

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 396

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO OPEN MEETINGS; AMENDING THE OPEN MEETINGS ACT TO INCREASE CRIMINAL PENALTIES FOR VIOLATIONS AND TO PROVIDE FOR CIVIL PENALTIES.

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

Section 1. Section 10-15-3 NMSA 1978 (being Laws 1974, Chapter 91, Section 3, as amended) is amended to read:

"10-15-3. INVALID ACTIONS--STANDING. --

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 or made at a meeting held in accordance with the requirements
2 of Section 10-15-1 NMSA 1978.

3 B. All provisions of the Open Meetings Act shall
4 be enforced by the attorney general or by the district
5 attorney in the county of jurisdiction. However, nothing in
6 that act shall prevent an individual from independently
7 applying for enforcement through the district courts; provided
8 that the individual first provides written notice of the
9 claimed violation to the public body and that the public body
10 has denied or not acted on the claim within fifteen days of
11 receiving it. A public meeting held to address a claimed
12 violation of the Open Meetings Act shall include a summary of
13 comments made at the meeting at which the claimed violation
14 occurred.

15 C. The district courts of this state shall have
16 jurisdiction, upon the application of any person to enforce
17 the purpose of the Open Meetings Act, by injunction, mandamus
18 or other appropriate order. The court shall award costs and
19 reasonable attorney fees to any person who is successful in
20 bringing a court action to enforce the provisions of the Open
21 Meetings Act. If the prevailing party in a legal action
22 brought under this section is a public body defendant, it
23 shall be awarded court costs. A public body defendant that
24 prevails in a court action brought under this section shall be
25 awarded its reasonable attorney fees from the plaintiff if the

underscored material = new
[bracketed material] = delete

1 plaintiff brought the action without sufficient information
2 and belief that good grounds supported it.

3 D. In addition to costs, attorney fees and other
4 relief granted pursuant to Subsection C of this section, the
5 court may assess a civil penalty against any member of the
6 public body if the court finds that the member willfully and
7 knowingly violated any of the provisions of Section 10-15-1 or
8 10-15-2 NMSA 1978. The amount of the civil penalty shall be
9 determined by the court but shall not exceed the higher of one
10 thousand dollars (\$1,000) or the costs to the public body in
11 correcting any action invalidated because of the violation.
12 Any civil damages awarded pursuant to this subsection are the
13 personal liability of the member and shall not be paid or
14 reimbursed by any public funds.

15 [~~D.~~] E. No section of the Open Meetings Act shall
16 be construed to preclude other remedies or rights not relating
17 to the question of open meetings. "

18 Section 2. Section 10-15-4 NMSA 1978 (being Laws 1974,
19 Chapter 91, Section 4, as amended) is amended to read:

20 "10-15-4. PENALTY. -- Any person violating any of the
21 provisions of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty
22 of a misdemeanor and upon conviction shall be punished by a
23 fine of not more than [~~five hundred dollars (\$500)~~] one
24 thousand dollars (\$1,000) for each offense; provided that each
25 action taken by a public body at a meeting held in violation

underscored material = new
[bracketed material] = delete

1 of the provisions of the Open Meetings Act is a separate
2 offense. "

3 - 4 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25