 nd Read
HCR 2005	Redistricting Commission – 2 Independent Members	Petersen	2 nd Read
HCR 2012	Constitutional Amendment Legislature – 60 House	Shope	1 st Read
HCR 2018	Voting Age to 16	Mendez	1 st Read
HCR 2024	Lt. Governor – Run as a ticket	Mesnard	Senate 2nd Read
HCR 2027	Ballot Measures – Super Majority Referendum	Thorpe	2 nd Read
HCR 2030	Ballot Measures – Spending Increases	Finchem	2 nd Read
HCR 2031	Citizens United Repeal	McCune Davis	1 st Read
HCR 2032	County Supes – Referendum 2 Term Limit	Finchem	1 st Read
HCR 2036	Article 5 Convention – Elections	Mendez	1 st Read
SB 1024	National Popular Vote	Ableser	2 nd Read
SB 1025	Voting Age – 16	Ableser	2 nd Read
SB 1038	Elections – Technical Corrections	Ward	2 nd Read
SB 1042	Political Signs	Pierce	2 nd Read
SB 1056	Petitions – Signature Invalid if Address doesn't match	Lesko	Caucus
SB 1083	Mail In Ballots – Technical Corrections	Barton	2 nd Read
SB 1101	Campaign Contribution Disclosure – Ind Expenditures	Farley	2 nd Read
SB 1129	Financial Disclosure – Lobbying	Farley	2 nd Read
SB 1156	Elections and Ethics Commission – Duties	Quezada	2 nd Read
SB 1157	Voting Rights Restoration – Felonies	Quezada	2 nd Read
SB 1171	Campaign Reports – Late Filings	Yee	GOV VETO
SB 1172	School Info – Political Activity Prohibition	Yee	House 3rd Read
SB 1173	School Bond Override – Funding Sources	Yee	House 3rd Read
SB 1182	Candidate Petition Signatures – Electronic Qualifications	Ward	House 3rd Read

ATTACHMENT 1

Bill	Description	Sponsor	Status
SB 1184	Municipal Elections – Ballot disclosure	Griffin	GOV SIGNED
SB 1192	Community College Financing Districts	Ward	House 2nd Read
SB 1196	Political Do Not Call List	Kavanagh	House 2nd Read
SB 1206	Ind Expenditures – Corporations disclosures	Quezada	2 nd Read
SB 1207	Campaign Finance Disclosures Corporations	Quezada	2 nd Read
SB 1209	Ind Expenditure Audit Corporations	Quezada	2 nd Read
SB 1266	Clean Elections Amendments	Kavanagh	2 nd Read
SB 1287	Ballot Contents Disclosure – Prohibition	Yee	GOV SIGNED
SB 1309	Party Organization Meetings/PC's	Allen	COW
SB 1340	Early Ballot Delivery – Identification – Limit 10	Shooter	House 2nd Read
SB 1346	Voter Registration – Use SS#	Quezada	2 nd Read
SB 1347	Voter ID – Proof of Citizenship – Pct Register	Quezada	2 nd Read
SB 1348	Voter Registration Deadlines	Quezada	2 nd Read
SB 1349	Sample Ballots – Voter's Name	Quezada	2 nd Read
SB 1350	Voter ID – VA or Student ID Valid	Quezada	2 nd Read
SB 1352	Financial Disclosure Report itemization	Quezada	2 nd Read
SB 1353	Lobbyist Meals – Annual limit	Quezada	2 nd Read
SB 1354	Campaign Finance – Enforcement Referral	Quezada	2 nd Read
SB 1355	Public Officers – Promotional Material Restriction	Quezada	2 nd Read
SB 1356	Ind Expenditures – Violations – Criminal Enforcement	Quezada	2 nd Read
SB 1357	Campaign Finance – Public Service Corporations	Quezada	2 nd Read
SB 1358	Early Voting – Extended Hours	Quezada	2 nd Read
SB 1359	Elections Procedures – Workers/Provisionals	Quezada	2 nd Read
SB 1360	Voting Centers – On Campus Voting	Quezada	2 nd Read
SB 1361	Provisional Ballot Verification	Quezada	2 nd Read
SB 1362	Provisional Ballot – Partial Tally	Quezada	2 nd Read
SB 1363	Statewide voter Registration Portability	Quezada	2 nd Read

