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HOUSE BILL 367

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

James E. Smith

AN ACT

RELATING TO OPEN GOVERNMENT; REQUIRING LIVE VIDEO AND AUDIO
TRANSMISSION VIA THE INTERNET OF MEETINGS OF PUBLIC ENTITIES
CONDUCTING PUBLIC BUSINESS; REQUIRING COPIES OF TRANSMISSIONS
TO BE RETAINED AS PUBLIC RECORDS.

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

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1 and employees who represent them. The formation of public
2 policy or the conduct of business by vote shall not be
3 conducted in closed meeting. All meetings of any public body
4 except the legislature and the courts shall be public meetings,
5 and all persons so desiring shall be permitted to attend and
6 listen to the deliberations and proceedings. Reasonable
7 efforts shall be made to accommodate the use of audio and video
8 recording devices.

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

25 C. The board, commission, administrative

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1 adjudicatory body or other policymaking body conducting a
2 meeting required to be a public meeting open to the public
3 pursuant to Subsection A of this section shall provide for live
4 video and audio transmission of that public meeting via the
5 internet no later than January 1, 2012 unless exempted pursuant
6 to Subsection D of this section. The location or uniform
7 resource locator of the internet site where the live
8 transmission is or will be available shall be provided in the
9 notice of the public meeting required by the Open Meetings Act.
10 The internet site shall be a public access site or a site
11 available to the public without cost or subscription. The
12 department of information technology, when requested, shall
13 provide technical assistance to a board, commission
14 administrative adjudicatory body or other policymaking body to
15 implement the live video and audio transmission required by
16 this subsection.

17 D. After a request by a board, commission,
18 administrative adjudicatory body or other policymaking body for
19 technical assistance, if the department of information
20 technology determines in writing that providing a live video
21 and audio transmission of a particular public meeting in a
22 particular location and at a particular time is technically or
23 logistically impracticable, the department of information
24 technology shall issue the written determination to the
25 affected entity. If live audio transmission is practicable but

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1 not video transmission, the written determination shall so
2 indicate. The written determination shall exempt the entity
3 from providing a live video and audio transmission or from
4 providing a live video transmission for the particular public
5 meeting, as the case may be, as otherwise required by the Open
6 Meetings Act.

7 E. A board, commission, administrative adjudicatory
8 body or other policymaking body shall receive no more than two
9 exemptions in a twelve-month period pursuant to Subsection D of
10 this section. An entity receiving an exemption shall take all
11 actions reasonable and necessary to schedule its public
12 meetings at times and places where live video and audio
13 transmission of the meetings can occur.

14 F. A board, commission, administrative adjudicatory
15 body or other policymaking body providing a live video and
16 audio transmission of a public meeting, or a live audio
17 transmission of a public meeting pursuant to Subsection D of
18 this section, shall also produce an electronic media exact copy
19 of the transmission. The copy shall be a public record. The
20 copy shall be retained and disposed of by the entity producing
21 it in accordance with a records retention and disposition
22 schedule adopted by the state commission of public records
23 pursuant to the Public Records Act.

24 [~~G.~~] G. If otherwise allowed by law or rule of the
25 public body, a member of a public body may participate in a

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

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

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

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1 least one other location appropriate to provide public notice
2 of the continuation of the meeting. Only matters appearing on
3 the agenda of the original meeting may be discussed at the
4 reconvened meeting.

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

18 ~~[G-]~~ K. The board, commission or other policymaking
19 body shall keep written minutes of all its meetings. The
20 minutes shall include at a minimum the date, time and place of
21 the meeting, the names of members in attendance and those
22 absent, the substance of the proposals considered and a record
23 of any decisions and votes taken that show how each member
24 voted. All minutes are open to public inspection. Draft
25 minutes shall be prepared within ten working days after the

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1 meeting and shall be approved, amended or disapproved at the
2 next meeting where a quorum is present. Minutes shall not
3 become official until approved by the policymaking body.

4 ~~[H.]~~ L. The provisions of Subsections A, B, C and
5 ~~[G]~~ K of this section do not apply to:

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

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

22 (3) deliberations by a public body in
23 connection with an administrative adjudicatory proceeding. For
24 purposes of this paragraph, ~~[an]~~ "administrative adjudicatory
25 proceeding" means a proceeding brought by or against a person

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

8 (4) the discussion of personally identifiable
9 information about any individual student, unless the student
10 [~~his~~] or the student's parent or guardian requests otherwise;

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

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

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1 shall be made in an open meeting;

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

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

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

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

14 [~~F~~] M. If any meeting is closed pursuant to the
15 exclusions contained in Subsection [~~H~~] L of this section [~~the~~
16 ~~closure~~]:

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

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1 meeting; [~~and~~] or

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

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

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

19 "10-15-2. STATE LEGISLATURE--MEETINGS.--

20 A. Unless otherwise provided by joint house and
21 senate rule, all meetings of any committee or policymaking body
22 of the legislature [~~held for the purpose of discussing public~~
23 ~~business or for the purpose of taking any action within the~~
24 ~~authority of or the delegated authority of the committee or~~
25 ~~body~~] are declared to be public meetings open to the public at

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1 all times. Reasonable notice of meetings shall be given to the
2 public by publication or by the presiding officer of each house
3 prior to the time the meeting is scheduled.

4 B. No later than the second session of the fiftieth
5 legislature, the legislature shall provide to the public on its
6 internet web site a live audio and video stream of its sessions
7 and public meetings unless the legislative council service
8 determines in writing that providing a live video and audio
9 transmission of a particular public meeting in a particular
10 location and at a particular time is technically or
11 logistically impracticable. If live audio transmission is
12 practicable but not video transmission, the written
13 determination shall so indicate. The written determination
14 shall exempt the legislature from providing a live video and
15 audio transmission or from providing a live video transmission
16 for the particular public meeting, as the case may be, as
17 otherwise required by the Open Meetings Act.

18 C. The legislature shall produce an electronic
19 media exact copy of the live video and audio transmissions or
20 audio transmissions of its public meetings. The copy shall be
21 a public record. The copy shall be retained and disposed of by
22 the legislature in accordance with a records retention and
23 disposition schedule adopted by the state commission of public
24 records pursuant to the Public Records Act.

25 [~~B.~~] D. The provisions of Subsection A of this

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1 section do not apply to matters relating to personnel or
2 matters adjudicatory in nature or to investigative or quasi-
3 judicial proceedings relating to ethics and conduct or to a
4 caucus of a political party.

5 ~~[G.]~~ E. For the purposes of this section, "meeting"
6 means a gathering of a quorum of the members of a standing or
7 interim committee or policymaking body or conference committee
8 held for the purpose of ~~[taking any action within the authority~~
9 ~~of the committee or body]~~ discussing public business."

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