

underscored material = new  
[bracketed material] = delete

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 678

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Al Park

AN ACT

RELATING TO PUBLIC POLICY; LIMITING THE USE OF PROXY VOTING FOR  
PURPOSES OF THE OPEN MEETINGS ACT.

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

underscoring material = new  
[bracketed material] = delete

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, any agency or authority  
10 of any county, municipality, district or ~~[any]~~ 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 ~~[for~~  
14 ~~the purpose of]~~ taking any action within the authority of or  
15 the delegated authority of any board, commission or other  
16 policymaking body are declared to be public meetings open to  
17 the public at all times, except as otherwise provided in the  
18 constitution of New Mexico or the Open Meetings Act. No public  
19 meeting once convened that is otherwise required to be open  
20 pursuant to the Open Meetings Act shall be closed or dissolved  
21 into small groups or committees for the purpose of permitting  
22 the closing of the 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

.176685.1

underscored material = new  
[bracketed material] = delete

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. During a meeting, a vote by a member of a public  
9 body or by the member's authorized designee shall be cast  
10 personally by the member or designee. A member shall not cast  
11 a vote for or on behalf of another member by proxy or other  
12 means unless expressly authorized by law.

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

23 ~~[E.]~~ F. A public body may recess and reconvene a  
24 meeting to a day subsequent to that stated in the meeting  
25 notice if, prior to recessing, the public body specifies the

.176685.1

underscoring material = new  
[bracketed material] = delete

1 date, time and place for continuation of the meeting and,  
2 immediately following the recessed meeting, posts notice of the  
3 date, time and place for the reconvened meeting on or near the  
4 door of the place where the original meeting was held and in at  
5 least one other location appropriate to provide public notice  
6 of the continuation of the meeting. Only matters appearing on  
7 the agenda of the original meeting may be discussed at the  
8 reconvened meeting.

9 [F-] G. Meeting notices shall include an agenda  
10 containing a list of specific items of business to be discussed  
11 or transacted at the meeting or information on how the public  
12 may obtain a copy of such an agenda. Except in the case of an  
13 emergency, the agenda shall be available to the public at least  
14 twenty-four hours prior to the meeting. Except for emergency  
15 matters, a public body shall take action only on items  
16 appearing on the agenda. For purposes of this subsection, [an]  
17 "emergency" refers to unforeseen circumstances that, if not  
18 addressed immediately by the public body, will likely result in  
19 injury or damage to persons or property or substantial  
20 financial loss to the public body.

21 [G-] H. The board, commission or other policymaking  
22 body shall keep written minutes of all its meetings. The  
23 minutes shall include at a minimum the date, time and place of  
24 the meeting, the names of members in attendance and those  
25 absent, the substance of the proposals considered and a record

.176685.1

underscored material = new  
[bracketed material] = delete

1 of any decisions and votes taken that show how each member  
2 voted. All minutes are open to public inspection. Draft  
3 minutes shall be prepared within ten working days after the  
4 meeting and shall be approved, amended or disapproved at the  
5 next meeting where a quorum is present. Minutes shall not  
6 become official until approved by the policymaking body.

7 [H.] I. The provisions of Subsections A, B and [G]  
8 H of this section do not apply to:

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

14 (2) limited personnel matters; provided that  
15 for purposes of the Open Meetings Act, "limited personnel  
16 matters" means the discussion of hiring, promotion, demotion,  
17 dismissal, assignment or resignation of or the investigation or  
18 consideration of complaints or charges against any individual  
19 public employee; provided further that this [~~subsection~~]  
20 paragraph is not to be construed as to exempt final actions on  
21 personnel from being taken at open public meetings, nor does it  
22 preclude an aggrieved public employee from demanding a public  
23 hearing. Judicial candidates interviewed by any commission  
24 shall have the right to demand an open interview;

25 (3) deliberations by a public body in

.176685.1

underscoring material = new  
[bracketed material] = delete

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

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

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

21 (6) that portion of meetings at which a  
22 decision is made concerning purchases in an amount exceeding  
23 two thousand five hundred dollars (\$2,500) that can be made  
24 only from one source and that portion of meetings at which the  
25 contents of competitive sealed proposals solicited pursuant to

.176685.1

underscored material = new  
[bracketed material] = delete

1 the Procurement Code are discussed during the contract  
2 negotiation process. The actual approval of purchase of the  
3 item or final action regarding the selection of a contractor  
4 shall be made in an open meeting;

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

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

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

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

17 ~~[H-]~~ J. If any meeting is closed pursuant to the  
18 exclusions contained in Subsection ~~[H]~~ I of this section ~~[the~~  
19 ~~closure]~~:

20 (1) the closure, if made in an open meeting,  
21 shall be approved by a majority vote of a quorum of the  
22 policymaking body; the authority for the closure and the  
23 subject to be discussed shall be stated with reasonable  
24 specificity in the motion calling for the vote on a closed  
25 meeting; the vote shall be taken in an open meeting; and the

.176685.1

underscoring material = new  
~~[bracketed material] = delete~~

1 vote of each individual member shall be recorded in the  
2 minutes. Only those subjects announced or voted upon prior to  
3 closure by the policymaking body may be discussed in a closed  
4 meeting; and

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

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