ATTACHMENT 1

Bill	Description	Sponsor	Status
SB 1364	Provisional Ballot Tally Verification	Quezada	2 nd Read
SB 1365	Initiative/Referendum – Notary Requirement	Quezada	2 nd Read
SB 1366	PPE – Independent Voters	Quezada	2 nd Read
SB 1367	PPE Repeal	Quezada	2 nd Read
SB 1374	Joint Candidate Nominating Petitions	Dial	2 nd Read
SB 1375	Candidates – Multiple Party Designations	Dial	2 nd Read
SB 1376	Political Sign Removal	Dial	2 nd Read
SB 1377	Joint Candidate Fund Raising – Allocation	Dial	2 nd Read
SB 1388	Ind Expenditures – 501C Registration	Pierce	2 nd Read
SB 1407	Lobbying Counties, Cities, School Districts	Yee	House 2nd Read
SB 1410	Mail In Balloting – Counties Allowed	Quezada	2 nd Read
SB 1418	Political Committees Defined	Dial	2 nd Read
SB 1435	Public Meeting Definition	Allen	2 nd Read
SB 1453	HOA Elections	D Farnsworth	House 3rd Read
SCR 1001	2016 Vote Repeal Clean Elections – Education Funding	Pierce	House 3rd Read
SCR 1002	Supreme Court Rules Subject to Initiative/Referendum	Kavanaugh	2 nd Read
SCR 1009	Legislature – 4 year terms – Limit 2 Consecutive	Kavanaugh	Caucus
SCR 1016	Independent Redistricting - Revisions	Quezada	2 nd Read

Respectfully Submitted

William Beard

Pima County Election Integrity Commission

ELECTION INTEGRITY COMMISSION

Pima County, Arizona

TO: Honorable Chair and Members
Pima County Board of Supervisors

FROM: Tom Ryan, Chair 
Election Integrity Commission

DATE: April 17, 2015

RE: Recommendation to Use Ballot Images to Enhance Early Ballot Audit

The Pima County Election Integrity Commission (EIC) recommends that the Board direct the County Elections Department to conduct a **Pilot Study** on the use of ballot images to enhance the integrity of the post-election hand count for early ballots. Ballot images will be available in future elections with the recently purchased central count tabulation equipment. This will make it possible to hand count early ballots from selected precincts in the same manner as the hand count of precinct-cast ballots. Ideally, the pilot study would be conducted as part of a relatively uncomplicated election such as the 2016 Presidential Preference Election in which there is a small number of races and ballot styles.

Why? The Current Early Ballot Audit is Insufficient.

The existing procedure for hand count of early (mailed) ballots differs significantly from that of precinct-cast ballots. For precinct-cast ballots, the audit is "end-to-end," meaning that the hand count tally for the audited races can be compared to figures that appear in the final canvass, or Statement of Votes Cast. In contrast, the hand count of early ballots, which make up more than 70% of the ballots, is done on batches of mixed-precinct ballots and produces tallies that do not appear in any official election results. The result is that the existing early ballot audit only confirms that ballot batches are correctly scanned, but all subsequent data processing, including accumulation of batch totals, sorting and reporting of results, is ignored and remains unaudited. This is a significant shortcoming. The pilot study will evaluate a procedure that would make the early ballot audit equivalent to the precinct-cast ballot audit.

How? Our New Tabulation Equipment Provides the Technology to Improve Our Election Audits.

The recently purchased ES&S central count tabulation system includes the capability to create digital images of each and every paper ballot. Once all the ballots are scanned, the database of ballot images can be sorted, by software, into precincts or voting areas. The ballot images associated with selected precincts can then be printed. These printed images can then serve as proxies for the actual paper ballots and can be hand counted in the same manner currently used for the precinct-cast ballots. In order to conduct the same type of audit with actual paper ballots, the ballots would have to be physically sorted by precinct, a labor-intensive job that election officials have been unwilling to do. The ballot images make it possible to avoid physical sorting.

Honorable Chair and Members
Pima County Board of Supervisors
April 17, 2015
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What? A Pilot Study to Evaluate the Use of Digital Images of Ballots in Election Auditing

The Commission recommends the implementation of a pilot study that will use digital images of ballots as input to the hand count of early ballots. For the study, this would be done in addition to the existing procedures specified in A.R.S. §16-602. The study will produce a report that will contain recommendations as to the efficacy of the approach. Our hope is that the use of ballot images can eventually replace the current early ballot batch method that requires interruption of the central count process to select random audit batches. It may even be possible that all of the auditing could be done with ballot images.

Cost? Minimal

The cost for the pilot study is only the cost of printing the ballot images for a few precincts. The paid hand counters will require some additional time for the study, but since they receive a flat daily rate of pay, there will be no additional cost to the County for their labor. We also recommend conducting the pilot study during a relatively simple election, such as the Presidential Preference Election, in which there is a small number of races and a small number of ballot styles. This will keep the auditing time to a minimum.

