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_____ BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC INFORMATION; EXEMPTING FROM PUBLIC
DISCLOSURE CERTAIN INFORMATION CONCERNING PUBLIC SECURITY.

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

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1 conducted in closed meeting. All meetings of any public body
2 except the legislature and the courts shall be public meetings,
3 and all persons so desiring shall be permitted to attend and
4 listen to the deliberations and proceedings. Reasonable
5 efforts shall be made to accommodate the use of audio and video
6 recording devices.

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

23 C. If otherwise allowed by law or rule of the
24 public body, a member of a public body may participate in a
25 meeting of the public body by means of a conference telephone

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1 or other similar communications equipment when it is otherwise
2 difficult or impossible for the member to attend the meeting in
3 person; provided that each member participating by conference
4 telephone can be identified when speaking, all participants are
5 able to hear each other at the same time and members of the
6 public attending the meeting are able to hear any member of the
7 public body who speaks during the meeting.

8 D. Any meetings at which the discussion or adoption
9 of any proposed resolution, rule, regulation or formal action
10 occurs and at which a majority or quorum of the body is in
11 attendance, and any closed meetings, shall be held only after
12 reasonable notice to the public. The affected body shall
13 determine at least annually in a public meeting what notice for
14 a public meeting is reasonable when applied to that body. That
15 notice shall include broadcast stations licensed by the federal
16 communications commission and newspapers of general circulation
17 that have provided a written request for such notice.

18 E. A public body may recess and reconvene a meeting
19 to a day subsequent to that stated in the meeting notice if,
20 prior to recessing, the public body specifies the date, time
21 and place for continuation of the meeting and, immediately
22 following the recessed meeting, posts notice of the date, time
23 and place for the reconvened meeting on or near the door of the
24 place where the original meeting was held and in at least one
25 other location appropriate to provide public notice of the

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1 continuation of the meeting. Only matters appearing on the
2 agenda of the original meeting may be discussed at the
3 reconvened meeting.

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

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1 the declaration of a state or national emergency.

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

13 H. The provisions of Subsections A, B and G of this
14 section do not apply to:

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

20 (2) limited personnel matters; provided that
21 for purposes of the Open Meetings Act, "limited personnel
22 matters" means the discussion of hiring, promotion, demotion,
23 dismissal, assignment or resignation of or the investigation or
24 consideration of complaints or charges against any individual
25 public employee; provided further that this paragraph is not to

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1 be construed as to exempt final actions on personnel from being
2 taken at open public meetings, nor does it preclude an
3 aggrieved public employee from demanding a public hearing.
4 Judicial candidates interviewed by any commission shall have
5 the right to demand an open interview;

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

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

20 (5) meetings for the discussion of bargaining
21 strategy preliminary to collective bargaining negotiations
22 between the policymaking body and a bargaining unit
23 representing the employees of that policymaking body and
24 collective bargaining sessions at which the policymaking body
25 and the representatives of the collective bargaining unit are

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1 present;

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

11 (7) meetings subject to the attorney-client
12 privilege pertaining to threatened or pending litigation in
13 which the public body is or may become a participant;

14 (8) meetings for the discussion of the
15 purchase, acquisition or disposal of real property or water
16 rights by the public body;

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

20 (10) that portion of a meeting of the gaming
21 control board dealing with information made confidential
22 pursuant to the provisions of the Gaming Control Act; and

23 (11) those portions of meetings addressing:

24 (a) security assessments or deployments
25 of information resources technology;

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1 (b) network security information; or
2 (c) the deployment, or a specific
3 occasion for the implementation, of security personnel,
4 critical infrastructure or security devices.

5 I. If any meeting is closed pursuant to the
6 exclusions contained in Subsection H of this section:

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

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

24 J. Following completion of any closed meeting, the
25 minutes of the open meeting that was closed or the minutes of

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1 the next open meeting if the closed meeting was separately
2 scheduled shall state that the matters discussed in the closed
3 meeting were limited only to those specified in the motion for
4 closure or in the notice of the separate closed meeting. This
5 statement shall be approved by the public body under Subsection
6 G of this section as part of the minutes."

7 SECTION 2. Section 14-2-1 NMSA 1978 (being Laws 1947,
8 Chapter 130, Section 1, as amended) is amended to read:

9 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

10 A. Every person has a right to inspect public
11 records of this state except:

12 (1) records pertaining to physical or mental
13 examinations and medical treatment of persons confined to an
14 institution;

15 (2) letters of reference concerning
16 employment, licensing or permits;

17 (3) letters or memoranda that are matters of
18 opinion in personnel files or students' cumulative files;

19 (4) law enforcement records that reveal
20 confidential sources, methods, information or individuals
21 accused but not charged with a crime. Law enforcement records
22 include evidence in any form received or compiled in connection
23 with a criminal investigation or prosecution by a law
24 enforcement or prosecuting agency, including inactive matters
25 or closed investigations to the extent that they contain the

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1 information listed in this paragraph;

2 (5) as provided by the Confidential Materials
3 Act;

4 (6) trade secrets, attorney-client privileged
5 information and long-range or strategic business plans of
6 public hospitals discussed in a properly closed meeting;

7 (7) tactical response plans or procedures
8 prepared for or by the state or a political subdivision of the
9 state, the publication of which could reveal specific
10 vulnerabilities, risk assessments or tactical emergency
11 security procedures that could be used to facilitate the
12 planning or execution of a terrorist attack; [~~and~~]

13 (8) confidential electronic network security
14 information:

15 (a) revealing components, including
16 passwords, personal identification numbers, access codes and
17 encryption, of a public body's electronic network security
18 system;

19 (b) collected, assembled or maintained
20 by or for a public body to prevent, detect or investigate
21 criminal or fraudulent activity; or

22 (c) concerning an assessment, made by,
23 made for or maintained by a public body, of the vulnerability
24 of the network to criminal activity; and

25 [~~(8)~~] (9) as otherwise provided by law.

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B. Protected personal identifier information
contained in public records may be redacted by a public body
before inspection or copying of a record. The presence of
protected personal identifier information on a record does not
exempt the record from inspection. Unredacted records that
contain protected personal identifier information shall not be
made available on publicly accessible [~~web sites~~] websites
operated by or managed on behalf of a public body."