HOUSE BILL 378

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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AN ACT

RELATING TO OPEN MEETINGS; REQUIRING A PUBLIC BODY TO PERMIT
ORAL PUBLIC COMMENT AT A PUBLIC MEETING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be
conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. A public body shall permit oral public comment before final action on any matter described in Subsection B of this section. At the discretion of the public body, oral
public comment may be permitted during a period for general
oral public comment on any issue of public importance or may be
permitted immediately prior to discussion and action being
taken on a matter by the public body. The public body shall
allow a reasonable amount of time for individual oral public
comment and a reasonable total amount of time for oral public
comment; provided that regardless of the amount of time
allowed, the public body shall allow for a diversity of
viewpoints to be presented.

[D.] If otherwise allowed by law or rule of the
public body, a member of a public body may participate in a
meeting of the public body by means of a conference telephone
or other similar communications equipment when it is otherwise
difficult or impossible for the member to attend the meeting in
person; provided that each member participating by conference
telephone can be identified when speaking, all participants are
able to hear each other at the same time and members of the
public attending the meeting are able to hear any member of the
public body who speaks during the meeting.

[E.] Any meetings at which the discussion or
adoption of any proposed resolution, rule, regulation or formal
action occurs and at which a majority or quorum of the body is
in attendance, and any closed meetings, shall be held only
after reasonable notice to the public. The affected body shall
determine at least annually in a public meeting what notice for

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a public meeting is reasonable when applied to that body. That
notice shall include broadcast stations licensed by the federal
communications commission and newspapers of general circulation
that have provided a written request for such notice.

[F.] A public body may recess and reconvene a
meeting to a day subsequent to that stated in the meeting
notice if, prior to recessing, the public body specifies the
date, time and place for continuation of the meeting and,
immediately following the recessed meeting, posts notice of the
date, time and place for the reconvened meeting on or near the
door of the place where the original meeting was held and in at
least one other location appropriate to provide public notice
of the continuation of the meeting. Only matters appearing on
the agenda of the original meeting may be discussed at the
reconvened meeting.

[F.] Meeting notices shall include an agenda
containing a list of specific items of business to be discussed
or transacted at the meeting or information on how the public
may obtain a copy of such an agenda. Except in the case of an
emergency or in the case of a public body that ordinarily meets
more frequently than once per week, at least seventy-two hours
prior to the meeting, the agenda shall be available to the
public and posted on the public body's web site, if one is
maintained. A public body that ordinarily meets more
frequently than once per week shall post a draft agenda at
least seventy-two hours prior to the meeting and a final agenda
at least thirty-six hours prior to the meeting. Except for
emergency matters, a public body shall take action only on
items appearing on the agenda. For purposes of this
subsection, "emergency" refers to unforeseen circumstances
that, if not addressed immediately by the public body, will
likely result in injury or damage to persons or property or
substantial financial loss to the public body. Within ten days
of taking action on an emergency matter, the public body shall
report to the attorney general's office the action taken and
the circumstances creating the emergency; provided that the
requirement to report to the attorney general is waived upon
the declaration of a state or national emergency.

[G-H] The board, commission or other policymaking
body shall keep written minutes of all its meetings. The
minutes shall include at a minimum the date, time and place of
the meeting, the names of members in attendance and those
absent, the substance of the proposals considered and a record
of any decisions and votes taken that show how each member
voted. All minutes are open to public inspection. Draft
minutes shall be prepared within ten working days after the
meeting and shall be approved, amended or disapproved at the
next meeting where a quorum is present. Minutes shall not
become official until approved by the policymaking body.

[H-L] The provisions of Subsections A, B and [G]
of this section do not apply to:

   (1) meetings pertaining to issuance,
suspension, renewal or revocation of a license, except that a
hearing at which evidence is offered or rebutted shall be open.
All final actions on the issuance, suspension, renewal or
revocation of a license shall be taken at an open meeting;

   (2) limited personnel matters; provided that
for purposes of the Open Meetings Act, "limited personnel
matters" means the discussion of hiring, promotion, demotion,
dismissal, assignment or resignation of or the investigation or
consideration of complaints or charges against any individual
public employee; provided further that this paragraph is not to
be construed as to exempt final actions on personnel from being
taken at open public meetings, nor does it preclude an
aggrieved public employee from demanding a public hearing.

   (3) deliberations by a public body in
connection with an administrative adjudicatory proceeding. For
purposes of this paragraph, "administrative adjudicatory
proceeding" means a proceeding brought by or against a person
before a public body in which individual legal rights, duties
or privileges are required by law to be determined by the
public body after an opportunity for a trial-type hearing.
Except as otherwise provided in this section, the actual
administrative adjudicatory proceeding at which evidence is
offered or rebutted and any final action taken as a result of
the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable
information about any individual student, unless the student or
the student's parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining
strategy preliminary to collective bargaining negotiations
between the policymaking body and a bargaining unit
representing the employees of that policymaking body and
collective bargaining sessions at which the policymaking body
and the representatives of the collective bargaining unit are
present;

(6) that portion of meetings at which a
decision concerning purchases in an amount exceeding two
thousand five hundred dollars ($2,500) that can be made only
from one source is discussed and that portion of meetings at
which the contents of competitive sealed proposals solicited
pursuant to the Procurement Code are discussed during the
contract negotiation process. The actual approval of purchase
of the item or final action regarding the selection of a
contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client
privilege pertaining to threatened or pending litigation in
which the public body is or may become a participant;
(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act.

[I.] J. If any meeting is closed pursuant to the exclusions contained in Subsection [H] I of this section:

(1) the closure, if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; or

(2) if a closure is called for when the policymaking body is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law.
authorizing the closed meeting and stating with reasonable
specificity the subject to be discussed is given to the members
and to the general public.

[J-] K. Following completion of any closed meeting,
the minutes of the open meeting that was closed or the minutes
of the next open meeting if the closed meeting was separately
scheduled shall state that the matters discussed in the closed
meeting were limited only to those specified in the motion for
closure or in the notice of the separate closed meeting. This
statement shall be approved by the public body under Subsection
[G] H of this section as part of the minutes."

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