Better Audits and Less Handling of Paper Ballots

If the study is successful, the Commission will recommend a change in state law that would explicitly allow the use of ballot images in election hand counts as *an option* to the current methods specified in statute. Any county with the enabling technology could take advantage of the option to use digital images for auditing. We do not believe that there are any legal barriers to this pilot study. It is simply an enhancement of the existing audit process, and Pima County already goes beyond the legal requirements and enhances the audit by adding additional precincts to the hand count. Eventually, the use of ballot images for auditing will reduce or eliminate ballot handling and chain of custody concerns associated with the hand count audit.

Summary

The proposed use of ballot images for auditing has three potential benefits:

- The early ballot audit will be end-to-end, consistent with the audit of precinct-cast ballots.
- The selection of random early ballot batches, which occurs as early ballots are scanned, could eventually be eliminated.
- Conducting hand counts with printed images would eliminate additional handling of paper ballots currently required to support audits.

A pilot study is needed to validate the efficacy of the proposed auditing process, and identify any potential roadblocks. The EIC sincerely hopes that the Board will accept this recommendation.

PIMA COUNTY
ELECTION INTEGRITY COMMISSION

BYLAWS

ARTICLE I
NAME

Section 1 The name of this organization shall be the Pima County Election Integrity Commission (EIC).

ARTICLE II
LEGAL REQUIREMENT

Section 1 The Pima County Election Integrity Commission ("EIC") was created by Board direction on July 1, 2008. The Commission will function under the authority of the above-mentioned resolution and other stipulations as stated in the Pima County Code.

ARTICLE III
FUNCTION and PURPOSE

Section 1 The Pima County Election Integrity Commission is chartered as an advisory group, reporting to the Pima County Board of Supervisors. The purpose is to help improve the conduct of elections by examining the systems and processes behind them in order to improve functioning of and public trust in the Pima County electoral process.

ARTICLE IV
MEMBERSHIP, APPOINTMENTS and QUALIFICATIONS

~~Section 1 In accordance with direction by the Pima County Board of Supervisors EIC shall be composed as defined in Section 2.~~

Section ~~2~~ **1** ~~APPOINTMENT:~~ Voting members of the Pima County Board of Supervisors shall each appoint one (1) member to the EIC. The Pima County Administrator shall appoint one (1) member to the EIC. ~~In~~ **addition,** ~~Each~~ political party, recognized by Pima County, shall appoint one member. All appointments are **to be** ratified by the Pima County Board of Supervisors.

Section ~~3~~ **2** ~~QUALIFICATIONS:~~ ~~The membership of the Commission must be composed of residents of Pima County.~~ **Each voting member of the EIC shall be a resident of Pima County and a registered voter of same.**

Section ~~4~~ **3** ~~NONVOTING MEMBERS:~~ ~~The Pima county shall appoint one (1) staff person to serve as an ex-officio, nonvoting member.~~ **The Director of the Pima County Election Department shall be an ex-officio, non-voting member.**

Section ~~5~~ **4** TERMS:

- a. The terms of members of the Commission appointed by Pima County officials shall be two (2) years from the **time date** of that member's appointment **as is** ratified by the Pima County Board of Supervisors. ~~Such members may be removed with or without cause prior to the expiration of their term by the County Board of Supervisors who appointed them or by their successor in office.~~
- b. The terms of members **of the Commission** appointed by political parties shall be for two (2) years **from the date of that member's appointment is ratified by the Pima County Board of Supervisors.**

- c. Members may be removed with or without cause by the person or party that appointed them or the successor to that person.
- d. Upon the expiration of an appointment a member of the EIC may be reappointed or replaced by the appropriate appointing official or party. In no case may a member serve if his or her appointment has expired.

Section 65 REMOVAL:

- a. ~~The appointment of an EIC member who fails to attend~~ If a voting member misses four (4) consecutive regularly scheduled meetings and/or who fails to attend at least forty percent (40%) of the the regularly scheduled meetings called in a calendar year will be terminated the EIC may remove that member by majority vote. Such vote shall be placed on the agenda of the first scheduled meeting after the criteria for removal are met. The person whose membership is in question shall be notified of the scheduled vote and shall be allowed to present a defense against removal. A two-thirds vote of members attending shall be required for removal.
- b. The EIC may by a two-thirds vote recommend to the ~~appropriate governing body the removal of any member~~ Pima County Board of Supervisors that a voting member be removed from the EIC for reasonable cause other than non-attendance.

Section 76 ~~VACANCIES: Vacancies on the Commission~~ If a vacancy occurs on the Commission for any reason, that vacancy shall be filled by appointment in the same manner in which members are initially appointed and such appointment shall last be for the duration remainder of the unexpired term.

ARTICLE V
OFFICERS & ELECTIONS

- Section 1 The officers of ~~this Commission~~ the EIC shall include be the Chairperson ~~man~~ and Vice Chairperson ~~man~~.
- Section 2 Two-thirds (2/3) of the voting members of appointed to the EIC who are appointed and qualified must be present to hold election of officers. Vacant appointments shall be included as part of the total membership when determining the two-thirds (2/3) ratio.
- Section 3 ~~An~~ The election for of officers of the EIC shall be held each year take place at the first meeting of the calendar year, at which the requirements in Section 2 above are met or as required to fill a vacancy.
- Section 4 Each elected officer shall hold office until a successor is elected and qualified or the person holding the office is no longer a member of the EIC.

ARTICLE VI
DUTIES of OFFICERS

- Section 1 Chairperson shall:
 - a. Preside at all EIC meetings and ensure meetings are in compliance with all governing rules.
 - b. Ensure that ~~standing committees and other committees~~ are established as needed and chaired, and their tasks are expeditiously and effectively performed.
 - c. Serve as an ex-officio member of all committees
 - d. Shall be a the spokesperson for the Commission unless the Chair designates another voting member due to circumstances.

- e. ~~Complete~~ ~~Compile~~ and ~~s~~ Submit the Annual Report to the Pima County Board of Supervisors.

Section 2 The Vice Chair ~~person~~ shall:

- a. Perform the duties of the Chair ~~person during~~ in the absence of the Chair.
- b. Act ~~in~~ as an advisory capacity ~~advisor~~ to the Chair ~~person~~ and perform such ~~functions~~ ~~additional~~ ~~duties~~ as assigned by the Chair ~~person~~.

ARTICLE VII

REMOVAL of OFFICERS FROM OFFICE

Section 1 The EIC may by a two-thirds (2/3) vote of ~~these Commissioners~~ ~~qualified~~ ~~ratified to the Commission~~ ~~at any one time~~ voting members appointed and remove any officer for reasonable cause. Such action must be proposed at least one (1) ~~regularly~~ scheduled meeting prior to the scheduled vote.

ARTICLE VIII

COMMITTEES

~~Section 1 All EIC meetings will be conducted in accordance with the Arizona Public Open Meeting Law, A.R.S. 38-431.~~

~~Section 2~~ 1 a. ~~Ad hoc committees may be designated as necessary by~~ The EIC ~~may create such committees as deemed necessary. Such committees shall be composed of one (1) or more members of the EIC.~~

~~Section 2~~ b. ~~Such committees shall be composed of one or more EIC members~~ The EIC may appoint other interested citizen/residents to any committee to serve as members.

~~Section 3~~ c. ~~Other interested citizens/residents may be appointed by the EIC to serve as members~~ Committees may be temporary or permanent. ~~Temporary committees shall be created for a specific task and dissolved when that task is finished; temporary committees are for short term existence. Permanent committees shall be created for long term tasks.~~

~~Section 4~~ 3 d. ~~Ad hoc~~ Committees ~~will~~ shall be dissolved upon the completion of their assigned ~~when their task done~~ complete.

ARTICLE IX

MEETINGS

~~Section 1 All EIC meetings will be conducted in accordance with the Arizona Public Open Meeting Law, A.R.S. 38-431.~~

~~Section 2~~ 2 The EIC shall hold a minimum of 9 meetings per ~~calendar~~ year.

~~Section 3~~ 3 A majority of ~~the~~ voting members, ~~counting vacancies as members~~, of the EIC shall constitute a quorum.

~~Section 4~~ 4 The act of a majority of ~~the Commissioners~~ ~~voting members~~ present at a meeting at which there is a quorum shall be the act of the EIC unless the act of a greater number is required by law or by these bylaws.

~~Section 5~~ 5 Member decision-making actions ~~will~~ shall be governed by the provisions of the Arizona law on Conflict of Interest, A.R.S. 38-501.

Section 56 Proposing And Approving Agenda Items:

- a. The Chair and staff ~~will~~ **shall** send a proposed agenda to **all** EIC members at least one week ~~before the next~~ **prior to any regular** meeting.
- b. ~~Agenda items can be proposed by a~~ Any member, including the non-voting members, **may propose an item for the agenda. The proposal shall** and be sent ~~in person, by email or regular mail~~ to the EIC staff and the Chair ~~and Vice-Chair~~ **by email, regular mail or personal contact** for approval. The Chair ~~at his or her option may then~~ approve or disapprove the **proposed agenda** item. ~~The submission must be at least one week prior to any regular meeting.~~
- c. If the Chair disapproves the agenda item, the Chair ~~must inform~~ **shall notify** the proposing Commissioner within one day of receipt. The proposing Commissioner ~~can~~ **may** then request an override ~~of the Chair~~ by notifying ~~the Coordinator~~ **staff** who obtains written or email support of **shall then poll the remaining voting members of the EIC and if four (4) additional Commissioners members support the proposed agenda item it shall be placed on the agenda.**
- d. ~~The final agenda will shall be compiled three (3) business days before the meeting.~~
- e. **d. Any EIC Commissioner may bring up an item at any meeting under "New Business." Since the EIC must comply with the Open Meeting Law, A.R.S. 38-431, no item not on the agenda may be discussed nor shall any action taken on any such item.**
- f. **e. At the start of any the meeting, agenda items can be called into question by any EIC member by making a motion to remove the item. Votes on removal will be decided by a simple If a majority of voting members those present and voting vote to remove the item it shall be removed from the agenda.**

Section 67 **Any member of the EIC may request A call for an emergency meeting of the EIC to discuss an issue pertaining to the handling of elections within Pima County can be requested by any Commissioner, through the Coordinator, by notifying staff of the request. who then obtains written or email support from Staff shall notify each member of the EIC of the request and if four(4) other voting members support the request through written. or email or other communication then the emergency meeting shall be scheduled at the earliest available time.**

ARTICLE X
ETHICAL CONDUCT

Section 1 At all times each EIC Commissioner shall conduct him ~~and or~~ herself in a respectful and collegial manner **when dealing with other Commissioners members.**

Section 2 When Operating Outside of Formal EIC Proceedings:

- a. It is understood that Commissioners are likely to engage in political activities outside of the formal EIC structure.
- b. Whenever ~~members~~ **Commissioners** speak publicly and they choose to mention their EIC membership they must state for the record that ~~he or she is not~~ **they are speaking for themselves and not on behalf of** the EIC.
- c. ~~Members~~ **Commissioners** have the right to publicly discuss EIC business that is a matter of public record.

ARTICLE XI
LIMITATION of POWERS

Section 1 Neither the EIC nor any ~~member~~ Commissioner may incur governmental expenses without the prior authorization of the governing body affected, nor may they obligate Pima County in any form.

ARTICLE XII
PARLIAMENTARY AUTHORITY

Section 1 The parliamentary guidelines of the Pima County Election Integrity Commission shall be in accordance with Robert's Rules of Order, as applicable.

ARTICLE XIII
OPEN MEETING LAW TRAINING

Section 1 The EIC shall hold a training session on the Open Meeting Law for all members once a year.

Section 2 If any member(s) miss the scheduled training session, for whatever reason, a training session shall be conducted for that (those) person(s) as soon as possible.

~~Section 3 Missing three (3) sessions in one (1) calendar year shall be grounds for dismissal under Article IV, Section 6B.~~

ARTICLE XII#V
AMENDMENTS and REVIEW

Section 1 These bylaws may be amended at any regular meeting of the EIC by a two-thirds (2/3) vote of those present and voting, provided that notice of the change has been given to members at least one (1) week prior to the meeting at which the voting takes place.

Section 2 These bylaws shall be reviewed at least every five (5) years by the EIC.

Ratified by the Pima County Election Integrity Commission on:

10-21-11

Date

OPEN MEETING LAW

A Reference Guide to A.R.S. § 38-431 through 38-431.09 for 2011-2012

Prepared by the Pima County Attorney's Office Civil Division
Karen S. Friar, Deputy County Attorney



A.R.S. § 38-43109(A) provides:

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 this article in favor of open and public meetings.

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 must, with very limited exceptions, 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 (ARS § 38-431):

- 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 (such as the Arizona Board of Tax Appeals);
- 4) Advisory committees*;
- 5) Standing and special committees; and,
- 6) Subcommittees* of any of the above.

*An advisory committee or a subcommittee is a group “officially established, on motion and order of a public body or by the presiding officer of the public body whose members [are] appointed for the specific purpose of making a recommendation concerning” a decision or course of conduct to be made or considered by the public body. A.R.S. § 38-431(1).

With few exceptions, the Open Meeting Law (“OML”) applies to multi-member bodies created by law or an official act pursuant to some legal authority.

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.

Arizona law defines a **quorum** as “*a majority of a board or commission.*” A.R.S. § 1-216(B). This has been interpreted to mean a *majority of the total number of members set forth in law or in the board or commission’s by-laws*. Thus, if the law or by-laws require that there be seven (7) members on the commission, but there are only five (5) currently appointed and serving, a quorum is still based on the seven members that should be on the board and would be four (4). The quorum would not be based on the five sitting members (where the quorum would be three (3)).

Legal action is a collective decision, commitment or promise. A.R.S. § 38-431(3). All legal action must take place during a public meeting. A.R.S. § 38-431.01(A). The requirements of OML must be followed regarding ***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:

- a) **Discuss** (speak together about) a legal action;
- b) **Propose** (suggestion of a member) a legal action;
- c) **Take** (a collective decision, commitment or promise by a majority) a legal action; or,
- d) **Deliberate** (exchange of facts or opinions) with respect to a legal action.

Every “legal action” must be conducted in either a public meeting or, when allowed by law, an executive session. Consequently, ***all meetings where there is a gathering of a quorum either in person or through technological devices (such as conference phones, e-mail and facsimiles) must, pursuant to A.R.S. § 38-431.01(A), be public.***

The safest course of action is to comply with the Open Meeting requirements ANY TIME a majority of the public body discusses the business of the body.

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. ***Discussion of business by a quorum of the public body may take place ONLY in a public meeting or an executive session convened pursuant to law.***

Topics which may be discussed in executive session:

- 1) Personnel matters (A.R.S. § 38-431.03(A)(1));
- 2) Confidential records (exempt by law from public inspection)(A.R.S. § 38-431.03(A)(2));
- 3) Legal advice (with the attorney FOR the public body) (A.R.S. § 38-431.03(A)(3));
- 4) Instruction on contract negotiations, litigation, or settlement to avoid or resolve litigation (with the attorney FOR the public body) (A.R.S. § 38-431.03(A)(4));
- 5) Employee salary (A.R.S. § 38-431.03(A)(5));



- 6) International and interstate negotiations (applies to cities and towns) (A.R.S. § 38-431.03(A)(6)); and,
- 7) Instruction to public body's representative regarding the purchase, sale or lease of real property (NOT with the party with whom the public body is negotiating) (A.R.S. § 38-431.03(A)(7)).

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 is to be held in public and the contract must be approved in a public meeting.

Discussion and considerations are strictly limited in executive session to the seven categories authorized. Once the session is concluded, the public body must reconvene in a public meeting to take the final vote or make a final decision.



Notice of meetings:

Notice must be given at least 24 hours prior to the start of the meeting. The 24 hours includes Saturdays, if the public has access to the physical location where notice is posted or if notice is available on the internet. Excluded from the 24 hour notice period are Sundays and the fifteen holidays established under A.R.S. § 1-301(A).

Notice **MUST** be given to:

- 1) Each member of the public body; and,
- 2) The public.

It is sufficient to mail a copy of the notice to each member of the public body. Notice must be made available to the general public.

The public is informed of meetings of the County's public bodies (including special districts) in a two-step process:

- 1) A disclosure statement is filed on the public body's website or, in the case of special districts, on the district's website or with the Clerk of the Board of Supervisors. The statement identifies where public notices of meetings will be displayed both physically AND electronically. A.R.S. § 38-431.02(A). The physical location should have regular business hours and be easy to find and access; and,
- 2) A notice of each meeting is then posted on the public body's website AND at the physical location identified in the disclosure statement. The public body should also provide such additional notice which is reasonable and practicable. A.R.S. § 38-431.02(A). Additional notice includes: news releases, mailings to persons requesting they be informed, and newsletters or other publications. Notice must also comply with the Americans with Disabilities Act for accommodation of disabled persons needs.

When the public body meets for a specified calendar period on a regular day or date, in a regular place, at a regular time notice need only be posted at the beginning of the calendar period. However, the agenda requirements discussed below must still be met, unless the notice contains a clear statement that the agenda for each meeting will be available at least 24 hours in advance and provides directions on where and how to obtain a copy.

Notice must contain the following:

- 1) Identification of the public body;
- 2) The date, time and place of the meeting -- specify the street address and specific room number or other identifying information;
- 3) Either the agenda for the meeting and any executive session or information on how the public may acquire a copy of the agenda; and
- 4) A statement regarding accommodations for persons with disabilities.

If an action is taken in violation of the Open Meeting Law, it is null and void. A meeting may be convened within 30 days of the void action to ratify that action. The **notice to ratify an action must also contain:**

- 1) A description of the action to be ratified;
- 2) A clear statement that the public body proposes to ratify a prior action; and,
- 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 place where and time when the meeting will be resumed.)



Additionally, a meeting may still be held when there has been a temporary technical problem preventing notice of a meeting on the public body's website, but only if the posted notice and other additional notice requirements have been met. A.R.S. § 38-431.02(A).

**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 promotes public confidence and provides protection to the members of the public body.***

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 detail.***

An **agenda for an executive session** must contain a **general description** of the matter to be considered, but should not contain information that would defeat the purpose of the session. Weight the legislative policy to favor public disclosure with the legitimate confidentiality concerns of the Executive Session in determining the agenda content. Remember that the **specific legal authority** for the executive session from A.R.S. § 38-431.03(A) must be included on the agenda.

If there are any changes in an agenda after it has been posted and distributed, a new agenda must be prepared, posted 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 the public body** and then only 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 know specifically what topics the public will address, this broad heading is acceptable. However, *if a matter is raised by the public that is not on the agenda, the public body shall not discuss it at that meeting.*



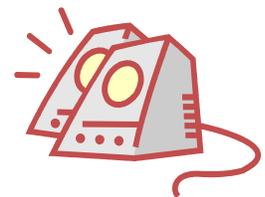
At the conclusion of the open call to the public, individual members may ONLY:

- 1) *Respond to criticism made;*
- 2) *Ask staff to review a matter raised; or,*
- 3) *Ask to include the matter on a future agenda* (if discussion of the matter is desired).

Discussions and decisions at a meeting are limited to matters specified on the agenda and “other matters related thereto”. Extreme caution should be exercised in utilizing the “other matters related” provision; such matters must be, in some reasonable manner, related to the specified agenda item. The better course of action is to defer discussion and decision until a later meeting, when the matter can be specifically listed as an agenda item.

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 as long as there is no active interference in the conduct of the meeting. Audio recording and video recording are allowed.

Keep in mind that some public bodies must follow other statutes, rules or regulations which may require public participation or public hearings. In such instances, the public must be provided an opportunity to be heard.

Minutes must be kept and made available to the public:



All public meetings and executive sessions must have minutes. Minutes may either be **written or recorded** (audiotape or video) and must be available for public inspection **within three (3) working days** of the meeting. Minutes must be reduced to a **form readily accessible** to the public. Thus, access to the recording would meet the accessibility requirement, but shorthand notes would not.

Executive session minutes are confidential and may only be disclosed to authorized persons which are: members of the public body; the officer, appointee, or employee who was the subject of the session; staff personnel as necessary to prepare and maintain the minutes; the attorney; the auditor general; the court; and the Attorney General or County Attorney in response to an investigative request.



Minutes for a public meeting must contain:

- 1) The date, time, and place of the meeting;
- 2) The members present or absent;
- 3) A general description of the matters discussed or considered (even where no formal vote is taken);
- 4) An accurate description of the legal actions proposed, discussed, or taken. This 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.

Meetings may occur by means other than in person:

Remember that *any gathering of a quorum* of members of the public body, in person *or through technological devices*, at which the members discuss, propose or take legal action, must be held in public. A *legal action does not require a vote*; discussions about or deliberations on a possible action is a meeting subject to the provisions of the Open Meeting Law. A *quorum of the public body need not be at the same location or at the same time in order to have a meeting under the Open Meeting Law. Meetings may occur serially.* With the advances of technology, hyper-vigilance is required to avoid unwittingly conducting a meeting without complying with the Open Meeting Law requirements. Conference calls, video conferences, facsimiles and e-mails all pose a risk.

A member may attend a meeting via telephone or other conferencing device:

Members of the public body may participate in a meeting by telephone or video conference, if such attendance is approved by the public body and not prohibited by statutes. This should be used, however, only when no other reasonable alternative to personal attendance exists. If the public body wishes to allow such appearances in certain circumstances, the body should adopt rules or procedures which specify when telephonic (or video conference) attendance will be allowed and how those appearances will be handled.



Telephonic attendance requires compliance with the following:

- 1) Notice and agenda indicate one or more members will participate via telephone;
- 2) The meeting place adequately provides for the public to observe and hear all telephone communications;
- 3) Procedures are developed to clearly identify the member(s) participating telephonically; and,
- 4) The minutes identify the member(s) participating by telephone and describe the procedures followed to assure public access to all communications during the meeting.



A meeting may be conducted online (BUT, only with very special attention to details):

The Arizona Attorney General opined in September 2008¹ that a public body may conduct an online meeting for the purpose of *deliberation and discussion*. *Final action (motion and vote) must take place in a traditional face-to-face public meeting.* The online meeting would only

¹ See A.G. Opinion I08-008.

be legal, however, if all requirements of the Open Meeting Law are met. This includes:

- 1) Proper notice and an agenda;
- 2) The taking and preservation of minutes; and
- 3) Public access to the entire course of deliberation and discussion (the public must be able to identify which member contributed which edits and which comment);

Notice must provide:

- 1) A specific beginning and end time;
- 2) Clear instructions on how to access the meeting and operate any software used by the public body to host the online meeting;
- 3) An indication of how the public body will facilitate public access to the meeting (including the location of any free Internet access);
- 4) A proposed date and time for the meeting at which the final action of adoption will take place; and
- 5) Reasonable accommodations for any member of the public with a disability that requests an accommodation (there will be technological obstacles to access for some disabled citizens).

Additionally, a policy must be developed for the retention of records created during the course of the online meeting.

An online meeting, while potentially convenient for many members and the public, is fraught with the potential for abuse. Scrupulous compliance with the provision of the law and the recommendations of the Attorney General are imperative.



WATCH OUT FOR THESE OPEN MEETING LAW PITFALLS:

REMEMBER: A quorum of the public body need not be at the same location or at the same time in order to have a meeting under the Open Meeting Law. Any communication between at least a quorum about a topic that might foreseeably come before the group is a meeting!

Care must be taken to avoid the unintended serial meeting and, consequently, a violation of the Open Meeting Law.

E-mail communications can be a meeting:



E-mail communications constitute a meeting when the e-mail has the equivalent components of a meeting:

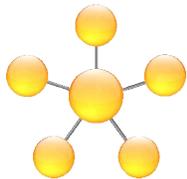
- Between a quorum
- Via technological device; and
- Discussions, deliberations, proposals or take legal actions

Such e-mails constitute a meeting and are subject to all of the provisions of the Open Meeting Law.²

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, may be a legal action which must take place in public. (It is irrelevant if the materials shared in the e-mails (such as a newspaper article) are part of the public domain.)²

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.



Penalties exist for violations of the Open Meeting Law:

² A.G. Opinion 105-004 (“When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML.” See, also the attached Exhibit A.



As the consequences for violating Open Meeting Law provisions can be serious, it is incumbent upon every member of a public body to be fully informed of the requirements of the law and to further investigate the penalties which may be assessed. Every effort should be made to avoid technical violations (those which would seem to have no demonstrated prejudicial effect on a complainant).

Any actions taken in a meeting which was conducted in violation of the provisions of the Open Meeting Law are null and void. The actions may be resurrected and given force through a properly noticed ratification held within 30 days of discovery of the void action.

Additional penalties include:

- 1) The issuance of a writ of mandamus in which the court compels compliance or prevents a violation from occurring;
- 2) A civil penalty up to **\$500.00 against the individual** who violates the provision(s) of the Open Meeting Law or against anyone who knowingly aids, agrees to aid, or attempts to aid another person in violating the law (*the public body may not pay the fine which is deposited in the public body's general fund*);
- 3) Reasonable attorney's fees to the successful plaintiff (these are normally paid by the political subdivision, but the court must assess such fees against the individual if it determines he or she violated the law with the intent of depriving the public either of information or opportunity to be heard); and,
- 4) Removal from office.

The public body may not hire counsel or expend monies for legal services to defend against Open Meeting Law challenges, unless it has specific legal authority to do so. If so authorized, the retention rate and expenditure must be approved in a properly noticed open meeting, before any obligation is incurred.



An excellent detailed resource and guide for the conduct of meetings by public bodies is the Arizona Agency Handbook prepared by the Attorney General's Office. The handbook may be accessed through the Attorney General's website:

www.azag.gov

Type "**Arizona Agency Handbook**" in the search box located under "AZ.GOV" in the upper right. A list will appear on the left

hand side. Click “Open Meeting Law” and then **Arizona Agency Handbook: Chapter 7: Open Meetings**” for the full text..

The open meeting law statutes (§38-431 through §38-439.09) are also available on the “Open Meeting Law” page.



ATTACHMENT 5

E-mail Communications and the Open Meeting Law



E-mail communications are treated the same as any other form of communication between members of the public body.



Serial e-mails between a quorum of members on a subject that may come before the board for legal action (including discussion or deliberation) violate the Open Meeting Law.



E-mail exchanges among a quorum of the members that involve proposals, discussions, deliberations, or taking legal action on matters that may come before the board constitute a "meeting" and, therefore, violate the Open Meeting Law.



A unilateral e-mail from one board member to a quorum of the other board members that proposes an agenda item will not violate the Open Meeting Law PROVIDED the member does not expound upon the item or propose a course of action AND PROVIDED that the other board members do not respond to the e-mail in any way (including a response to the sender only.)



E-mails from third parties to a quorum of the members would not violate the Open Meeting Law PROVIDED that members do not "reply to all" (or to enough members to constitute a quorum) if responding back to the third party.



An e-mail request for information from a member to staff does not violate the Open Meeting Law even if the other board members are copied on the e-mail and the response from the staff person. HOWEVER, the board members may not engage in discussions or share opinions (via e-mail or other forms of communication) related to the information provided outside of a properly noticed public meeting.



E-mail communications of members related to their official duties, even on home computers or personal cell phones, tablets or other devices, are public records and must be maintained for inspection and, if requested, reproduction.



BOTTOM LINE: Communications via electronic media should be used very cautiously and should NEVER discuss, deliberate or propose legal action on matters that may foreseeably come before the public body for action. **When in doubt, ALWAYS err on the side of openness – IF IT'S IFFY, DON'T HIT SEND!!!!**

For additional information and hypotheticals illustrating the use of e-mail and other electronic communications, please review Attorney General Opinion I05-004.

A copy of the Opinion may be found at:

<http://www.azag.gov>
Search for "2005 opinions"

